



## NECESSARY CRIMINAL LIABILITY FOR SECURITY DISCLOSURES

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### ABSTRACT

*Preserving the security secrets and not dispensing them is one of the important duties on all citizens, as it is considered one of the important secrets at the state level because it relates to its existence and its continuation and its security depends on it in different aspects. In general, or the employee, according to his daily work, whose job center imposes the ability to see these secrets and knowledge of them.*

*Because of what causes the disclosure of these secrets and the spread of the interest of the state, society and national security, most legislation has been keen to criminalize those who divulge government secrets in general and security secrets in particular. We discussed the crime of divulging security secrets by clarifying the concept of this crime and determining the penalty resulting from its perpetrators in both Iraqi and Jordanian law by following the comparative approach.*

### INTRODUCTION:

The crime of disclosing security secrets is considered a crime that threatens the security of the state and is harmful to public interests. This crime is embodied in the disclosure of confidential or prohibited information by an employee working in a governmental or private institution or in a security organization<sup>(1)</sup>. The seriousness of this type of crime is that it exposes national security and the public interest to danger, and severe and strict legal penalties must be imposed against anyone who commits this act, which could include leaking, publishing, or handing over unannounced information to parties that do not have the right to obtain it. Therefore, the secrets that are embodied in matters related to government secrets and the highest interests of the state enjoy a high level of attention that distinguishes them from other secrets, with the aim of caring for and preserving them<sup>(2)</sup>.

Which prompted the state to focus on imposing restrictions on all its employees by forcing them not to disclose the secrets of documents, data, and all the information they receive, and the importance of keeping them secret. Therefore, we found it necessary to investigate the criminal liability resulting from disclosure.

Security secrets. Determining this responsibility will remain one of the most important priorities that must be taken into account and paid attention to in all legislation, and this is what we will explain in our study by following the comparative approach to demonstrate the importance of the responsibility resulting from the perpetrators of the crime of disclosing security secrets in both Iraqi and Jordanian laws.

research importance:

The importance of our research comes from the important role of criminal liability that results from the disclosure of security secrets in preserving the national security of the state and the safety of society. Criminal liability is also considered an essential factor in preventing the spread of corruption, reducing conspiracy and espionage, and encouraging people to act with caution when dealing with security secrets and government secrets. In general, therefore, the importance of this study focuses on its treatment of the most important and harmful crimes against the state's entity,

<sup>(1)</sup> Dr.. Sherif Ahmed Al-Tabbakh, State Security Crimes in the Light of Judiciary and Jurisprudence, Dar Al-Fikr Al-Jami'i, 1st edition, Alexandria, 2015, p. 13.

<sup>(2)</sup> Dr.. Sharif Ahmed Al-Tabbakh, State Security Crimes in the Light of Judiciary and Jurisprudence, op. cit., p. 15.



as these crimes represent a direct assault on the political, economic, security, and scientific existence of the state.

The first topic: The nature of the crime of disclosing security secrets

The crime of disclosing security secrets is the disclosure of sensitive and accurate information that is kept confidential for security reasons, without a permit allowing its disclosure <sup>(1)</sup>.

This disclosure is considered a crime in most countries of the world, and its perpetrators are punished by imprisonment, financial fines, or both in some cases. These secrets are protected and kept secret to protect national security and defend the country. These secrets include information related to the army, security and intelligence services, and the security secret also includes information related to organized crimes, terrorism, and espionage crimes, and this information is strictly protected.<sup>(2)</sup>

In order for the state to carry out its activities through its agencies and administration, it must grant confidentiality to many events, documents, data, and information whose disclosure may cause harm to the public interest. Therefore, the state imposes restrictions on its employees that prevent them from divulging secrets. The secret can be considered as the subject of the crime whose features we want to clarify and determine its elements, with the aim of limiting the criminal responsibility imposed on its perpetrators.

The first requirement: the concept of security secrets

The term security secrets is used in the context of law and security, as it refers to information and documents related to non-military matters such as security services, police, and government institutions in all their fields, and also includes information about criminal investigations, terrorism, and all matters that threaten the security of citizens and the state and expose them to danger. We will divide this requirement into two sections. In the first section, we will explain what is meant by secret in language and terminology, and in the second section, we will clarify the definition of security secrets.

The first section: Definition of the secret linguistically and terminologically

A secret is defined in the language as what an individual conceals within himself in general, and it was stated in the surrounding dictionary that a secret is everything that is concealed by a person within himself, and the plural is secrets and secrets, and a secret is the inside of a thing and its core, and a secret is what the secret is secreted with

A secret is defined as an event about which knowledge is limited to a small number of people if there is an interest for one or several people to keep knowledge of it within a specific scope.

Section Two: Definition of security secrets

Security secrets fall within the list of government secrets, as government secrets include all information related to the function of the state, as a government based on the supreme policy of the state, such as security secrets, internal secrets, as well as secrets related to the state's external relations. Government secrets are considered an essential part of the state's higher policies, which include everything related to the state's policy at the internal and external levels<sup>(3)</sup>

Hence, we can consider that crimes that affect the direct protected interest revolve around what we can call security secrets or a number of other terms that differ according to legislation, but they all revolve around the same meaning<sup>(4)</sup>. Also, determining the place of criminal protection for security secrets will remain one of the most important duties that it must be taken into account and taken into account in all legislation if this is related to providing multi-faceted protection for


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<sup>(1)</sup>Dr.. Hisham Yousfi, *Criminal Protection of Professional Secrets*, Dar Al-Walid for Publishing and Distribution, Cairo, first edition, 2015, p. 11

<sup>(2)</sup> Dr.. Mahmoud Suleiman Moussa, *International Espionage and Criminal Protection of State Secrets*, Mansha'at Al Maaref, Alexandria, 2001, p. 45

<sup>(3)</sup> Dr.. Mahmoud Suleiman Musa, *International Espionage and the Criminal Protection of State Secrets*, op. cit., p. 48.

<sup>(4)</sup>Dr.. Mahmoud Suleiman Musa, *International Espionage and the Criminal Protection of State Secrets*, op. cit., p. 48.



the defense secret or by providing protection that has a special nature centered on obliging all individuals to preserve the defense secret by achieving rapprochement between enforcing confidentiality and the rights of individuals that conflict with confidentiality<sup>(1)</sup>.

If we touch upon the meaning of security secrets according to the Iraqi legislator, we find that it has not enacted special legislation for security secrets, but rather it has been addressed through some legislation and regulations. We will present a small portion of them. In the law on the discipline of state and public sector employees, No. 14, issued in 1991, in force, it is an indication of the meaning of security secrets. The meaning of security secrets without using the word itself, but rather it was replaced by the confidentiality granted to information and documents that must be kept secret by the employee and which he has access to in accordance with his job, such as information and documents that are considered secret by their nature, as well as information and documents that are feared to cause harm to the state or citizens if they are disclosed. Finally, administrative data and orders are confidential and the employee has been informed of the need to keep them confidential.

While the Penal Code No. 111 issued in 1969 was in force, this law mentioned the term state secrets and they were divided into four sections: defense secrets, job secrets, secrets harmful to the state, and judicial secrets.

The second requirement: Elements of the crime of disclosing secrets

Disclosure is usually characterized by the fact that it occurs secretly. If it occurs publicly, then the crime does not occur. It is worth mentioning that revealing part of a secret or revealing the entire secret incorrectly is considered revealing the entire secret, due to the importance of government and security secrets in particular. Since divulging government secrets in general is considered an act that is inconsistent with the ethical rules of the job and the credit that must be available to someone who has the job capacity<sup>(2)</sup>, therefore, in this requirement, we will clarify the most important elements of the crime of divulging government secrets, which include security secrets.

First: The material element: The material element can be defined as representing the external behavior that the law refers to as a crime, which is perceived according to the senses. Likewise, the Iraqi legislator, in Article 28 of the Penal Code No. 111 of 1969 as amended, defined the material element as criminal behavior represented by committing An act forbidden by the law or refraining from performing an act ordered by the law. The material element is considered one of the most important elements of the crime, since in the absence of the material element there is no crime or punishment, and the law does not recognize any crime unless this element is present, and since states are greatly concerned with protecting their secrets. It has nothing more important than preserving its governmental and security secrets and the country's defense secrets. Criminal legislation has focused on imposing punishment on anyone who attacks these secrets, because a state that cannot protect its secrets cannot preserve its entity, existence, and prestige among states. Based on this, we can divide the types of legislators' criminalization of what violates protected secrets into three types:

-The first form takes the form of criminalizing actions that are still in the process of preparing for the crime.

-The second form represents the criminalization of actions that directly affect security secrets and protected secrets.


-The third picture is embodied in the acts attached to the crimes of assaulting security and defense secrets.

One of the most important conditions for an employee to be liable for the crime of disclosure is the transfer of secrets to others. Here, third parties mean anyone who does not belong to the people whose scope of knowledge of the incident is limited.

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<sup>(1)</sup> Dr.. Mahmoud Suleiman Musa, *International Espionage and the Criminal Protection of State Secrets*, op. cit., p. 48.

<sup>(2)</sup> Dr.. Jaber Youssef Abdel Karim Al-Maraghi, *Crimes of Violating Defense Secrets*, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 15.



It is considered a secret<sup>(1)</sup>, and legislation in Iraq or Jordan does not require that material harm be caused to the victim, if he is a legal or natural person. Likewise, the material element here does not require the presence of a criminal result that is harmful and independent of the criminal behavior<sup>(2)</sup>, as the crime in all its forms is considered a crime. Harm. It is also necessary that the perpetrator's activity in accessing the secret be illegal.

Second: The moral element of the crime: The crime of divulging secrets is considered one of the crimes committed intentionally, that is, premeditated crimes, and therefore its moral element takes the form of intent. As a result, the law does not apply criminal punishment to those who divulge secrets due to negligence, recklessness, or failure to follow the regulations and laws in Preserving it, but he will be held civilly accountable for all the damages he caused as a result of his negligence and negligence. The moral element also expresses the existence of a link between an individual's criminal behavior and its results and the psychological state of the offender who carried out this behavior. This psychological state is called the moral element of the crime, and there must be a link between the mental activity of the offender and the physical activity of the crime<sup>(3)</sup>

We must point out that the moral element of any crime has two forms: criminal intent and error. We can define criminal intent according to the proponents of the theory of knowledge as the perpetrator's knowledge of the criminal incident at the moment he initiates his physical activity that caused it. As for the proponents of the will theory, they define criminal intent as directing the perpetrator's will to Carrying out the crime according to the conditions required by law<sup>(4)</sup>. As for a mistake, it is every voluntary act or omission that results in results that were not intended by the actor but were due to him

He must pay attention to it and avoid it. Accordingly, it is a condition for the error to occur that the perpetrator engages in the criminal behavior without his will and reaches a criminal result from that behavior. Likewise, there must be an obligation on the perpetrator that requires him to be cautious and careful, and that the original crime occurs as a result of breach of this obligation.

Third: The presumed element: In addition to the elements we mentioned above, there must be a third element, which is the presumed element, and it expresses a legal position or a factual position whose existence precedes the occurrence of the crime. Therefore, we can also call it a prior condition, as it is a condition that the law requires to be present in A number of crimes without being considered among the elements, such as the quality of a public employee, which must be present in the perpetrator. The purpose of requiring the presence of this element is that the basis of the crime lies in the breach of an obligation resulting from the job and what its duties require, and it is required that this quality be present upon knowledge of the job secret without it being present. When disclosing them, that is, the disclosure must be made by the perpetrator of the crime of disclosing military and security secrets, which is every person who has knowledge of the secret because of his job, meaning that the crime of disclosing secrets only occurs against a person who has a certain capacity.

The crime is not a physical entity and consists of the act and its effects. Rather, it is a personal entity, where criminal responsibility is imposed on the perpetrator and he bears the consequences of the act attributed to him in the event that he commits an error. The error committed by the perpetrator is divided into an intentional error called criminal intent, which is In intentional crimes, an unintentional mistake is due to negligence and negligence.

### **The second section: The effects of disclosing government secrets**

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(1) Dr.. Abdel Fattah Mustafa Al-Saifi, Penal Code - Crimes of Assault on State Security and Funds - Dar Al-Nahda Al-Arabi, Beirut, 1972, p. 20

(2) Dr.. Jaber Youssef Abdel Karim Al-Maraghi, Crimes of Violating Defense Secrets, op. cit., p. 18

(3) Abdul Rahman Obaid Allah Ataa, Criminal Protection of Secrets in Jordanian Law, Master's Thesis, Middle East University for Postgraduate Studies, Department of Public Law, Jordan, 2010, p. 50.

(4) Abd al-Rahman Ubaid Allah Ataa, Criminal Protection of Secrets in Jordanian Law, op. cit., p. 52.

The effects that result from the occurrence of a crime are the imposition of a penalty on its perpetrator<sup>(1)</sup>. If a person performs an act forbidden by law or refrains from doing what the law orders, this is considered a crime that the legislator confronts by imposing penal measures appropriate to the crime and applying the punishment determined by the law for this. The crime is for the purpose of securing penal protection that reduces behavior that violates the laws, as the legislator aims, by following penal procedures, to provide the highest degree of protection for the group of major interests and core values in society, and thus achieve justice, stability, and control of behavior. With regard to disclosing government secrets, it is an act that contradicts Public job ethics, whether it is a security, military, professional, or any other job.<sup>(2)</sup>

The criminal liability for the crime of disclosing government secrets in general and security secrets in particular is focused on ensuring protection for these secrets regardless of the container in which they are disclosed, that is, if they are in the form of paper secrets or data and information that are used in government departments and agencies for confidential correspondence with ministries. Criminal liability is also one of the important issues in the Penal Code, as every person bears the consequences and consequences of his criminal behavior and is partially held accountable for it under the Penal Code, due to a violation of the penal rules that prohibit acts harmful to the interests of society and the state.

#### **The first requirement: the concept of criminal liability**

The term criminal liability is used to indicate that the individual bears all the consequences resulting from his behavior that violates the law<sup>2</sup>. The concept of criminal liability applies to the concept of accountability and the person's responsibility for the results and consequences of his actions. The idea of responsibility involves raising the idea of error and penalty, as error and penalty can be either moral or legal. Because of this, liability is either moral or legal.

It is also not sufficient for criminal liability to be established if the perpetrator commits a physical act that results in harmful results. Rather, a crime must be committed according to the conditions imposed by criminal jurisprudence as a physical and psychological activity that violates the goals of the group, and takes on an illegal character due to its contradiction with the legal rule that criminalizes this activity. .

Therefore, criminal responsibility means asking the offender about his behavior that violates the rules prevailing in society, and then expressing social disapproval of this behavior by imposing a penalty or precautionary measure imposed by the law on whoever committed the crime<sup>(3)</sup>.

The opinion of jurists is that criminal responsibility should not be considered one of the elements of the crime because it does not result unless all the elements of the crime are present. It is the effect of the combination of these elements and relates to humans only, while other creatures have no relation to responsibility<sup>(4)</sup>. While the opinion of another section of jurists tends to consider criminal responsibility as one of the pillars of crime, and their argument for that is that not every behavior results from a person.

Anyone who violates the law is subject to punishment, but this behavior must allow for personal accountability. Accountability is linked to the person of the perpetrator and is not linked to the act itself. Criminal responsibility arises from the offender when he has the criminal capacity<sup>(5)</sup>.

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(<sup>1</sup>) Dr.. Ali Sadiq Abdel Hamid, State Security and the Legal System of the Foreign Judiciary, doctoral thesis, Cairo University, Faculty of Law, 1976, p. 25.

(<sup>2</sup>) Dr.. Jalal Tharwat, The Theory of Multiple Intent Crime in Egyptian and Comparative Law, New University Publishing House, Alexandria 2003, p. 75.

(<sup>3</sup>) Haider Ghazi Faisal Al-Rubaie, Criminal Liability, Master's Thesis, College of Law - Al-Mustansiriya University, Baghdad 2006, p. 15.

(<sup>4</sup>) Hussein Ali Jabbar Al-Rikabi, Criminal Protection for External State Security, Zain Legal Publications, Beirut, Lebanon, first edition, 2018, p. 65.

(<sup>5</sup>) Dr.. Zeina Ghanem Abdel-Jabbar Al-Saffar, Banking Secrets, A Comparative Legal Study, Dar Al-Kutub Al-Qawaniyya, Egypt, 2011, p. 50.



We can also define criminal liability as the obligation to bear all the consequences resulting from actions and actions that violate the legal rules, or in other words, it is the individual's authority to bear any responsibility resulting from the actions committed that are considered crimes from the point of view of the law.

One of the conditions for the establishment of criminal liability is that the perpetrator must have the ability to perceive or discern and have freedom of choice or will. Criminal liability does not fall on someone who does not possess these two qualities. Criminal liability also differs from civil liability in that the cause of criminal liability is an act that is harmful to society because of the criminal danger it represents, whereas the cause of liability is the harmful act that affects the interest of a specific person. The relevant penalty within the scope of criminal liability is a punishment imposed in the name of society by holding a person responsible for committing a crime, while the penalty in the field of civil liability is an exposure that is taken from the one who caused the damage and given to the injured person.

The second requirement: Criminal liability for disclosing secrets in Iraqi law and Jordanian law.

The penalties imposed for the crime of disclosing government secrets vary depending on the country and according to the existing legal system in it. The perpetrator may be punished with imprisonment<sup>2</sup>, a fine, or loss of his job

He was prevented from working in the government. If he discloses secrets that affect national security and harm the state, he may be exposed to severe penalties, such as deprivation of his civil rights and imprisonment. In this requirement, we will clarify the penalty for the crime of disclosing government secrets in both Iraqi and Jordanian law.

Jordanian law, in the text of Article 355 of Penal Code No. 16 issued in 1960, stipulates that a punishment of imprisonment for a period not exceeding three years must be imposed on each of the following:

He obtains official secrets by virtue of his job or official position and discloses them to those who do not have the right to obtain them or to those whose job does not require such access<sup>(1)</sup>, that is, in the event that an employee in a government position, whether professional, military, or security, keeps secret documents, drawings, models, or copies. Some of them are in his possession, without having the right to keep them and without his job requiring that.

As for Iraqi law, it made security secrets a trust in the hands of the employee who owns them or knows about them in accordance with his job, and did not give him the right to announce them to others because that would be a betrayal of the trust entrusted to him<sup>(2)</sup>, and keeping them gives a manifestation of his carrying out his job duties honestly and sincerely.<sup>(3)</sup>

Therefore, the Iraqi legislator stipulated consequential penalties in Articles 95 to 99, in which he mentioned two penalties: deprivation of some rights and the penalty of police supervision. The penalty of deprivation is applied to all those sentenced to life or temporary imprisonment and is taken against them from the date of issuance of the ruling until the day of their release. While the penalty of police surveillance is applied to those sentenced to imprisonment for committing specific crimes such as assault

External State Security, so that the perpetrator is placed under police surveillance after the end of his sentence for a period equivalent to the sentence period, provided that it does not exceed 5 years. The court has the right to reduce this period and order the convict to be exempted from it.

Likewise, the legislator in Iraqi law, in Article 437, did not require that there be harm in the criminal consequence resulting from the crime of disclosure, when in the text of Article 327 of the Amended Penal Code No. 111 of 1969, he restricted the disclosure of secrets in the event of harm occurring or not, but he increased the penalty in the event Disclosure would harm the interest of

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<sup>(1)</sup> Dr.. Kamel Al-Saeed: Explanation of the Jordanian Penal Code, Crimes Against Money, 2nd edition, Dar Al-Thaqafa Publishing and Distribution Library, Amman, 1993, p. 25.

<sup>(2)</sup> Abd al-Rahman Ubaid Allah Ataa, Criminal Protection of Secrets in Jordanian Law, op. cit., p. 53.

<sup>(3)</sup> Shafiq Abdul Majeed Al-Hadithi, The Disciplinary System for State Employees in Iraq, Master's thesis, University of Baghdad, 1975, p. 25.

the state, as a penalty of imprisonment for a period not exceeding 3 years and a fine not exceeding 309 dinars, or one of these two penalties, was imposed on every employee or person charged with a public service who disclosed a matter he knew about in accordance with his position to a person who knew he should not know about it, and the The penalty is imprisonment if this disclosure harms the interest of the state

The Iraqi legislator also punished the perpetrators of the crime of divulging government secrets that harm the state, such as the crime of divulging defense secrets, with life imprisonment as an original punishment<sup>(1)</sup>, and this is what was stated in the text of Article 177 in the amended Penal Code No. 111 of 1969. As well as imprisonment for a period not exceeding 15 years, as stated in Article 178.

Conclusion:

At the conclusion of our research, we must emphasize that the criminal liability resulting from the disclosure of security secrets is considered one of the fundamental issues in both Iraqi and Jordanian law. As both laws consider it

A serious crime that requires the imposition of strict penalties according to the law. In Iraqi law, the penalty of imprisonment and a fine was imposed on anyone who divulges a state secret. The period of imprisonment and the fine are determined according to the importance of the secret being disclosed and the degree of danger resulting from it. While Jordanian law imposes a prison sentence for a period not exceeding 3 years on anyone who discloses a secret entrusted to him by virtue of his job.

We have concluded that disclosing security secrets is considered a criminal offense under the applicable penal code, and a penalty must be imposed against the perpetrator, especially since his act is the most effective evidence of his unfitness to hold official duties in the state.

We recommend the necessity of enacting a law that regulates everything related to security secrets and takes into account the issue of progress in technology and the resulting serious effects on national security and nationalism.

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(<sup>1</sup>) Abd al-Rahman Ubaid Allah Ataa, *Criminal Protection of Secrets in Jordanian Law*, op. cit., p. 54.



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