

# Penalties Arising from Security Institution Secrets in Iraqi and Jordanian Law

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## Abstracts

This study investigates the penal consequences of crimes against the security secrets of institutions within Iraqi and Jordanian law, focusing on the legislative frameworks, philosophical underpinnings, and penalties associated with the breach of sensitive information. In both legal systems, the criminalization of such offenses reflects the critical importance of maintaining national stability, public trust, and institutional integrity. Through a comparative analysis, the research explores the primary, secondary, and supplementary penalties imposed on individuals who violate security confidentiality, examining the role of deterrence and retribution in shaping these legal measures. Additionally, it is important to delve into the philosophical foundations that inform these penalties, emphasizing the balance between safeguarding public interests and ensuring proportional punishment for violations. The findings underscore the need for comprehensive legal frameworks that effectively address the evolving threats to national security posed by breaches of confidential information.

Keywords: Criminal Law, Criminal Procedure, Legal Studies, Iraqi Law

## 1. Introduction

The breach of trust by employees who are supposed to protect institutional confidentiality is a major threat to national stability and public trust. Such practices are also criminalized in both Iraqi and Jordanian legal systems because the protection of sensitive information is vital in the maintenance of public order and state security. This paper aims to explore the penal consequences of crimes that involve the breach of security secrets in these jurisdictions, including the legislative frameworks, the philosophical underpinnings of the laws, and the penalties that can be imposed for such violations.

The primary purpose of this research is to emphasise the importance of legal measures in the prevention of violations of institutional security and enhancing accountability among people in positions of trust over confidential information. The study aims to uncover the principles and how they are applied in the formulation of penal sanctions to protect security secrets through a comparison of the Iraqi and Jordanian legal systems. Furthermore, the research looks at the differences between primary, secondary, and supplementary penalties and the philosophical

reasons behind these legislative responses. In the context of security breaches, this study is a comprehensive comparison of the legal frameworks and penal systems of Iraq and Jordan.

This is important as it highlights the ongoing relevance of legal measures in defending against threats to national security, particularly in an environment of technological advancement and increasing interconnectedness. The findings of this research also shed light on the need for more robust legal frameworks to protect the confidentiality and integrity of institutional secrets and inform the development of future legal responses

### 1.1. Primary Penalties

The commission of a crime necessitates the imposition of a penalty on the perpetrator. When an individual engages in an act prohibited by law or refrains from performing an act mandated by law, such behavior constitutes a crime. Also, legislators address such acts through penal measures aimed at ensuring legal protection against conduct that contravenes the law. These measures seek to maximize protection for fundamental societal interests and public values, thereby achieving justice, legal stability, and behavioral regulation.

Furthermore, in the context of disclosing governmental secrets, this act fundamentally contradicts the ethical standards expected of security officials, whose roles require upholding confidentiality. Breaches of this nature undermine the trust intrinsic to public office and jeopardize the integrity of professional conduct. The right to confidentiality in matters of security extends beyond individuals to include legal entities, thus warranting penal protection for such secrets (Abdul Latif, 1979, p. 49).

The criminal liability associated with disclosing security secrets is grounded in safeguarding these secrets, regardless of the medium in which they are stored—be it written documents, data, or information. Criminal liability is a core aspect of criminal law, where individuals bear responsibility for conduct deemed criminal under penal legislation. This liability arises from violating penal provisions that criminalize actions or omissions detrimental to societal interests and disrupt its balance (Ali Hamza, 1990, p. 26).

### 1.2. Secondary Penalties

In addition to primary penalties, secondary penalties serve as complementary measures to ensure the objectives of criminal justice are achieved. Secondary penalties are often applied in conjunction with primary penalties, aiming to enhance the deterrent effect on potential offenders and to ensure comprehensive justice.

One of the key secondary penalties imposed in cases of crimes against institutional security secrets is the deprivation of certain rights. This may include barring individuals from holding public office or occupying positions of trust for a specific period. Such measures are intended to reinforce the principles of accountability and to safeguard public institutions from repeated breaches of confidentiality (Al-Samarrai, 1985, p. 112).

Another form of secondary penalty is financial compensation for damages incurred as a result of the disclosure of secrets. This measure is particularly important in addressing the material and moral harm caused to individuals or entities whose secrets have been compromised. Financial

penalties serve both as restitution for the affected party and as a deterrent for the offender (Kadhim, 1993, p. 58).

The imposition of secondary penalties underscores the importance of a multifaceted approach to combating crimes against institutional security. By addressing both the immediate and long-term implications of such breaches, secondary penalties contribute to a more robust framework of legal protection for sensitive information.

### 1.3. Philosophical Foundations of Penal Measures

The philosophical foundation of penal measures lies in the dual objectives of deterrence and retribution. Deterrence aims to prevent potential offenders from engaging in unlawful behavior by imposing severe consequences for such actions. Retribution, on the other hand, seeks to restore balance and justice by ensuring that the punishment is proportionate to the gravity of the crime committed.

In the context of crimes against institutional security secrets, the philosophical underpinning of penalties reflects the critical importance of safeguarding public trust and institutional integrity. By imposing strict penalties on those who compromise security secrets, the legal system reinforces the principle that such acts are not only violations of legal norms but also betrayals of societal trust.

Furthermore, the penal philosophy recognizes the need to protect the broader interests of society. The unauthorized disclosure of security secrets poses significant risks to national stability and public safety. As such, penalties for such crimes are designed to emphasize the collective interest over individual gains, thereby prioritizing the welfare of the community as a whole (Najm, 1988, p. 73).

This approach aligns with the broader objectives of criminal law, which seeks to balance the rights of individuals with the overarching need to maintain social order and harmony. By addressing the root causes of criminal behavior and ensuring proportionate responses, the philosophical framework of penal measures contributes to a more equitable and just legal system.

### 1.4. Legislative Treatment of Crimes Related to Security Secrets

Some Arab penal codes address the crime of violating defense secrets by stipulating penalties for such acts in a single legal article, followed by elaboration in subsequent articles. This is evident in Iraq's Penal Code Articles 177 and 188. Article 188 defines a defense secret as follows:

1. Military, political, economic, and industrial information that, by its nature, is known only to authorized individuals and whose confidentiality is essential for national defense.
2. Correspondence, documents, drawings, maps, designs, photographs, and other items whose disclosure could reveal information mentioned in the previous clause, necessitating confidentiality in the interest of national defense.

3. News and information concerning the armed forces, their formations, movements, equipment, supplies, and other military matters, unless officially authorized in writing for publication or dissemination.

4. Measures and procedures aimed at detecting and apprehending perpetrators and accomplices in crimes outlined in the first chapter of this section ("Crimes Against the External Security of the State"), as well as information regarding investigation and trial proceedings, if publication is prohibited by the investigative or trial authority.

In Jordan, the legislator has dedicated the State Secrets and Documents Protection Law No. 50 of 1971 to combat such crimes. Despite this, legal scholars in these countries have elaborated on and clarified the meanings and intricacies of these crimes (Mohammed, Jbour, p. 153).

While the Iraqi legislator designated Article 175 of the Penal Code to criminalize agreements or invitations to join such agreements as an independent crime, it did not extend this to crimes involving breaches of defense secrets. Instead, it focused on specific crimes under external state security. Article 175 of the Iraqi Penal Code states: "Anyone who participates in a criminal agreement with the intent of committing crimes mentioned in Articles 147 to 156 or uses it as a means to achieve a specific purpose shall be punished with life imprisonment or temporary imprisonment."

As a result, forming a criminal agreement to commit a crime related to the breach of defense secrets, or calling for such an agreement, does not fall under Article 175. Instead, it may be addressed by the general provisions on criminal agreements outlined in Articles 55-58, as these articles have general applicability unless superseded by specific provisions. This parallels Article 437 of the Iraqi Penal Code No. 111 of 1969 (amended), which states:

"Anyone who, by virtue of their position, profession, trade, art, or nature of work, becomes aware of a secret and discloses it in cases not legally permitted or uses it for personal benefit or the benefit of another shall be punished with imprisonment for a period not exceeding two years, a fine not exceeding 200 dinars, or both. However, there is no punishment if the disclosure is authorized by the concerned party or intended to report a felony or misdemeanor or prevent its commission."

The Iraqi legislator addressed the penalty for breaching defense secrets in the second book of Penal Code No. 111 of 1969 under the title "Crimes Harmful to Public Interest," specifically in the first chapter, "Crimes Against the External Security of the State." Article 177 states: "Life imprisonment shall be imposed on:

1. Anyone who, by any means, obtains an item considered a defense secret of the state with the intent to damage it for the benefit of a foreign state or disclose it to a foreign state or its agents.
2. Anyone who delivers or discloses a defense secret of the state to a foreign state or its agents.
3. Anyone who destroys, for the benefit of a foreign state, documents or other items considered defense secrets or renders them unusable."\*

The legislator in the Penal Code does not merely punish acts that violate the secrecy of national defense but also emphasizes protecting such secrets due to their critical importance. This protection is achieved by criminalizing acts that may serve as preparation or facilitation for breaching national defense secrets, even if such acts are not inherently crimes. The legislator deems them punishable to preserve and safeguard these secrets (Saad, 1981, p. 205). Accordingly, Article 181 of the Iraqi Penal Code stipulates the following:

(a) A prison sentence of no more than seven years, or detention and a fine, shall be imposed on:

1. Anyone who flies over regions of the Republic's territory in violation of prohibitions issued by the competent authorities.
2. Anyone who takes photographs, drawings, or maps of locations or places contrary to prohibitions issued by the competent authorities.
3. Anyone who enters a fortress, defense installation, camp, or any place where armed forces are stationed or that houses warships, aircraft, military vehicles, or facilities related to national defense and is restricted from public access.
4. Anyone found in locations or areas prohibited by military authorities.

(b) If the crime occurs during wartime or involves deceit, fraud, concealment, or falsification of identity, nationality, profession, or status, the penalty shall be imprisonment for up to fifteen years. If both circumstances exist, the penalty shall be life imprisonment or temporary imprisonment.

Given the detrimental consequences of deliberately breaching national defense secrets in favor of a foreign state and the grave risks posed to state security, the legislator extends criminal protection to these secrets through provisions in the Military Penal Code, complementing the stipulations of the Penal Code. These measures aim to provide comprehensive and effective protection, considering the legislator's perspective on the paramount importance of such secrets for national defense and for individuals subject to the Military Penal Code.

The intent behind criminalizing the unauthorized disclosure of data and information, as outlined in Section (b) of Article 3 of the draft Jordanian Cybercrime Law, is to protect the right of data owners to privacy and confidentiality. Privacy focuses on an individual's right to decide when, how, and to what extent their personal and professional information is shared, while confidentiality pertains to the right to keep information hidden from unauthorized individuals, whether such information belongs to individuals or institutions. An act is not punishable unless it is unauthorized by the owner of the information or if access is unpermitted. For example, a person authorized to shut down a device has no right to access or disclose stored data or information. If they do so, Section (b) of Article 3 applies, as they exceed their authorized access. The intent behind the unauthorized access and disclosure of another's information is central to criminalization, irrespective of whether the disclosure succeeds.

Article 5 of the Temporary Jordanian Cybercrime Law of 2010 criminalizes acts of interception, eavesdropping, and surveillance. It states that any person who intentionally and unjustifiably

intercepts, eavesdrops on, or monitors transmissions over the information network is subject to penalties. Similarly, Article 356 of the Jordanian Penal Code specifies:

1. Any telegraph or postal employee who misuses their position by accessing, damaging, or embezzling a letter or disclosing its contents to unauthorized persons is punishable by imprisonment for one month to one year.
2. Any telephone employee who, due to their role, discloses a conversation they overheard is punishable by imprisonment for six months or a fine of up to twenty dinars.

Imprisonment under Article 21 of the Jordanian Penal Code involves placing the convicted person in a correctional facility for a period ranging from one week to three years, unless otherwise specified by law.

Article 357 of the Jordanian Penal Code stipulates a fine not exceeding five dinars for anyone who intentionally damages or opens a letter or telegram not addressed to them. Furthermore, the Telecommunications Law criminalizes acts related to intercepting technical communication systems. Article 76 of Telecommunications Law No. 13 of 1955 explicitly addresses such offenses.

Finally, Article 110 of the Jordanian Penal Code declares:

1. Any Jordanian who bears arms against the state in enemy ranks is punishable by death.
2. Any Jordanian who, during wartime, commits a hostile act against the state without joining an enemy army is punishable by life imprisonment.
3. Any Jordanian who enlists in any capacity in an enemy army and fails to sever ties before committing a hostile act against the state is punishable by temporary imprisonment, even if they acquired foreign citizenship through enlistment.

### 1.5 Supplementary Penalties

Supplementary penalties are defined as follows: "A secondary punishment for the crime, aimed at reinforcing the primary penalty. Consequently, it is an adjunct to the main punishment, imposed by law as soon as the ruling is issued, without requiring the judge to explicitly state it, as the judge does not have the authority to exempt the offender from it." Another definition states: "A penalty imposed by law for the criminalized act, in addition to the primary punishment, which accompanies and results from it by force of law." A key characteristic of supplementary penalties is that they are imposed on the convicted individual by law without requiring explicit mention. They differ from the primary punishment as they aim to support the latter (Mahmoud Naguib, Hosni, 1988, p. 710).

In Jordanian law, these penalties are referred to as penal sanctions. Article 21 states: "(Detention is placing the convicted person in one of the correctional and rehabilitation centers for the duration of the sentence, which ranges from one week to three years unless otherwise specified by law)." Article 22 adds: "(A fine is the obligation for the convicted person to pay the amount specified in the ruling to the state treasury, ranging between five and two hundred dinars unless otherwise specified by law)."

Regarding the supplementary penalty specific to the crime of divulging state security secrets, it varies across different penal legislations. Since the crime of disclosing government secrets is considered a felony, those convicted are deprived of the rights and privileges previously mentioned immediately upon the issuance of the verdict, without requiring the ruling to explicitly mention such deprivations.

The Iraqi legislator has addressed supplementary penalties in Chapter Two of Part Five in Book One of the Penal Code No. 111 of 1969, within Articles 95 to 99. Two supplementary penalties are stipulated: deprivation of certain rights and privileges, and police surveillance. The penalty of deprivation of rights and privileges applies to anyone sentenced to life or temporary imprisonment, effective from the day of sentencing until their release.

Similarly, Jordanian law addresses these penalties in Article 74 of its Penal Code. The supplementary penalties applied to those convicted of divulging state defense secrets vary across criminal laws. The Iraqi legislator specified supplementary penalties in Chapter Two of Part Five in Book One of the Penal Code No. 111 of 1969, addressing two penalties: deprivation of certain rights and privileges and police surveillance. The deprivation penalty applies from the day of sentencing to the day of release.

Moreover, individuals convicted of the crime of destroying or disclosing state defense secrets are subject to police surveillance after their release. This is because such crimes threaten state security. Article 99 of the Iraqi Penal Code No. 111 of 1969 mandates that this supplementary penalty applies to such crimes. Article 99(a) explicitly states: "(Anyone sentenced to imprisonment for a felony involving external or internal state security, counterfeiting, forgery, bribery, embezzlement, theft, or aggravated murder shall, by law, be placed under police surveillance after completing their sentence in accordance with Article 108 of this law.)" Crimes involving public property sabotage with the intent to disclose secrets are subject to this article, distinguishing them from other crimes of public property sabotage.

### 1.6 Complementary Penalties

Complementary penalties are defined as follows: "A secondary punishment aimed at providing a complete penalty for the crime. It is associated with the crime itself rather than its primary punishment and is imposed only if explicitly pronounced by the judge and specified in type; it cannot be imposed independently." Another definition states: "Penalties imposed by the judge in addition to the primary penalties, without the authority to impose them alone, distinguishing them from primary penalties." They are also defined as: "A secondary penalty complementing the effect of the primary penalty, not automatically applied but requiring explicit mention in the ruling" (Obaid, Raouf, 1979, p. 792).

The Iraqi legislator, unlike supplementary penalties, did not define complementary penalties but allocated a specific chapter for them: Chapter Three of Part Five in Book One of the Penal Code No. 111 of 1969. It enumerates three penalties: deprivation of certain rights and privileges, confiscation, and publication of the verdict. Articles 100 to 102 of the same law consider publishing the verdict a complementary penalty. Article 101 of the Iraqi Penal Code of 1969 states: "(Except in cases where the law mandates confiscation, the court may, upon conviction in a felony or misdemeanor, order...)". Article 102 stipulates: "(The court, on its own motion or

upon the request of the public prosecutor, may order the publication of the final verdict issued in a felony...").

In Jordanian law, complementary penalties are referred to as disciplinary penalties in Article 23: "(The duration of disciplinary detention ranges between twenty-four hours and one week and is enforced in places separate from those designated for individuals sentenced to criminal or penal punishments, as far as possible)." Article 24 states: "(The range of disciplinary fines is between five and thirty dinars.)" Article 25 further adds: "(The provisions of Article 22 of this law apply to disciplinary fines.)"

Both Iraqi and Jordanian legislators have refrained from specifying complementary penalties for the crime of divulging state defense secrets, relying instead on general provisions in their laws. These provisions aim to safeguard sensitive information in specific areas. If the offender achieves their objective by obtaining a confidential defense secret, they commit another, more serious crime, alongside unauthorized entry into a restricted area. In such cases, the principle of multiple crimes and penalties applies. Notably, Jordanian legislation, in Article 14 of the State Secrets and Documents Protection Law, deviates from general criminal principles, criminalizing certain acts of intent as standalone crimes, even if the intended crime does not occur. This occurs when such expressions of intent threaten or harm protected interests or rights, especially those concerning the state's existence.

Iraqi Penal Code Article 437 stipulates: "(Anyone who, by virtue of their position, profession, trade, or art, becomes aware of a secret and discloses it outside legally authorized cases or uses it for their benefit or the benefit of another person shall be punished. However, no punishment applies if the secret owner permits its disclosure or if the disclosure aims to report a felony or misdemeanor or prevent its occurrence)."

It is crucial to distinguish between breaching confidentiality, constituting the crime of disclosing secrets under Article 437 of the Iraqi Penal Code (a specific offense requiring the offender to possess a particular status as an element of the crime), and violating legal prohibitions against broadcasting, publishing, or other public disclosure methods. These latter acts constitute crimes under Articles 235 and 236 of the Iraqi Penal Code and can be committed by any individual. The factual elements of these crimes differ, allowing for their coexistence (Ma'moun Mohammed, Salama, 1980, p. 320). Thus, the legislator consistently prohibits employees from disclosing sensitive security-related secrets of institutions.

## 2. Conclusion

This study highlights the significant importance of safeguarding security secrets within institutional frameworks in both Iraq and Jordan, emphasizing the critical role of penal measures in deterring breaches of confidentiality. Through adopt comprehensive comparative analysis of the legislative approaches in both countries, the varied methods used to address crimes related to the unauthorized disclosure of sensitive information, underscoring the need for effective legal deterrents.



The examination of primary, secondary, and supplementary penalties demonstrates that while both Iraqi and Jordanian legal systems impose severe consequences for such breaches, the philosophical foundations underlying these penalties reflect the common goal of protecting national security and public trust. Also, it identifies the intricate relationship between criminal law, ethical standards, and public accountability in maintaining the integrity of governmental institutions.

Furthermore, it's important to development of more robust legal frameworks, particularly in light of the evolving technological landscape and its impact on the security of sensitive information. It is clear that both countries face challenges in striking a balance between upholding national security and protecting individual rights, but the continued refinement of legal measures and the enforcement of stringent penalties will play a crucial role in enhancing institutional resilience against security breaches.

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