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The punitive policy in Law No. 26 of 2013 (Analytical study)

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Abstract

This research, tagged with (Punitive Policy in Law No. 26 of 2013, is an analytical study), deals with an important and vital topic of criminal law jurisprudence, related to the punitive criminal policy of the Iraqi legislator in Law No. 26 of 2013 related to the protection of doctors, because the legislator relies on a successful criminal punitive policy in this law will inevitably lead to ensuring a degree of appropriate protection for this important segment of society in order to give them a measure of freedom in practicing Their lofty work away from fears of attacks or illegal clan claims, where we divided the study into two demands, the first of which came under the title What is the punitive policy In it, we discussed the concept of punitive policy and its stages of development In general, within the framework of the first section of it, while the areas of punitive policy were addressed in the second section of it. As for the second requirement, we devoted it to addressing the policy of punishment in the Iraqi Doctors Protection Law, and in its framework, the penalties imposed by the legislator were reviewed. on the manifestations of criminal behavior that fall under the criminalization provisions contained in this law, and we have concluded from this that the legislator has considered The crime of clan claim is a misdemeanor in the first section, while in the second section, the policy of Punishment was discussed in the second crime, represented by images of assaulting doctors, which the legislator referred to the texts of Articles (229-233) of the Iraqi Penal Code regarding the penalties imposed on those who assault a doctor, which criminal behavior expands to They include several forms, the most important of which are insulting the doctor, assault,

resistance and intentionally preventing him from performing his job duties, all of which also fall under the type of misdemeanor as well. Let us end our research after that with a conclusion that includes our conclusions and recommendations.

Keywords

Punitive Policy, Law No. 26 of 2013

Introduction

First: Defining the topic and its importance

The integrity of every law in any country depends on the extent of its criminal policy, whether it is related to identifying criminal phenomena or determining the legal or social reaction to them, and for the latter, the matter depends on the legislator's punitive policy in punishing the harmful acts that were included in the criminalization texts in the first place, and these The policy on which the legislator relies upon approving any punitive law is based on several factors, the most important of which are religion, morals, social traditions, politics and the public interest. The legislator's successful punitive criminal policy in the Physicians Protection Law will result in securing appropriate protection for this segment with an effective humanitarian role resulting from its interaction with the human body, its ailments and its ills, and thus will be reflected positively in giving them a great deal of freedom in exercising their humanitarian duty away from fears of attacks and illegal clan claims, and to encourage doctors who migrate outside the country to return to it and grant them privileges To ensure their return and benefit from their services.

Second, the scope of the search

The subject of punitive policy is included in Law No. 26 of 2013 within the framework of the Criminal Law, and therefore the cornerstone and focal point of the research is the Doctors Protection Law No. 26 of 2013 in addition to the Iraqi penal legislation represented by the Iraqi Penal Code No. 69 of 1996 as amended and the Code of Criminal Procedure No. 23 of 1996 1971 amended to the extent that allows the study of the legislature's punitive policy in protecting doctors objectively.

Third: the research problem

The research deals with a basic problem of a great degree of importance, which is the nature of the punitive policy followed by the Iraqi legislator in protecting doctors, and then diagnosing the aspects that the legislator focused on in this aspect, and whether the punishment for crimes that affect doctors is limited to the penalties contained in the framework of the Penal Code Or did he create objective and effective penal protection that makes attacking doctors an

aggravating circumstance? Or at least that he decided penalties that justify the legislation of this law? These are roughly the research questions and its main problems, which we are trying to highlight in our research.

Fourth: Research Methodology

The approach most consistent with the nature of the subject of the research is based on the use of the analytical method to analyze the texts of criminalization and punishment stipulated in the Iraqi Doctors Protection Law and the relevant texts in the general penal legislation, in order to reach an assessment of the legislator's punitive policy in combating crimes against doctors, leading to a criminal policy. Successful punitive action in combating crime and protecting doctors from all attacks they are exposed to as a result of their work.

Literature review

1. What is the punitive policy?

The concept of punitive policy

The punitive policy is the second part of the penal policy, as it is concerned with studying the penal part, as it defines its general lines that guide the legislator when determining, the judge when applying, and the punitive administration when executing the penalty, through studies. The scientific studies presented by punitive scientists (Akram, 2012; Santoso & Kristiyanto, 2021). They are a means to implement a specific part of the criminal policy, which is mainly related to the criminal law. The modern punitive policy in its fight against crime relies on two means, namely punishment and precautionary measure, as they are abbreviated to the criminal penalty formula, where punishment is characterized by a purely punitive formula in the face of a previous crime, while the precautionary measure is characterized by a preventive formula and its goal is to confront a criminal danger represented in a possible crime (Mohamed, 2005; Wahhab & Al-Shammari, 2021). Punishment includes a degree of intended pain, as there is no punishment without this pain. Conciliation and some other measures taken by the competent authorities are not considered punishment, but may constitute preventive measures, as these means are subject to the principle of criminal legitimacy (Fakhri, 2010; Yang, 2021). Much of the development after the philosophy of punishment was based on retaliation and revenge against the offender, as it was the only means of social reaction to the crime, the society considered the former offender as an abnormal and evil human being, and the execution of the punishment against him was merciless until before the end of the nineteenth century) Muhammad, 2006). After the emergence of the strong criticism movement of the cruelty and ugliness of punishment, philosophical doctrines began to emerge, and this was followed by a continuous

and continuous development in the punitive policy, where the treatment of the convict began to change, and since the majority of penalties are depriving of freedom, and in order to achieve the desired reform, interest began in prison reform, then the punitive criminal policy developed to add to the The penal treatment is the idea of dividing criminals into categories and according to the different types of those types, the appropriate punitive treatment is determined for them, as advocated by the Italian positivist school (Mohamed, 2002). Then the idea of double criminal penalty appeared, according to the philosophy of the compromise school, which believes that punishment alone is not sufficient and must be supplemented and attributed. By future measures to confront the criminal danger expected in the person of the offender (Abdel-Fattah, 1972) and its appearance was due to the inadequacy of the punishment alone in the face of the criminal danger, Society (Ali, 2007). After the Second World War, the approach of the social defense movement with a humanistic tendency emerged, which called for the abolition of the penalty of death, Execution because every sane person can be reformed. Therefore, it is necessary to study the anti-social personality, find out the reasons for its deviation, and diagnose the treatment. Even the punishment has become a measure for a class of criminals who can only be integrated through it (Muhammad, 1982). Determining penalties complements criminalization, as punishment is closely linked to criminalization, so there is no punishment without committing a crime and no crime without punishment (Ahmed, 1972). Therefore, some (Ali, 1968) see that the crime is nothing but a violation of the sanctity of moral rules and a source of outrage for the human conscience. And his vengeance, while criminal punishment is nothing but a comparison to these immoral behaviors. The punitive policy aims with its penal means to protect society and the entity of the state, as well as the rights and freedoms of individuals by imposing them on everyone, as it obliges individuals to respect the rules that the state follows, and then it reassures the citizens and calms the thoughts that have been disturbed by the crime, as it creates a kind of cooperation and solidarity between Individuals reject illegal behavior, in addition to the fact that the authority of the criminal judge in estimating the penalty is manifested from the scientific and practical aspects, thus giving the law effectiveness in implementation, depending on the discretionary power determined by the punitive legislator, which may expand or narrow according to the circumstances, and this change is determined by the punitive policy in line with With the humanity of punishment and with the offender's ability to bear when implementing punitive (Fadil, 1992). The punitive policy is based on several principles on which the determination of penalties depends after using the results reached by the science of punishment, which is at the same time its most prominent characteristics, which are the principle of legitimacy and the principle of judicial as well as the principle of personality As well as justice and finally the principle of respect for human dignity and rights.

2. Areas of punitive policy

Based on the foregoing, the punitive policy is united in three areas:

First: The legislative field, as punishment is closely related to criminalization, as there is no punishment without a crime. Therefore, the punishment takes its description from being a counterpart to the fact criminalized by law (Ahmed, 1973). Based on this principle, crime and punishment are linked to a causal relationship imposed by the principles of justice, and the law is obligated to respect it. And take it into account because this relationship is created by the criminal legislator, which grants the state the right of general deterrence and private deterrence in accordance with the principle of criminal legitimacy. This and that the penalty in the legislative field is based on four elements, namely the substance and represented in the penalty that affects the interests of the convict, detracting from his personal freedom or his financial rights or The second is the reason for applying the penalty to the convict by the state, as he must have committed a crime that affects the rights of others, which will be a reason for sentencing him with punishment or the appropriate measure. Finally, the penal judgment, which is issued by the judiciary bearing the conviction decision represented in attributing the crime to the offender and determining the punishment or the appropriate measure for the circumstances of the crime and the person of the latter.

Second: The judicial field and consists of two parts, the first of which is objective and deals with the grounds to be taken into account when applying the stipulated penalties, and the second is procedural, which deals with proving the state's right to punishment and the procedures for applying and implementing penalties (Ahmed, 1973). The criminal's goal in this is to prove the state's right to punishment and to apply punishments by fair means. The role of the judge is to apply the law under the supervision of the Supreme Court h T does not abuse his authority under the pretext of the discretionary authority of the judiciary, as this oversight would provide an effective guarantee to protect litigants from any possible judicial abuse or abuse.

Contemporary criminal policy, as we have explained, took the principle of the necessity of examining the personality of the criminal and the importance of measuring the appropriate measure according to the degree of his seriousness and ended with the specialization of the judge to reach the goal of respecting human rights and providing fair trial guarantees, whether it is related to adults or juveniles (Hadam, 2016).

Third: The executive field. This field also consists of two parts, one of which is objective, deals with the grounds to be taken into account when executing the penalty, and the second is procedural, showing the procedures to be followed when implementing the penalty according to these bases (Ahmed, 1973), which is the stage in which the goal of the penalty is achieved, and it cannot be achieved unless It works to eliminate it. Taking into consideration that the implementation of

punishment is no longer for the sake of pain, revenge or cure for the offender as it was previously, but rather the goal is to rehabilitate him and integrate him into society as a good element and keep him away from criminal behavior or behavior.

3. Punishment policy in the Doctors Protection Law

The objective rules are not only used in the field of criminalizing acts that violate the law, but also extend these rules to determine the appropriate punishment for those acts in order to develop a complete picture in the fight against crime in general (Abdul-Amir, 2012). Security and social stability, as without a criminal penalty, the law remains just an idea that has no effect in achieving legal security (Fakhri, 2010).

4. Punishment Policy for the Crime of Unlawful Clan Claims

Criminal responsibility has no meaning without the existence of the penalty imposed by the criminal judge on the perpetrator of the crime when its elements are available, and since the penalty, based on the principle of penal legitimacy, is originally decided by an explicit text specifying it, but this does not prevent it from being inflicted with other penalties because the penalties are in terms of their origin or subordination. It is divided into types: the most important of which are the original penalties, and they are also if the penalty is the main penalty stipulated by the legislator and its estimation for the crime, and the judge must rule on it when the accused is proven guilty, and the ruling can be limited to it without its signature being dependent on the ruling on another penalty (Ali, 2015). And consequential penalties, and this is considered a secondary penalty and it is not of one kind. Either the original penalty follows automatically or the judge expressly stipulates it in the ruling, as the purpose of it is to strengthen the original penalties (Abboud, 2005), and in line with the punitive policy of the legislator in the Doctors Protection Law, we find the article The fifth of it was decided that "anyone who claims... shall be punished by imprisonment for a period of no less than three years and a fine of no less than ten million dinars." Through the text, it is clear that the original penalty set by the legislator for this crime is imprisonment for the crime. for a period of no less than three years and a fine of no less than ten million dinars, and we believe that this penalty is not commensurate with the gravity of some manifestations of criminal behavior for this crime, especially since the legislator came with the previous text at all, which means that it expands to include all forms of clan claims, and not Since there was a need to include the special text and to suffice with what was stated in the dissolved Revolutionary Command Council Resolution No. 24 of 1997, which punishes with imprisonment for a period of no less than three years, for anyone who claims a clan claim against someone who performs an act in implementation of a law or an order issued to him from a higher authority, As there is no doubt that the provisions of this decision apply to doctors, and the truth is that Resolution (24) for the year 1997 came to tighten the penalties contained in

the Penal Code and to grant privacy to the crime of clan demands for blood money, which is known as the (tribal pile) and Articles (229/230) of The Penal Code dealt with assault, threat and abuse of the employee or assigned to serve when carrying out their duty and the imposition of a penalty for that, which reached the maximum penalty in Article (229) to imprisonment for a period not exceeding two years and in Article (230) imprisonment for a period not exceeding three years, but the decision not to It is mentioned that it is an intensification of the penalty imposed in Chapter Three of the Iraqi Penal Code and under the title (Assault on Officials charged with a Public Service), with other details and visions that differ from the workspace of the legal articles mentioned. Hence, the Iraqi legislator has already criminalized the tribal claim and stipulated a penalty of imprisonment of no less than three years, and the Doctors Protection Law did not add anew to that protection except the financial penalty represented by a fine of no less than ten million Iraqi dinars, which we believe its shortcomings in providing The required protection because the financial penalty, no matter how high its amount, does not constitute, in our opinion, a sufficient deterrent element. Also, the provisions of the Penal Code, specifically Article (430), in which the legislator makes the threat a felony by stipulating that "Whoever threatens another with committing a felony against himself or his money, or against the person or money of another, or by assigning other matters, shall be punished with imprisonment for a period not exceeding seven years or imprisonment It is dishonorable or divulged, and this was accompanied by a request or a mandate to an order, or abstaining from an act or intended to do so, and he shall be punished with the same penalty if the threat was made in a letter without the name of the sender, or it was attributed to an existing or alleged secret group. This article deals with the punishment of those who demand them from the clan, because it provides them with protection that is not provided by Article 5 of the Doctors Protection Law in its current form. Therefore, we hope to amend the penalty amount to become temporary imprisonment, such as for a period not exceeding 10 years, in order to reduce those claims that doctors are exposed to and obstruct the performance of their duties, and for the text contained in the Doctors Protection Law to provide additional protection for them that exceeds what is provided by general texts, specifically Article 430 of Penal Code. We may ask about the penalty for the crime of clan claim, if it developed and took place through Isn't it known as the tribal deck?? The tribal bench, after the Supreme Judicial Council rejected its dismissal decision to re-adapt it from a threatening crime in accordance with Article (431) of the Iraqi Penal Code to Article Two of the Anti-Terrorism Law, has important implications, most notably that its punishment amounts to death in accordance with Article 4 of the law. It is also a crime against honor and the serious consequences that this entails. Therefore, the doctor's exposure to a tribal claim through what is known as the clan's bench would raise the offender's penalty to death according to the anti-terrorism law, meaning that the last law in this case provides better protection for the doctor than Provided by the special text contained in Article 5 of the Law on the Protection of Physicians.

As for the extent to which the subsidiary penalties are included with the penalties imposed on the perpetrator of the clan claim crime, we note from the outset that it is not possible for the convict of the crime under study to be inflicted with any accessory penalties, because the legislator made the crime a misdemeanor that is not covered by the accessory penalties.

As for the complementary penalties (Kamel, 2009), the Iraqi Penal Code limited them to three penalties: deprivation of some rights and privileges, confiscation and publication of the ruling. From extrapolating the texts of the law, we find that the trial court, when judging the perpetrator of the crime of clan claim, can also decide to deprive him of one or more rights. The rights referred to in Article (100) of the Penal Code, represented in assuming some positions and public services, bearing national or foreign decorations, and bearing arms for a period not exceeding two years, starting from the date of the end of the execution of the penalty or its expiry for any reason. As for confiscation as a complementary penalty, the court may also impose it on the perpetrator of a clan claim misdemeanor, because Article 101 of the Penal Code indicated that "except for the cases in which the law requires a judgment of confiscation, the court may, upon conviction of a felony or misdemeanor, order the confiscation of items. The seized items obtained from the crime or that were used in its commission or that were specified to be used in it without prejudice to the rights of others. Accordingly, the court, when issuing its judgment convicting the perpetrator of the clan claim crime, may rule for the confiscation of the money or things obtained from the claim or that were used in committing it or those that were intended to be used in committing the crime without prejudice to the rights of bona fide third parties. With regard to publishing the judgment as a complementary punishment, it may not be imposed against the perpetrator of a clan claim misdemeanor, because this penalty is imposed only in felony crimes. (Sultan, 2011) against the perpetrator of the crime in question as the second means on which modern criminal policy depends in addition to punishment to avoid the latter's shortcomings in some It is noteworthy that the legislator did not organize precautionary measures within the provisions of the Doctors Protection Law, but left the matter to the general rules. With reference to those rules, we find that the most applicable measures with the crime of legal clan claim is police surveillance and therefore it is permissible The trial court may place the convict of the crime under investigation under police surveillance after the expiry of the penalty for a period of no less than one year and not exceeding the period of the sentence imposed, provided that it does not, in any case, exceed five years when the convict is a recidivist, or the court believes for reasonable reasons that he will return To commit a felony or misdemeanour

5. Punishment policy in the crime of assaulting doctors

The Physicians Protection Law has adopted a punitive policy based on referring to the Penal Code with regard to the extent of the penalty imposed on anyone who assaults a doctor, as Article VI of it stipulates: "Anyone who assaults

a doctor while practicing his profession or because of its performance shall be punished with the penalty prescribed for anyone who assaults a doctor." An employee during the performance of his job or because of it." When extrapolating the provisions of the Penal Code, we find that the penalties vary depending on the occurrence of the criminal act in its simple form or its association with aggravating circumstances, and where the attack on doctors occurs in its normal form, the penalty also varies and varies according to the different forms of the material element of the crime as we previously indicated. When criminal behavior takes the form of (insult), we find that Article (229) of the Iraqi Penal Code, prior to its amendment, distinguishes between insult or threat directed at a public official, or a person charged with a public service, or a council or an official body, and makes his punishment imprisonment for a period not exceeding two years or a fine not exceeding For two hundred dinars, and for insulting or threatening a judge or a judicial court..... his punishment is made more severe than the previous one, with imprisonment for a period not exceeding three years and a fine or one of them. This and that the penalty for insult or threat became more severe when Article (229) was amended, where the legislator standardized the penalty in all cases without differentiating between one category and another. The legislator has an upper or lower limit of imprisonment, which means that the judge has the authority to single out in light of the circumstances and circumstances of the crime, starting from the minimum imprisonment (three months) up to the maximum Sunday (five years), in addition to canceling the penalty of a fine. But if the criminal behavior in the crime of assaulting doctors takes the form of (assault and resistance), we find that the penalty prescribed for it before amending the text of Article (230) of the Penal Code is imprisonment for a period not exceeding (three years) or a fine not exceeding three hundred dinars. Amending Article (230), the penalty has been tightened, as the amended article stipulates that "a penalty of imprisonment for a period of no less than one year shall be imposed on anyone who assaults an employee or a person charged with a public service...." Thus, we note that the amendment did not include the penalty of an optional fine that existed from Before. As for the penalty for the crime of assaulting the Doctors in its last form (intentionally preventing a doctor from performing his duties) was clarified by Article (231) of the Penal Code by stipulating that "he shall be punished with imprisonment for a period not exceeding three years and a fine or one of these two penalties, whoever prevents an employee...." And from the analysis of the text It is clear that the legislator has expanded the judge's authority when ruling and gave him the choice between three penalties, either to sentence a prison sentence of no more than three years and a fine together, or to sentence a prison sentence of no more than three years only, or only to a fine of an unlimited amount, and in the face of indeterminacy Thus, it is necessary to refer to the general rules regulating the amount of the fine, as we find that Article (91) of the Penal Code has specified it as "... the amount of the fine shall not be less than half a dinar and not more than five hundred dinars unless the law provides otherwise." In any case, the crime of

assaulting doctors in its three forms, and despite the amendments, is a misdemeanor, which means that what we have clarified regarding the possibility of imposing subsidiary punishments, the precautionary measures in the crime of clan claims also apply to the crime of assaulting doctors, which the legislator did not bring in the special law anything new in its regard, but was satisfied NS Referring to the general rules, and we hope that the legislator justified the inclusion of the text regarding making assault on the doctor an aggravating circumstance of the crime. As for the penalty prescribed for the crime in the event that the criminal act is combined with aggravating circumstances, we find that the legal texts regulating the crimes of assault on officials and those charged with a public service included two types of aggravating circumstances, the first of which is the aggravating circumstances specific to some forms represented by Article (230) of the Penal Code which stipulated "...and the penalty shall be imprisonment for a period of no less than two years if, along with the assault or resistance, a wound or harm occurred," meaning that the legislator has aggravated the penalty due to the gravity of the criminal outcome resulting from the criminal behavior. As for the second type of aggravating circumstances, which applies to All forms of crime have been referred to in Article (232) of the Penal Code by saying, "It is considered an aggravating circumstance in the commission of the crimes set forth in Articles 229, 230 and 231 A, If the crime was committed with premeditation. B. If the crime was committed by five or more persons. C. If The crime was committed by a person who apparently carried a weapon." From the analysis of the preceding text, it becomes clear that the assault on doctors, whether it takes the form of (insult) or (assault and resistance), or (intentionally preventing him from performing his duties) if combined with a premeditated circumstance, or if it is committed as a minimum When five people or more accepted it, or that the offender committed it while he was carrying a visible weapon, and we note that the legislator did not specify the type of weapon and did not also indicate its use in committing the crime, only stipulated that it be apparent. An aggravating penalty in the event of the availability of one of the above circumstances, which requires a return to the general principles of the Penal Code, which states: "If an aggravating circumstance is present in a crime, the court may rule... If the penalty is temporary or life imprisonment, the sentence may be more than the limit. The maximum penalty prescribed for the crime, provided that it does not exceed twice this limit, provided that the period of temporary imprisonment in any case does not exceed twenty-five years and the period of imprisonment to ten years. It shall be judged according to the criteria prescribed in Article (93/2), provided that the period of imprisonment in all cases does not exceed four years."

Conclusion

In the conclusion of our tagged research (punitive policy in Law No. 26 of 2013, an analytical study), we would like to review the most important results we have reached during the research, and make a set of recommendations that we hope the legislator will take into account in the future.

Results

1- Article 5 of the Doctors Protection Law, which penalized illegal clan claims, was not one of the innovations in the policy of criminalization and punishment in this law, because the Iraqi legislator had previously penalized this act according to the dissolved Revolutionary Command Council Resolution No. 24 of 1997 with the same freedom-depriving penalty. In the law in question, it is only the addition of a financial penalty to be imposed on the perpetrator of this act, represented by a fine of no less than ten million dinars, which does not constitute a sufficient deterrent to provide objective criminal protection for doctors.

2- The legislator has singled out a special text for assaulting doctors, which is the text of Article 6 of the law, without bringing anything new in this field, because it referred to the texts of assaulting employees contained in the Penal Code in Articles (229-232), which apply to doctors as they are employees or assigned. Therefore, the legislation of Article VI did not bring any additional protection justifying its provision.

3- The policy of punishment followed by the Doctors Protection Law was not at the level that achieves deterrence and that ensures undermining the level of the criminal phenomenon against this segment, because all the penalties that can be imposed according to the criminalization provisions contained in this law or that were referred to the Penal Code, do not go beyond imprisonment. And the fine does not provide doctors with objective criminal protection better than that provided by the general provisions contained in the Penal Code. As for the crime of clan claims, the text made the penalty of imprisonment for a period of no less than three years and a fine of no less than 10 million, which is a misdemeanour, which is also reflected in the subsidiary penalties that It may be imposed in this case, and the situation is no different in the crime of assaulting doctors, for which the law has referred with regard to its punishment to the Penal Code, the three forms (insult, assault, resistance, intentionally preventing one from performing the duty) also do not all deviate from being misdemeanours.

Recommendations

1- We suggest to the legislator in the Doctors Protection Law to add a text that makes the crime against doctors in accordance with the general provisions of criminalization an aggravating circumstance that requires toughening the penalty in accordance with Article (136) of the Iraqi Penal Code, because the law dealt only with the two crimes of clan claims and assault on doctors, in which it referred to the punishment prescribed in the Penal Code, while there are many forms of criminal behavior that doctors may be exposed to that do not fall under the fifth and sixth articles of the law.

2- We recommend the legislator to amend the penalty prescribed for the crime of illegal clan claim by making its punishment imprisonment for a period not exceeding ten years in order to provide doctors with better protection than what

was provided to them by the general text of Article (430) related to the crime (threatening), which can be applied to the act of claiming Tribalism, and because it provides the doctor with protection that is not provided by the special text represented in the text of Article 5 of the law

3- As for the sixth article of the law, we propose to reformulate it as follows: "Anyone who assaults a doctor while practicing his profession or because of its performance shall be punished with the penalty prescribed for anyone who assaults an employee or a public servant during or because of his job" for the reasons that we have indicated in their place. from research.

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