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The Law on the Illicit Enrichment Crime and Financial Disclosure in Jordan: Issue of Effectiveness and Enforceability

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Abstract: Traditional prosecution of corruption proved useless results, due to futility of proving methods and the secretive nature of corruption case. Therefore, the financial disclosure system had been created to be an important and effective tool to curb corruption through prevention of conflict of interests and prosecution of illicit enrichment. Jordan adopted this system within the Illicit Enrichment Law aiming to prosecute illicit enrichment and deprive perpetrators and their accomplices from the proceeds of corruption. However, there are several problems inherent in the law that frustrates its objectives. Hence, this article discusses one of these issues, which is the relationship between the criminal liability of illicit enrichment and the obligation of submission the financial disclosure in accordance with the Jordan law, with some reference to the international standards.

Keywords: Financial disclosure; Illicit enrichment; Jordanian illicit enrichment law; Enforceability.

1. Introduction

“Income and Asset Declaration systems can be a powerful tool to prevent corruption and detect the theft of public assets. . . . We should never forget the reason we create these systems. As part of an overall anti- corruption strategy, they help ensure that scarce resources are spent honestly and wisely. In this way, we help citizens get the health care, the education, the roads and the quality of life they have paid for and deserve. And . . . this attention to good governance acts as a reinforcing foundation for prosperity and stability.”– Otaviano Canuto, PREM vice president. (Burdescu *et al.*, 2010)

The expression of Financial Disclosure (FD) is similar to the “Asset Declaration” (AD) (Burdescu *et al.*, 2009) and the “Income and Asset Declaration” (IAD) (Messick, 2009), which means: a formal declaration made and submitted by specific types of public officials, disclosing their assets, incomes and any properties gained from any resource or any other financial position for them and for their families (Habershon and Trapnell, 2012).

The FD system was founded as a tool of good governance to curb corruption, since it aims to prevent and detect the illegitimate wealth of public officials through verifying any abnormal increases or changes on the properties of public officials (Kofele-Kale, 2006). In addition, it assists the competent authorities in investigation, prosecution and restoration of stolen money (OECD., 2011) to deprive corruptors from it (Habershon and Trapnell, 2012).

In fulfilling its obligations to United Nations Convention Against Corruption (UNCAC), Jordan promulgated the Financial Disclosure Law no. 54 in 2006 (FD). Consequently, the Financial Disclosure Department (FDD) was established in 2008 within the Ministry of Justice and affiliated to the Minister of Justice (United Nations, 2011). Accordingly, pursuant to article 5 (A) of the FD law, the FDD is chaired by a judge from the Court of Cassation appointed by the Judicial Council. In 2014, the said law was repealed by the new Illicit Enrichment Law no. 21 of 2014 (IE Law) to remedy the problems of the FD law. Interestingly, the IE law is typical to FD law, whereas, the differences are just subsidiaries not substantial (Nasraween, 2014). Besides, the IE law identifies the categories of persons who are subjected to its provisions, where they have to provide the FDD, periodically, with the financial disclosure on their assets and the properties of their families periodically at the due dates under article 7. As well, criminalizes illicit enrichment under articles 4 and 13.

2. Illicit Enrichment

Illicit enrichment represents the proceeds of corruption crimes committed during the period of service, such as bribery, embezzlement and investment of public office (AbdulJaleel, 2004). However, secretive nature is the main characteristic of this crime (Derencinovic, 2010), thus, it is undetectable by traditional investigation; only illogical

increases or changes on the wealth indicate an occurrence of suspicious act (Banerjee and Hanna, 2012). That is why, the financial disclosure system deemed an effective instrument to monitor and prevent illicit enrichment. Therefore, illicit enrichment is considered one of the most complicated corruption crimes due to lack of proof, where money is the only tangible evidence (Muzila *et al.*, 2012).

The United Nations Convention against Corruption (2004) defines this crime under article 20 as “A significant increase in the assets of a public official that he or she cannot, reasonably, explain in relation to his or her lawful income.” Some scholars define illicit enrichment as a significant increase in the wealth of a public official that cannot be logically explained in relation to his or her lawful income (Kofele-Kale, 2006). The IE Law defines this crime under articles 4, which stipulates:

“It shall be regarded an Illicit Enrichment; any movable or immovable property attained by any person, subject to this law, for his benefit or the benefit of any other person due to exploitation of position, office or the status he holds or by virtue of capacity any of them; and it is : any increase occurs on the movable or immovable properties owned by him-or- his/her spouse -or- minor children according to in the financial disclosure submitted by him pursuant to this law or to the Financial Disclosure Law no. 45 of 2006, during his tenure of position, office, status or by virtue of the capacity any of them, if this increase does not commensurate with the financial resources, and he fail to prove a legitimate source for that increase.”

Despite the fact that, it has been over eight years since the promulgation of the IE law and the repealed FD law, yet, there is no declaration has been subjected to verification, and none of the subject person had been prosecuted of illicit enrichment until now because of some legal barriers inherent in the IE law and related legislation. Hence, this study intends to explain a part of these problems which is the issue the subject persons.

3. The Financial Disclosure System

The notion of the financial disclosure system is not recent establishment, so, it's worth mentioning, that the Islamic provisions include mature and comprehensive concepts of corruption and its consequences that include fifty verses of the Holy Qura'an explain the notion and types of corruption (Abuarqub, 2009). As well, it has effective measures on preventing and combating corruption, for example: *Diwan AL-Madhalem* means Ombudsman, *Al-Hesbah* means an administrative and law enforcement control with semi-judicial power, and the *financial declaration* which include any person who entitled to perform public duties on behalf of the governor (Ma'abra, 2011). Thus, this study invites researchers, scholars and everyone interested in corruption studies to attain unique knowledge to look at the related teachings of Islam. Interestingly, historical notion of what so-called the “public official's disclosure” was found also in 1889 in the United Kingdom in the (Prevention of Corruption Act). In 1974 the House of Commons enacted the (Register of Interest Act) (OECD., 2011). By 1980s of the last century this system spread widely in the west countries of Europe.

Utilizing the financial disclosure system as a vital factor in fighting corruption framework achieved quality steps in the 1970s in the United States after the Watergate scandal (Habershon and Trapnell, 2012). Nowadays, more than 175 countries adopt the financial disclosure system with some differences between them (Muzila *et al.*, 2012; Van der Does de Willebois *et al.*, 2011) especially after the ratification of the UNCAC in order to comply with article 52(5) which stipulates that “Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance.”

4. Considerations to Adopt the Financial Disclosure System

The financial disclosure is considered an effective tool to combat corruption. Its importance is increasing day-by-day, due to the expected benefits, which are twofold; as corruption prevention instrument where the code of conduct per se is no longer adequate to reduce the conflict of interest, even though it is a part of the legal framework in building financial disclosure system (Habershon and Trapnell, 2012). On the other hand, financial disclosure system can be an efficient tool to prevent corruption in some countries with preventive model (Burdescu *et al.*, 2009) or what-so-called Conflict of Interests model (OECD., 2011) through reducing possibilities of conflict of interest (Messick, 2009), due to the maturity of democracy and high level of transparency with long public service traditions like EU countries (Derencinovic, 2010).

Other regimes, particularly in the developing countries with low level of democracy; short traditions of public service had adopted the illicit enrichment model (Perdriuel-Vaissiere, 2012), where the role of the financial disclosure system is to identify it, by this means, assists other competent authorities to return the stolen money (Burdescu *et al.*, 2010).

Jordan adopted the IE model because it criminalizes illicit enrichment offence and the law aims to detect this crime. Therefore, the legal framework of illicit enrichment model mostly consists of the financial disclosure law and relevant criminal legislations (Nasrallah, 2013). Then, public officials are periodically required to declare their wealth and / or update the information, assess in enhancing the integrity among the public service and keep the officials away -as possible- from conflict of interest or illicit enrichment (Burdescu *et al.*, 2009; Messick, 2009). To this end, public officials expected to receive an ethical guidelines, awareness against corruption. These procedures enhance the transparency in the public sector and support the confidence of people in the public entities (OECD.,

2011), decrease incidences of favouritism and nepotism since the declaration of assets includes the public official's family (Burdescu *et al.*, 2009).

The financial disclosure system assists the investigation and prosecution in these secret crime, which it will be easier to reveal the cover off the required information or data related the public official (Burdescu *et al.*, 2009; Muzila *et al.*, 2012). That is to say, financial disclosure is also provide an effective criminalization on illicit enrichment (Perdriel-Vaissiere, 2012) and stolen asset recovery (International Centre for Asset RecoveryBasel Institute on Governance, 2009) money laundering, even the statement of the written disclosure can be used against the defendant himself if he fail to prove the legal resource of his wealth or where the absence of evidence that explain the changes on the public official's wealth is difficult to capture through investigation and prosecution (Habershon and Trapnell, 2012) that is why financial disclosure system considered an important addition resource of information to the investigation to understand the trend of investigation (de Willebois *et al.*, 2011). In other words, when the law requires the public official to explain the logic and lawful source of the excessive wealth, otherwise the failure of proof means that the wealth is an illicit enrichment; this is considered one of the best practices in combating corruption (Perdriel-Vaissiere, 2012).

5. The Jordanian Financial Disclosure Department

The FDD is the responsible institution for managing the financial disclosures in line with the IE law as provided under article 5. The FDD has specific administrative tasks needs to be achieved and article 5 from the said law provides the establishment and main task of the FDD as follows:

“A department, named the Financial Disclosure Department, shall be established in the Ministry of Justice and it shall be affiliated with the Justice Minister. It shall be headed by a judge from the Court of Cassation chosen by the Judicial Council, and he/she shall be assisted by the sufficient number of employees necessary to run this Department (FDD).”

IE law does not provide the FDD with the verification functions; as well the new FDD regulation, where it explains the mandates of the FDD under the article 3 thereof. Notwithstanding, article 5 of the IE law provides the following phrase “...shall be assisted by the **sufficient number of employees** (emphasis added) necessary to run this Department”. The number of the FDD officers is only 5 persons (Nasrallah, 2013) which is not adequate to enforce the provisions of compliance and maintenance of the financial disclosures. Besides, pursuant to the IE law itself, the FDD officers are not allowed to verify the declaration, due to the strong confidentiality, and harsh sanctions on violation of this principle. The compliance and non-compliance figures are as follow -

Table-1. Figures on compliance and non-compliance

Year	2007	2008	2009	2010	2011	2012	2013
Filers	2166	1245	347	2266	1297	974	1972
Failed and Notified		713	44	516	379	239	412
Referred to Court		251	2	38	47	15	9

Source: Ministry of justice / FDD, official statistics provided by the FDD staff

The figures from Table 1 shows that the number of cases referred to court are very low compared to the number of filers. This may be due to the issues of enforceability and ineffectiveness of the law.

6. Contents of the Financial Disclosure

Article 7 of the IE law identifies a specific date for each phase or action on the declaration, to determine if the subject person has exceeded or breached those dates or complied with. To that end, the subject person should (after 60 days of receiving the form of disclosure) submit disclosure for himself and for the spouse and minor children. Consequently, this action should be repeated in January every two years along the term of office pursuant to article 7 of the IE law. Based on that, the article 7 of the IE law specifies three types of disclosure submission, which are: a. upon taking office, b. leaving office or demise of position, and c. during the term of office.

What kind of information should be stated and declared by the financial disclosure in order to meet objectives of law? This is one of the most important issues that should be clarified under the law to be enforceable by the competent authority (Burdescu *et al.*, 2010). Essentially, many considerations should be taken into account to identify the contents of the declaration which are: the type of the financial disclosure system, political regime, and the perception level of corruption and the standard of income (Burdescu *et al.*, 2009).

The main goal of the financial disclosure is to monitor changes or increase of wealth to control the potential conflict of interest and prevent the illicit enrichment offence (Burdescu *et al.*, 2010). In addition, article 7 of the IE law provides the same meaning, where it stipulates “...such disclosures shall include all increases occurred on his/her financial position and its sources.”

The FDD regulation of 2014 clarifies what should be stated declaration form which includes –

1. details about the identity of the filer;
2. position;
3. date of taking the office;

4. full address;
5. name of the spouse and minor children;
6. types of assets;
7. movable and immovable property owned inside and outside the Kingdom;
8. benefits of the estates or lands for any of the filer or members of the family;
9. and the source of the any increase on financial position occurred after the date of submission of the earlier declaration and the signature of the filer.

7. Public Official Subject to the Financial Disclosure System

The concept of “public official” may not only refer to the governmental employees, but it includes the three branches of the state; judicial, legislative and executive authorities. In Jordan, it is in accordance with article 3 of the IE law (Nasrallah, 2013). However, some countries have extended the concept of public official to include any person providing public services as in the case of India (Muzila *et al.*, 2012).

The IE law enumerates the subject persons in article 3 thereof. Prima facie, the IE law includes the main three branches of the state: Executive, Legislative, and Judicial in addition to specific categories from the other sectors. Noticeably, these categories are the most powerful and influential persons from the three branches of (Sadiq, 1981) the state; consequently, they are supposed to be the most vulnerable to prosecution of illicit enrichment. However, other relevant legislation may consist legal barriers to prevent the prosecution or holdback the procedures in secret soft scolding, for example, if the suspected person is a judge or a minister then, the prosecution only possible after lifting the legal immunity, which is not an easy mission.

8. Legal Obstacles Related to the Subject Persons

The study categorizes the subject persons to the provisions of the IE law into the following categories; the executive branch, the judicial branch and the legislative branch; in order to understand the seriousness of such legal barriers and to what extent does this law is reliable to combat corruption in Jordan.

Under executive branch, the aforementioned article 3 numerates the subject persons according to their capacity or position and their legal tenure is governed and regulated in accordance with the Constitution or by the relevant laws which may grant the legal immunity to the executives with the vote of majority among the House of representatives as provided under Article 56 of the Constitution of Jordan. The legal immunity hinders the prosecution of illicit enrichment against executives. In the history of the Lower House in Jordan, it does not witness any case of referral ministers to the Attorney General, except one case but fails to attain the majority, that is the case of “Casino Scandal” or what so-called “Jordan Casino Gate”. In this case the Prime Minister Marouf AL-Bakhit was cleared by the Lower House in voting to indict him, where the vote was 50 to 53, while the Lower House voted against the Minister of Tourism Osama Alddabas to refer him to the Attorney General, but he was also cleared and acquitted of all charges (Al Jazeera Transparency Unit, 2014).

Accordingly, the following persons under article 3 of the IE law have the legal immunity; they are the Chief of the Royal Court, Minister of the Royal Court, King’s Advisors, and Royal Court Advisors, heads of independent commissions, Head of the Audit Bureau, Amman Governor and the Head of Central Bank of Jordan. On the other hand, some of the subject persons from the executive branch have been immunized according to their relevant laws for example; the Head of the Anti-Corruption Commission and the Board of Members, as provided under article 20 of the JACC law; the Chairman and the Board of Commissioners as under article 11 of the Independent Electoral Commission; the customs officers who hold the capacity of judicial police in accordance with the article 179 which requires a prior permission (approval) from the special committee formed for this purpose.

Similarly, the judges are also having the immunity against any allegation or complaint. It is not allowed to arrest or detain any judge without a prior permission from the Judicial Council and before any legal procedure against them as stipulated under article 28 of the Law of Independence of the Judiciary of 2014. The Judicial Council has the right and discretion to allow or not to allow the prosecution against the judge as provided under article 29. Besides, the Judicial Council also can drop any complaint or accusation against the judge. Over and above, the law prevents any attempt of prosecution against the judge after the end of his tenure of retirement. As well, the law of the Constitutional Court provides the legal immunity to the members of court pursuant to article 23 of the said law.

Reading carefully the article 28 of the Independence of Judiciary law and the article 23 of the Constitutional Court law confirm the legal restrictions on prosecution of judges of illicit enrichment offence which contradict with IE law procedures due to the strong discretion of the Judicial Council who can reserve any complaint or prevent any attempts to prosecute the judge even after leaving the position. Equally, the judges of the Shari’a courts have the same immunity as stated by the article 24:A of the Formation of Shari’a Courts. The provision provides that Shari’a judge may not be captured or arrested unless after obtaining permission from the Council.

With regards to legislative branch, the Constitution of Jordan immunizes the members of the parliament where they shall not be arrested or prosecuted without a prior decision by absolute majority with sufficient reason to arrest or prosecution. Article 86 of the Constitution states that “no member of the Senate and the House of Representatives shall be detained or tried during the currency of the sitting of the Parliament unless the House to which he belongs issues a decision by the absolute majority that there is sufficient reason for his detention or trial or unless he was arrested flagrante delicto. In the event of his arrest in this manner, the House should be notified immediately”.

In conclusion, prosecution of illicit enrichment became futile; because the prosecution of illicit enrichment must comply with such legal immunity whenever the accused is one of those who enjoy the legal immunity. Article 3 of the IE law has limited applicable to the persons who are not included by immunity for example; second class of the public officials, members of municipal councils and so on. Meanwhile, the provisions of the IE law become ineffective and unenforceable against certain categories of people, when those people fall under the categories that are covered by legal immunity and such legal barrier impedes the prosecution of illicit enrichment through long tedious and futile procedures.

Another impediment for effective enforcement of the law is due to paragraph A of article 14 from the IE law which provides “the court shall issue a decision against the spouse and minor children who benefited from illicit enrichment obliging each of them to reconstitute the amount gained by the illicit act.”

Accordingly, the IE law omits the adult sons or daughters, so, they are not included to the financial disclosure of subject person because they have their own the legal capacity to exercise any legal dispositions independently. Subsequently, if the IE law limits the prosecution of illicit enrichment crime to those who are subjected to the financial disclosure, then, this omission may consider a gap where the subject person can transfer the suspicious part of wealth to his/her adult sons due to close relationship.

Besides, the IE law does not criminalize the spouse of illicit enrichment if the subject person had transferred the illegal properties to his/her spouse. However, the IE law just authorizes the court to issue its decision of asset recovery to retrieve the suspicious part of property from them as stipulated by article 14(A) of the IE, which defect the prosecution of spouse and disable the general provisions of the Penal Code and the Criminal Procedures Law; where they identify the criminal liability of the accomplice, intervener or partner to perpetrator of the crime. In addition, the spouse or the minor children is not required to explain the source of the wealth. Accordingly, the spouse is not obliged to attend before the verification committee because this committee is conducting an administrative procedures not a judicial trial, albeit, it has a judicial capacity pursuant to the article 10(B) of the IE law in which it specifies the subject person “*the declaration provider*” is only person who obliged to explain or give details to the verification commission and article 4 from the same law which provides the subject person who should justify the increase of wealth.

9. Conclusions

The study arrived to the following findings; as long the IE law limits the criminalization of illicit enrichment offence to those who are subjected to submit the financial disclosure pursuant to article 3 of the IE, in this manner, large segment of public officials will be outside scope of criminalization or application of the law, because they are not required to disclose their financial position. As a response to this problem, the Jordanian legislator should disconnect between the criminal liability of illicit enrichment and the obligation of submission the financial disclosure, by amending the law.

In addition, if the legal immunity stands, it is a strong legal barrier to prosecute the persons who enjoy it immunity. Besides, the prime minister, ministers, legislators, judges and who in the same rank, position and privilege of minister also far away from accountability. Thus, the influential persons in Jordan are in safe haven from the prosecution of illicit enrichment by the provisions of immunity. On the other hand, illicit enrichment offence is considered as the financial interpretation of other corruption crimes, which committed with utmost secrecy and nearly undetectable, due to nature of the crime, lack of power and contradiction between the IE law and the relevant legislations. In other words, it is like the stick in the wheel, which hinders the prosecution due to the legal immunity which needs constitutional and legislative amendments to overcome the problem of enforceability and ineffectiveness of the current IE Law.

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