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Criminalization and Punishment Policy for Crimes Related to Document Security

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Abstract

This paper discusses the policy of criminalization and punishment for crimes related to document security, emphasizing the importance of penal policy in protecting social interests. It covers the concept of criminalization policy and the policy of punishment, as well as the principle of legality of crimes and penalties. Result and Conclusion: The article concludes that the penal policy for protecting security documents is important for maintaining state security, and specialized state oversight agencies should be involved in monitoring those who deal with security documents. The punitive policy is determined in three areas: criminalization, prevention, and punishment. The paper recommends that the Iraqi legislator enact special laws aimed at protecting the secrets of security documents by finding mechanisms and methods that allow the involvement of specialized state oversight agencies. The paper recommends that the Iraqi legislator merge Articles (177) and (178) of the Iraqi Penal Code No. (111) of 1969, as amended, so that the penalty for disclosing the secret is one penalty without distinguishing between if this act is done for the benefit of a foreign country or the benefit of others. The article also calls on the Iraqi legislator to provide greater protection for security documents by involving specialized state oversight agencies such as the National Intelligence Service or the Directorate of Military Intelligence.

Keywords

document security, criminalization policy, penal policy, the legality of crimes, punishment, and electronic information crimes.

1. Introduction

In today's digital age, document security has become a crucial aspect of our lives. With the increasing use of technology, the risk of document fraud and identity theft has also increased. To combat this issue, many countries have implemented policies that criminalize and punish crimes related to document security. In this essay, we will discuss the importance of such policies and their impact on society [1,2]. Firstly, the policy of criminalizing and punishing crimes related to document security is essential to protect individuals and organizations from identity theft and fraud. Documents such as passports, driver's licenses, and social security cards contain sensitive information that can be used to steal someone's identity. Criminals can use this information to open bank accounts, apply for loans, and commit other fraudulent activities. By implementing strict laws and punishments for such crimes, governments can deter criminals from engaging in such activities and protect their citizens from financial losses [3,4]. Secondly, the policy of criminalizing and punishing crimes related to document security can also help in maintaining national security. Terrorists and other criminal organizations often use fake documents to enter a country or carry out illegal activities. By implementing strict laws and punishments for document fraud, governments can prevent such activities and ensure the safety of their citizens [5].

2. Literature Review

The policy of criminalization and punishment represents the criminal legislator's endeavor to provide maximum protection for the basic interests of some acts that constitute damage or danger to documents in all their forms and to clarify this in a manner of accuracy and detail, it will be discussed in two requirements: The first requirement is concerned with the concept of criminalization policy, and the second requirement is concerned with the policy of punishment.

2.1. Criminalization Policy

The main purpose of the Penal Code legislation is to enable the State to exercise its authority and impose its respect to reduce disturbances and violations that may occur in society, affecting its security and safety, through the elements of criminalization and punishment, as well as drawing up the legal procedures to be followed by official judicial institutions, surrounding them with sufficient guarantees so that no injustice is committed against the accused, and limiting illegal acts that affect the public interest targeted by the criminal legislator with protection and within the limits and conditions stipulated in the Constitution. The criminalization policy was the only means for legislators to protect interests, as there is nothing new in people's lives, but there is a way to protect it by criminalizing assault on it and monitoring a penalty for it, and legislation was correct in using the means of criminal law to maintain the continuity of this means

[6]. Criminal policy at the beginning of its emergence aimed to clarify the shortcomings in the means and systems used to combat crime and then developed its concept to mean: "Scientific guidance of criminal legislation directed primarily to the legislator because it determines the personality of the criminal [7], Through the set of measures proposed to the legislator or taken by the latter in a certain country and time to combat crime [8].

2.1.1. The concept of criminal legislation

According to the perspective of the philosophical basis of criminalization policy, the concept of criminal legislation developed after criminology was based on contemporary social theories, the concept of criminal policy indicates that: "The rational organization of the social reaction against crime in a particular society and at a certain time, criminal policy determines the social interests worthy of protection with a statement of the most appropriate and effective penalties in achieving their purpose, and therefore it deals with study and analysis of the assessment of the appropriateness of criminalization in the system. legal existing in a country [9].

2.2. Criminal Criminalization Policy

The policy of criminal criminalization has the main objective of protecting social interests, which require the protection of society and the human being from attack, and it is not limited to defining the principles necessary for the prevention of crime and the imposition of the prescribed punishment for it but also extends to the definition of criminalization. The legislative texts that achieve penal policy are represented in the Penal Code in a broad sense regarding criminalization, punishment, and precautionary measures, while "criminal procedures are related to the procedures to be taken, whether to prove the commission of the crime and attribute it to the accused, to impose punishment on him or to take preventive measures before him [10]. The purpose of the state when exercising its penal function [11] is to protect the social interests prevailing in society, as its choice is: the most valid sanction and expresses the extent to which society appreciates the importance of these interests. If the State determines that the interest deserves the maximum degree of legal protection, it shall express this with the penalty [12]. The importance of penal policy emerges, as the only means to put the penal code legislator for the state's right to punishment into practice, and thus protects and guarantees the interests of society that the legislator protected by the provisions of criminalization, but it is not the only purpose of criminal procedures, but there is another goal aimed at protecting individuals, their freedoms and needs, the policy of criminalization is not just criminalizing the fact of a specific attack, but it is a criminalization associated with a specific penalty when this attack occurs, and therefore the punishment and its type must be present before the legislator when criminalizing, there is A close relationship between criminalization policy and

punitive policy, as the punitive rule includes two parts [13]; The first is the assignment of a certain social behavior [14], and the second is a criminal penalty that results from violating this assignment, which is the penalty. Thus, it is clear how closely related the assignment and the punishment are, and each complements the other and does not exist for one without the other [15].

2.3. Penal Code

The Penal Code is responsible for the interest's worthy of protection, including the provisions that criminalize any conduct that threatens the existence and security of society, criminalize acts that constitute an attack on public funds and determine penal penalties for them, if the act is associated with the crime. This means that the law is not only accountable for intentions, but it is accountable for the actions that appear into existence, in a more precise sense, moral responsibility falls within the scope of morality, while legal responsibility falls within the circle of law, which regulates acts and generally carries a legal obligation or sanction because of behavior or behavior that entails certain effects and sanctions [16]. Criminal responsibility is no longer a purely material responsibility as it was in the old legislation, but is based at present based on moral or moral responsibility or it is a set of conditions that arise from criminalization as personal blame directed to the actor and these conditions show the act from a legal point of view as a rejected expression of the personality of the actor" or is "to hold the human being as a result of his actions and hold him accountable for them because they are issued from him from the awareness of their meaning and results and the will of him, while some of them go to define it as A legal relationship arises between the individual and the State under which the individual is obliged to the public authority to answer his act contrary to the legal norm and to submit to the reaction resulting from the violation [17].

2.4. Penal Policy

This penal policy has been reflected in the domestic legislation of States and has adopted severe penalties for criminal phenomena to combat them, as well as its reliance on various preventive means to prevent their harm. In Iraqi legislation, any act of individuals cannot be considered a crime unless such behavior is explicitly mentioned in the text of the law and described as a description that negates ignorance and determines an appropriate penalty for it in the same text of the legal article. This principle is embodied in the provision of the Iraqi Constitution in item (second) of article (19) thereof [18], as well as the Iraqi Penal Code in its article (first), which stipulates that: "There shall be no punishment for an act or omission except based on a law that provides for its criminalization at the time of its commission, and it is not permissible to impose penalties or precautionary measures not provided for by law. The Iraqi legislator was also keen on criminal laws in general and other special laws [19], to impose legal protection, This is what we find clear from the multiplicity of texts that dealt with crimes against documents, as well as texts that criminalized acts of assault against them, in the Iraqi

Document Preservation Law, and then in other texts of the Iraqi Penal Code that dealt with the subject of crimes on documents, including crimes against external state security [20], crimes of unsealing and stealing papers and things and destroying them [21], crimes of forgery in documents and documents [22], and crimes of exceeding the limits of employees of their jobs [23], all of this To preserve government interests in its various departments and institutions, and to protect the individual and society.

2.5. Military Penal Code

As for special laws such as the Military Penal Code No. 17 of 2007 and the Internal Security Forces Penal Code No. 14 of 2008, the provisions of these two laws are distinguished by a special nature that distinguishes them from other provisions of the Penal Code. The criminalization provisions in the Military Penal Code, which dealt with the subject of documents, and whose nature is characterized by confidentiality because of their attachment to security and military secrets, are numerous and authentic in that: The interest protected from the criminalization of acts is to protect the secret documents of the State without other information and documents [24], and the Iraqi legislator has identified documents that bear the nature of confidentiality and are considered secrets of the defense of the country as stated in paragraphs (1-4) of Article (188) of the Iraqi Penal Code. In light of what has been mentioned, criminal responsibility is a complex term that according to legal terminology as responsibility means: "the ability of a person to bear the penalty for the crimes he commits and to impose criminal punishment on him under a court ruling that determines that he is criminally responsible [25], and from a criminal point of view: a person bears the consequences of his harmful actions, whether about his transactions or what the law criminalizes and describes as a crime [26]. In the sense of a person's commitment to bear the legal effects and consequences of his behavior committed in violation of legal principles or rules, the concept, in general, applies to the concept of accountability and the person's bearing the consequences of his actions and actions, the behavior can be positive or negative contrary to the rules of ethics only and did not violate the legal rules. We conclude from this that the penal policy has an independent subjectivity, examines what should be criminalization and punishment, is guided in its proposed methods of criminalization and punishment by the results reached in determining the causes of crime, and contributes to the formulation of penal texts taken by the State and based on which the direction of the State's activity in the field of criminalization and punishment is determined and following the subjective conditions of society and its applicability. Considering that the recognition of an interest by the Constitution does not in itself guarantee the imposition of respect for it on public authorities and individuals, which requires the intervention of the penal law through the establishment of the penalty or the determination of the conditions for its infliction when attacking constitutionally protected interests.

3. Punishment Policy

Punishment is the true form of criminal punishment against those who commit a crime, criminalized by the legislator, as it threatens the interests of their protection. Although the definition of punishment varies in many different legislations, it is consistent in meaning. Therefore, we have chosen the following definition: It is a sanction approved by the Criminal Code for the benefit of society in the implementation of a judicial ruling on those who are proven responsible for the crime and prevent its commission again, whether by the criminal himself or by others [27]. There are three levels of protection of public interests, which the state seeks to criminalize: criminalization, prevention, and punishment. The punitive policy in question is one of the most important elements that have received theoretical studies and the attention of schools of thought in the field of criminal policy, due to the importance of the goals it seeks to achieve, represented in protecting society and seeking to reform the perpetrators by rehabilitating them socially. "Crime itself is not a legal problem, but rather a complex social phenomenon that is not limited to the penal code or the criminal aspect only but must be contributed by all sectors of society to combat it [28]. Under this view, criminal jurisprudence calls for the need not to overuse penal penalties, and the need for this use to be minimal following the principles of necessity, balance and proportionality as an indispensable basis for criminalization so that criminal punishment becomes the last means of defense of society [29], This call was supposed to be a methodology and an action guide expressed by the criminal policy in two directions: reducing criminalization and reducing punishment [30], Unfortunately, most Arab legislations, including Iraq, still believe that criminal punishment is the most successful and best way to combat crime and protect social values and interests, which made them use these methods on a large scale without taking into account the foundations and principles of the Constitution that govern the criminalization process, despite the proven failure of its approach to achieving its goals.

3.1. The principle of legality of crimes and penalties

The principle of legality of crimes and penalties requires that written law be the only direct source of criminalization and punishment [31], It follows that if there is no written text indicating the criminal act and specifying the penalty prescribed for it, the criminal judge must rule on the innocence of the accused, regardless of how serious the act he considers and deserves to be criminalized [32], This means that the criminal judge refrains from convicting the accused of a crime or imposing a penalty that has not been issued by legislation, as the Penal Code has its source exclusively from legislation, and to this legislation only the legality of the crime and punishment is due to indicate and determine whether an act or omission is subject to criminalization or not, and then determine the penalty resulting from that act if it is found that it constitutes a crime [33]. In the sense that the legislator is the

one who holds the reins of the powers of criminalization and punishment exclusively and monopolized by him alone, so he should envisage that the provisions of criminalization are accurate, clear and not subject to interpretation, because ambiguity in the rules of criminalization and punishment may be a reason to strip this principle of its constitutional value and a reason for arbitrariness in judgments, and application of the principle of legality, there is no crime or punishment except by law [34], This means that only the legislator has the power to criminalize and the judge is deprived of it, because the judge's function is limited to applying the provisions of the Penal Code to the facts before him and not creating new texts that were not stipulated by the legislator [35]. Accordingly, the punitive policy is concerned with multiple areas, the most important of which are: the identification, application and implementation of penalties, which are complementary to the criminalization policy, which does not take place without specifying the appropriate penalties for the crime." Therefore, some called it legal individualization, while the application and implementation of penalties take place in two successive stages: judicial application and punitive implementation, so these two stages were called judicial individualization and executive individualization [36].

3.2. Punitive policy

The penal policy defines the objective of sanctions in their three successive stages legislative, judicial, and executive and outlines the means of achieving this objective. It should be noted that penalties are determined in the abstract in the legislative text, and the judge alone transfers them to the field of truth, while the role of the legislator is limited to stating the grounds used by the judge in imposing penalties under the system determined by the legislator [37]. In determining the means of achieving the objective of sanctions, the punitive policy consists of two parts: the first is purely objective and deals with the abstract picture of sanctions at the legislative stage and the bases to be followed at the stage of their application or implementation. The second is purely procedural and deals with the procedures to be followed to adjudicate, first on the availability of the State's right to punishment, and then with the procedures in force when applying sanctions and implementing them under the objective bases specified for them [38].

4. Result and discussion

We conclude from the above that punitive policy is determined in three areas [39]:

- Purely legislative field: It is limited to the abstract picture of sanctions at the legislative stage.
- Judicial field: It is twofold, one of which is objective and deals with the principles to be followed in the application of the stipulated penalties. The other is procedural and deals with the establishment of the State's right to punishment and the procedures for the application of penalties.
- Executive field: It is also twofold, one is objective and deals with the bases to be

observed when implementing, and the other is procedural which shows the procedures to be followed to implement sanctions under these principles.

It is noted that the penalties related to the documents in question contained in the legislation made the type of document a reason for aggravating the penalty, and the status of the offender was considered an aggravating circumstance for the criminal penalty, as the legislator punished such crimes under the Penal Code with explicit articles, as well as another obligation set out in other laws, where the employee was required not to keep any confidential official documents after the end of his job service for any reason [40]. One of the most important duties of the citizen in general and the employee, whether civilian or military, is to preserve the military, political and economic secrets of the State and the functional secrets that are deposited in his trust or may be known to him under his job the following penalties:

The crime of disclosing the content of documents of security, military, political, economic, or industrial secrecy, which by their nature are in the custody of persons who have a functional capacity, as this is punishable by life imprisonment or death in other cases [41], as well as the penalty resulting from the crime of forgery in an official document [42]. Based on what has been mentioned, we found that the punitive policy is concerned with multiple areas, including the policy of criminalization, prevention, and punishment, and then seeks to determine the appropriate penalties for the crime and the scope of its application and implementation, as a complement to the criminalization policy, and then it aims to direct the legislator to develop the penal law to achieve the principles of this policy represented in the Penal Code in its broad sense with regard to criminalization and punishment, and precautionary prevention measures in the law of procedures that should be taken, whether to prove the occurrence of the crime to the accused person, or to impose punishment on him, Or to take preventive measures before the crime occurs, and in view of the different societies in their political, economic and social systems, the inevitability of difference and disparity among them in determining these interests is unquestionable, which results in a difference in the punitive policy, which is required by the social interest as shown in this policy.

5. Conclusion

After it became clear to us the importance of the penal policy in preserving security documents from crimes of assault on them as they affect one of the most important foundations for maintaining state security, it remains only to show the fruit of this research by reviewing the most important conclusions and proposals that we reached the most important:

- Security documents that belong to the country are one of the most important secrets that the legislator in each country gives special care, to because they are not related to the most important interests sponsored by the state, namely the interest of the survival of the state and the preservation of its external security, and we have learned about the most important forms of penal protection provided by the legislator to this group

of documents by criminalizing the acts that fall on them and determining the penalties for those who do so through legal texts included in the Criminal Code.

- The study showed that the disclosure of part of the secret of the security documents that belong to the country or a wrong or incomplete form of it is a disclosure of the whole secret and thus enables the application of legal texts on the perpetrator of this crime, such as their application to those who disclose the secret in full, and this is what most criminal legislation followed.
- The Iraqi legislator stipulated that fraud is available in the document and not that it is used, but it omits that if the offender uses the forged documents, then two crimes will arise: forgery and the crime of using the forged document.
- The protection policy is achieved through the scope of the Penal Code, including the texts, including those texts that approved the principle of legality of crimes and penalties, this principle was among the most important principles that played a prominent role in achieving that policy, in addition to what this principle plays from the warning and psychological role that pushes individuals to refrain from committing crimes, through what it achieves from public and private deterrence and its educational and guidance function at the same time. One, its effects have a great role in achieving legal security and spreading the spirit of stability.
- The Iraqi legislator did not specify in Articles (286-296) of the Penal Code only two copies of the traditional editor: (documents) and (bonds) to indicate the documents written as paper, or phrases such as (signature, fingerprint, seal) that represent images of the traditional signs that are usually associated with written papers, which confirms the forms posed, that electronic documents were excluded in Iraqi legislation, whether public law or privacy laws, except for the Traffic Law No. (8) of 2019, which included a reference to (electronic document) and gave it The authenticity of proof in the text of Article (3 / I / b) of Chapter II thereof.

6. Recommendations

We call on the Iraqi legislator to merge Articles (177) and (178) of the Iraqi Penal Code No. (111) of 1969, as amended, so that the penalty for disclosing the secret is one penalty without distinguishing between if this act is done for the benefit of a foreign country or the benefit of others because the secret will reach the foreign state after disclosing it to others, and we propose to make the commission of this act, if it is done for the benefit of a foreign state, an aggravating circumstance. The legislator should not restrict the freedom of the judge by placing exceptions on the minutes that have the absolute authority or those that have relative authority, which may lead to the arbitrariness of those who edit these minutes, and this may affect the conviction of the judge when issuing the judgment. We propose to the Iraqi legislator to enact special laws aimed at protecting the

secrets of security documents by finding mechanisms and methods that allow the involvement of specialized state oversight agencies such as the National Intelligence Service or the Directorate of Military Intelligence and to free the hand of these agencies in monitoring those who deal with this type of documents or places where they are kept more freely to provide greater protection for this group of documents. The legislator should address the issue of electronic information crimes by enacting special laws to face some emergency difficulties, due to a new and constantly changing technical reality compared to some comparative legislation in the field of combating these cross-border crimes.

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