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The scope of criminal protection for objectivity from the crime of food fraud

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Abstract

We dealt with the study of the scope of criminal protection from food fraud crimes in an attempt to find a legal framework to protect consumers from acts of food fraud that evolve and vary day by day in a way that does not occur to the legislator when drafting this legislation. By proposing new legal rules to criminalize acts of food fraud that are constantly evolving and diversifying, and tightening penalties for their perpetrators.

The crime of food fraud is committed intentionally. The origin of this crime is that it is committed intentionally, that is, it requires knowledge and will, but it can be committed by an unintended mistake when the merchant or professional neglects or fails to verify the condition of the food and verify that it is not cheated when importing, manufacturing, trading, or at any stage of production to reach the consumer, and committing criminal behavior in food fraud may result in permanent disability, disability, or even death. Most of them were considered independent crimes in view of the gravity of the outcome

Keywords:

criminal protection, food fraud, and food fraud Revisited.

Introduction

First: an introduction to the research topic, crime since ancient times has been linked to the existence of man on earth, and its forms and forms have even evolved with the development of human life, so that it can be said that the development of society and the accompanying technological progress have had an

impact on the development of criminal methods and the decline of the state's role in the economic field and its encouragement of the private sector in the industrial and commercial fields. This led to the acceleration of some weak-minded people to exploit the economic freedom that was allowed before being surrounded by precise legal regulation and guarantees to protect society from these behaviors.

In addition to the escalation of the activities of these groups in investing this freedom to achieve their own benefit, many have adopted fraudulent and fraudulent methods without any indifference to the dangers they generate, the magnitude of which threatens the lives and health of individuals.

The crime of food fraud is committed intentionally; that is, it is one of the crimes of criminal intent that requires knowledge and will, and the crime can be committed by an unintended mistake when the merchant or professional neglects or fails to ascertain the condition of the food and verify that it is not cheated when it is imported, manufactured, or traded. Or at any stage of production down to the reach of the consumer.

Finally, the perpetration of criminal behavior in food fraud may result in permanent disability, disability, or even death. In this case, the majority of laws went to tightening and lifting the penalty prescribed for the crime, but most of them considered it an independent crime in view of the gravity of the result.

Second: the importance of the topic, the crime of cheating is very ancient and has been criminalized by various monotheistic religions, and the importance of studying the topic of criminal protection from food fraud lies in trying to find a legal framework to protect the consumer from every act that deceives and spoils his food and makes it a cause for harming his life and health. The world was not suffering from these criminal phenomena as we are today, and was not aware of the dangers that would result.

Iraqi legislation has passed more than four decades since the Iraqi Public Health Law No. 89 of 1981, the effective rate, and the Food System No. 29 of 1982, the effective rate. As the methods of food fraud evolve and diversify day after day in a way that does not cross the legislator's mind when formulating these laws, in light of the accelerating and astonishing development in various fields that led to the widening of the scope of fraud crimes in the food industry, methods of production, circulation, and methods of preservation, the dangers to human food have increased and it became necessary to reconsider this old legislation by proposing new legal rules to criminalize acts of food fraud.

Third: The scope of the search, the scope of the study is limited to the objective framework of the criminal protection of the consumer from the crime of food fraud and what has been observed from a clear legislative deficiency and the absence of texts in the Iraqi Penal Code or special laws criminalizing and punishing the perpetrators of these crimes.

Furth: The research problem, the main problem with the study lies in the fact that, despite the great importance of protecting food from contamination resulting from fraud and the wide scope of its health risks and economic and social

repercussions on the individual and society as a whole, the Iraqi legislator did not address it in the Penal Code No. 111 of 1969 amended to protect against fraud. It did not criminalize acts of food fraud that cause food contamination and the resulting direct and indirect harm to human life and health.

Also, we did not find this protection in the special Iraqi legislation concerning human health and food safety. The amended Public Health Law No. 89 of 1981 did not include a deterrent penalty for perpetrators of food fraud, and this case applies to the Iraqi food system No. 29 of 1982 as amended, as this did not include the system has no punitive provisions for food fraud offenders.

Fifth: Study Methodology, we followed the analytical approach in studying the subject of (the scope of objective criminal protection from the crime of food fraud) by analyzing the position of the Iraqi legislator on this protection, with reference to some laws of other countries that dealt with this protection.

Sixth: Research Strategy, in order to become familiar with all aspects of the topic (the scope of criminal protection from the crime of food fraud) and to achieve the desired goal, we have divided the research plan into two requirements, as follows:

Chapter One: defining the crime of food fraud and its legal nature

Section One: Defining food fraud as a crime.

Section Two: The Legal Characteristics of Food Fraud.

Chapter Two: the elements of the crime of food fraud and the criminal penalty for it

Section One: The material element of food fraud crime.

Section Two: The material element of food fraud crime.

Section Three: deals with the criminal penalties for food fraud.

First Requirement: Crime of food fraud and its legal nature

defining the crime of food fraud and its legal nature although the crimes of fraud in general, and food fraud in particular, are covered by legislation, most of it does not explicitly define it but rather enumerates its forms, but some jurisprudence has provided a definition. As for its legal nature, there is no agreed standard, but it can be deduced from the texts that criminalize these crimes. Actions for different countries, and this will be recognized through the following two sections:

1.1 Section One

Defining the crime of food fraud Linguistically, cheating is the opposite of advice or contrary to what is agreed upon between one person and another, and it is the source of cheating, and it is cheated [1], the cheater is the beginning of darkness and the last of it; and the cheating (by breaking) is hatred; and the adulterated is the mixed and mixed, such as mixing the good of the seeds with the bad, or exposing them to moisture in order to have more weight [2].

In general, fraud is defined as any act directed at a good or service that violates the principles of the industry or the legal rules governing it, if it results in

undermining its quality, characteristics, or value without the knowledge of the dealer [3], that is, fraud is any change in the essence, nature, or characteristics of a commodity, its type, or source.

As for food fraud, it is noticeable that the laws did not address in their texts the definition of food fraud but rather included forms of fraud in processed foods. The Iraqi legislator did not know fraud, neither in the penal code in force, nor in the civil law or the consumer protection law, and even the food system in force did not provide a specific definition. However, the majority of legislation concerned with food [4], went on to consider food as adulterated in certain assumptions, most notably:

1. Mixing and mixing with another substance changes its nature, quality, or nutritional value.
2. If one of its nutrients is completely or partially removed.
3. If one of the materials included in its composition is wholly or partially replaced by another material of lower quality.
4. Which contains food additives not included in the prescribed specification.
5. If the data on its packaging contradicts the reality of the food inside, it leads to misleading the consumer or harming their health.

As for the definition of cheating in jurisprudence, some jurists have endeavored to formulate a definition of cheating. Cheating has been defined by some jurisprudence as "every intentional positive act that affects a commodity and is in violation of the rules specified for it in the legislation, or in the principles of the profession when it affects its properties, benefit, or value" [5], Others defined it as "any alteration in the components or characteristics of a class by adding something to that class or detracting something from it" [6].

It was also defined from another aspect of jurisprudence that: "Every alteration, modification, or erasure that occurs on the substance or natural formation of a substance or a commodity prepared for circulation, and that would detract from its basic properties, hide its defects, or give it the form and description of another commodity that is different from it in reality, and that with the intention of benefiting from the stolen properties or benefiting from the benefits obtained, with the intention of obtaining the difference in price for that commodity" [7].

As for the judicial definition of fraud, the French Court of Cassation expressed it in a ruling that stated that fraud is "resort to a modification or treatment that is illegal or inconsistent with the regulations, which would change the physical composition of the food product and this may be by addition, removal, or substitution" or by modification [8].

From the foregoing, it becomes clear to the researcher that the best definition of food fraud is to make any modification in the subjectivity of food commodities that is not permitted by law or the origins of the food industry, in order to change its reality or hide it in a physical appearance contrary to the truth, and this is done in any way that leads to a material change in food products,

whether it is by adding any foreign substance to the food commodity, by removing the beneficial elements, by mixing it with a substance of lower quality, or by substituting in whole or in part for the substances included in its composition.

It is noted that if food fraud results in death, ill health or permanent disability for the consumer, most of the legislation that criminalizes food fraud considers it an aggravating circumstance for punishment, and even that its proof is considered an independent and stand-alone crime with its own pillars and punishment as in the Egyptian legislation, and this is what will be addressed in the following [9].

1.2 Section Two: The legal nature of the crime of food fraud

As for the legal nature of food fraud crimes, are they misdemeanors or felonies? In terms of its gravity, and when the law stipulates the original punishment and decides imprisonment or a fine or both, it is a misdemeanor, but if the penalty is death or imprisonment, regardless of its duration in accordance with the general rules, and if this is applied to the penalty prescribed for confronting food fraud crimes, then according to this rule, some of them are misdemeanors and may be felony in certain cases stipulated by the laws. In Egypt, the law of suppressing fraud and Egyptian Fraud No. 48 for the year 1941, amended.

He considered the crime to be a misdemeanor and stipulated imprisonment and a fine for it [10], while cheating leading to death or permanent disability was considered a felony and its punishment was tightened according to the gravity of its criminal outcome.

As for the Iraqi Penal Code in force, it has decreed imprisonment for a period not exceeding two years and a fine of not more than two hundred dinars, which is one of the two penalties for cheating the contracting party on the reality, nature, or essential characteristics of the goods or the elements included in its composition, type, or source of goods in the cases in which it is considered a major reason for contracting [11], from this general text on the crime of fraud, we note that the Iraqi legislator considered the crime to be a misdemeanor, with evidence that it had set a prison sentence of no more than two years and a fine.

In Egypt, the Egyptian Law No. 48 of 1941 for the Suppression of Fraud and Deception, as amended, counted the crimes as misdemeanors and stipulated a penalty of imprisonment and a fine [12], while cheating leading to death or permanent disability was considered a felony and its punishment was tightened according to the gravity of its criminal outcome

From the point of view of this crime from the point of view of its legal aspect, the Iraqi Food System (29) for the year 1982, as amended by Law No. (4) for the year 2011, stipulated that food fraud should be banned and circulated only [13], without stipulating any penalty for this crime in between, and all that is in the matter The penalty contained in the amended Iraqi Health Law No. 89 of 1981, it is the one that applies to the perpetrators of these crimes despite the different nature and severity of food fraud crimes from the crimes mentioned in this last law,

which range from closing the offending shop or a financial fine to, in the most severe cases, imprisonment [14].

Given the nature of these crimes in terms of their material pillar, they are positive, temporary, continuous, simple crimes. They are positive because the offender's activity consists of a positive act by performing an act criminalized by law that would change the nature, properties, or usefulness of the food subject of the crime [15].

In this context, the Egyptian Court of Cassation ruled, "...the deception of things punishable by Article Two of Law (48) of 1941 requires that the same thing be changed by a positive act..." [16].

As for it, it is a temporary crime because its occurrence is just by committing the act of fraud, but it is noticeable that the crimes of offering and offering for sale are continuous crimes, meaning that the perpetrator is considered the perpetrator of the crime from the time of knowledge of cheating, even if he was not aware of it since the beginning of the act of offering or selling [17].

Looking at the crime as its moral element, the basic principle in the crime of food fraud is that it is a premeditated crime that requires the offender to have intentionally harmed by a positive or negative act. In this context, the Egyptian Court of Cassation ruled by saying: "to convict the accused in the crime of penal fraud by Law No. (48) of 1941, he must prove that he is the one who committed the act of fraud or that he knew of the fraud that took place." [18] The crime may occur unintentionally, and it is a misdemeanor of unintentional negligence. Purpose that will be discussed later.

But if we look closely at these crimes according to their nature in terms of the right that has been infringed upon, it becomes clear that the crimes of fraud are crimes against public health because the behavior of the offender in them is a falsification and alteration of the characteristics, qualities, or benefits of a food commodity, and the actor here, in addition to his harm to the interests and health of individuals, is to the greatest degree harmful to the public interest, the national wealth, the country's national economy, and its reputation [19].

From the foregoing, it becomes clear to us that this crime is a type of misdemeanor, but it can be a felony according to the gravity of the criminal outcome when it leads to death or permanent disability, and it is also a positive crime temporary and may be continuous, meaning that the perpetrator is considered the perpetrator of the crime from the time of knowledge of the act. And if he did not know about it from the beginning of the act, it is a simple crime, as it is a willful crime, but it can be committed by mistake, as well as a crime against public health as well as the health of its consumers.

The second requirement

Elements of the crime of food fraud and the criminal penalty for it

The simple crime of food fraud in its intentional form, like any other crime, requires the availability of the material element as well as the moral element of the

crime, which is the criminal intent in the crimes of intentional food fraud. To ensure adequate protection from this crime, it is necessary to provide the appropriate criminal penalty to deter its perpetrators, and this is what will be done Highlighting it through three branches as follows:

First Branch: Elements of the crime of food fraud and the criminal penalty for it

the simple crime of food fraud in its intentional form, like any other crime, requires the availability of the material element as well as the moral element of the crime, represented by the criminal intent in intentional food fraud crimes; and to ensure adequate protection from this crime, the appropriate criminal penalty must be available to deter its perpetrators. This is what it will be highlighted through three branches, as follows:

2.1 Section One: Criminal behavior

It was mentioned previously that what is meant by food cheating is that it is every change in the subjectivity of a food item that is not sanctioned by law or custom or required by the origins of the food industry, by changing the reality of food products or concealing them in an unrealistic appearance, and this happens by any means that results in a total or partial change to them, by mixing food commodity compounds with other autonomous compounds, or extracting some of their natural properties or beneficial elements, or producing them in any way that affects their nutritional properties or value, or leads to concealing their defects, in a manner that harms the health or lives of consumers.

In view of the above, the act of food fraud has many forms and forms, namely ((cheating by addition, cheating by extracting the beneficial elements from the food product, cheating by mixing, and finally cheating through total or partial substitution)) [20] and this is what will be explained in succession:

2.1.1 cheating in addition

This type of fraud is achieved by adding any foreign substance to the food commodity (), and this form is criminalized when the substance is harmful to health and safety, and on the contrary, there is no place to criminalize it (). Specifies the materials and food additives allowed to be added to food products, and the quantities and proportions of the constituent materials [21]. Usually, this method of cheating occurs when another food substance that contradicts it in quantity and quality is added to the food item.

Among the common applications of the method of cheating is adding water to milk or milk [22], and also making chocolate powder from cocoa and adding rice starch to it, as it is less expensive than cocoa and trading it as pure cocoa [23]. Other applications include adding seed oil to sesame oil [24], as well as adding acetic acid more than the amount specified in the production of vinegar or salsa [25].

In addition, it is what is known today as genetic engineering, that is, adding plant and animal hormones to the food commodity in order to provide profit, regardless of its risks to human health and society as a whole, through the resulting direct or indirect effects on human life. Such as cancerous tumors and kidney failure when eating agricultural fruits, we see crops of fruits and vegetables throughout the seasons of the year; that is, we see summer fruit in winter and winter fruit in summer thanks to genetic engineering technology to improve plant breeds as well as fatten meat-eating animals or inject them with types of growth-stimulating antibiotics [26].

It is noticeable in the legislation that dealt with and dealt with this crime, that it punishes the mere act of cheating in addition, even if the added substances do not result in immediate harm or direct harm to human health or life, meaning that it does not require actual harm to occur, but rather the assumed harm is sufficient.

In this context, the Egyptian Court of Cassation ruled in a ruling stating that: "The material element in the crime of cheating soft drinks is achieved by producing soft drinks with foreign substances added to them, regardless of whether the substances are harmful to health or harmless" [27].

2.1.2 Cheating by extracting beneficial elements

This is done by removing part of the elements that make up the food while keeping the food in its name or selling it at the same price, such as removing cream from milk, which leads to a decrease in its elements or nutritional value, and this method leads to a fundamental change in the food or it creates a defect [28].

This method of cheating is rare in reality, as the derogation has a general material meaning that focuses on the ingredients of the food products themselves and their nature, such as their shape, size, size and components, and any action that may result in the concealment or removal of these contents and leads to confusion for consumers in the fact that food products are of a certain nature or type [29]. This method is one of the means of food fraud that leads to changing the nature of the food or its composition or causing a defect in it [30].

2.1.3 Mix cheat

It is intended to mix a food substance with a substance of lower quality than it, whether it is of the same type or of another class (). Cheating and counterfeiting by mixing does not require that the two substances be of a different nature, but it can happen if these substances are of the same nature [31].

It is intended to mix a food substance with a substance of lower quality than it, whether it is of the same type or of another class [32]. Cheating and counterfeiting by mixing does not require that the two substances be of a different nature, but it can happen if these substances are of the same nature [33].

Mixing is not a method of food cheating unless it is intended to suggest that the mixed food products are pure and without any blemishes, or with the intent of

deceiving consumers that they are in a better form than they are [34]. This mixing does not happen unless it is possible to achieve mixing the mixed food with the other food that is mixed with it.

Among the practical applications of this method is what came in the ruling of the Egyptian Court of Cassation that: "...it is considered cheating by mixing making wheat bread mixed with corn when the sale has taken place that the bread is pure wheat ...[35]."

In Iraq, one of the applications of this picture is that the Iraqi Health Control Department in Baghdad Al-Karkh, the Laboratories Division of the Ministry of Health, suspended the activity and closed the factory of Al-Badawi Company for Food Products Ltd for a period of thirty days.

This is because the aforementioned laboratory manufactures apple cider vinegar, which laboratory analysis proved that it is not apple cider vinegar, but rather that it is a mixture of industrial vinegar mixed with apple flavor, according to the text of Article (96/First) of the Iraqi Public Health Law No. (54) of 2001[36]. From the researcher's point of view, it is noticed here that the procedures followed are not compatible with this criminal behavior, which requires more than just closing the laboratory and stopping its activity if we look at the effects that may result from this behavior.

2.1.4 Fraud by substitution

According to the majority of laws that deal with the crime of food fraud, food is considered adulterated if it is partially or completely replaced by one of the compounds included in its composition with another substance of inferior value, of lower quality, or rank [37], and this is achieved when the perpetrator of the criminal behavior modifies the main contents of the food products For example, replacing all or part of this material with food of lower quality and rank in order to benefit from the difference in the financial value for which these products are sold.

In this context, the Alexandria Misdemeanor Court in Egypt ruled in a ruling in which it stated:"...there is fraud in strawberry syrup when the analysis proves that the drink is not strawberry juice and does not contain strawberry elements, but is a drink made from strawberry spirit and does not contain strawberry juice. [38]".

Another application of this form of fraud in Iraq is that one of the foodstuff factories in Baghdad produces food products labeled as being from meat. It produces pastrami and bird heads not from pure meat but rather from adulterated meats that are shaped with materials that give the shape of meat after dyeing them with a special meat dye [39].

The researcher realizes that the arrangement of responsibility for the perpetrator in this method of cheating does not require the occurrence of harm to health in order to be punished, but it is sufficient merely to partially or completely replace the real foodstuffs with the foreign substance to be a criminal and punishable, implying that the legislation considered them dangerous crimes rather than harm.

2.2 Section Two: The criminal outcome

"It is the effect of the criminal behavior, whether it is material or legal, and it is the last link in the criminal chain [40]," says the definition of the criminal outcome legal and means violating the criminal text by attacking the considered interest [41].

Hence, the criminal result has been achieved in the crime of food fraud when the right or the legally protected interest is violated, and the legal interest is the right of human health and safety [42].

The researcher supports what some legislation has stated: that it is not necessary that the harm resulting from food fraud occurred directly or that it resulted in clear effects or direct. It may slacken for a long time, that is, the damage, and this affects the degree of resistance of the human body and its response to contamination resulting from food fraud, which varies from person to person accordingly. At a time when adulterated food may cause direct health damage when eaten, other previous health problems may have helped. On that, such as ill health or weak immunity and the like,

On the other hand, it may be another person who is not affected and does not show direct health effects when eating contaminated food because of cheating. That is, it is not necessary to research the extent to which this damage has occurred and achieved immediately and directly, as the basis of the research must be that the criminal behavior (the act of cheating) is considered a sufficient presumption of its availability, and if food fraud leads to the death or disability of a person or his permanent disability, then this is a circumstance that requires severe punishment, but most of the legislation has considered it an independent crime.

2.3 The causal relationship between the act of cheating and the criminal consequence

The criminal responsibility is not achieved by the availability of the criminal activity and the result that results from it only, but rather there must be a causal link between the behavior committed by the perpetrator and the result, if the criminal behavior and the result is the essence of the material element, then the role of the causal link is to prove that this act has led to that result [43], so that it is said that had it not been for this activity, the result would not have been achieved, and it is represented by attributing a specific result to a specific activity and attributing this behavior to a specific subject [44].

If we reverse this rule on food fraud crimes, then there must be a link between the criminal behavior represented by the offender committing one of the fraudulent acts in the food, which is the addition, deduction, mixing, and substitution, and the damage resulting from it, which is the contamination of food that results in direct or indirect health effects that affect human health due to food contaminated by cheating, i.e., achieving the desired result, which is food contamination and spoilage, which from the researcher's point of view is presumed

harm and not necessarily actual, in order to ensure that the perpetrators of fraud crimes that are difficult to prove due to the absence of immediate or direct harm to the consumer will not escape.

Second branch: The moral element of the crime

The moral element in food fraud crimes is not sufficient to prove the crime, to achieve the material element only; it must be associated with a criminal intent represented by the sinful will, which is the psychological link between the offender and the material of the crime; the criminal intent, according to the general rules in criminalization, is the direction of the offender's will to sinful behavior. Knowing all of the legal requirements for criminalization [45].

Accordingly, the criminal intent requires the offender's knowledge of cheating in food compounds and his will for him, and this does not happen except with the will of the offender for actions that he knows will change the nature, properties, or value of the food that entered it, and it is worth mentioning that the knowledge of the incrimination of this crime is assumed and cannot be denied except in the cases specified by the law, as for the knowledge of the fraud incident, it must be proven, and the burden of proof rests on the accusing authority [46], and the trial judge must verify that the offender knew that the food subject of the crime had been cheated. Then the court must indicate in its judgment the availability of the criminal intent of the offender, evaluating the evidence for that in application of the general rules in criminalization and criminal procedures [47].

It is worth noting that the crime of food fraud in the original is usually intentional and requires the presence of a sinful will on the part of the offender [48], but the justifications for limiting this crime require that the producer, merchant, or importer be held accountable for the crime of fraud if it occurred due to his negligence, lack of precaution, or negligence,

That is because what he must do when he begins to manufacture or produce foodstuffs or offer them for circulation is to verify their safety at the time of manufacture or production, or to ensure that the foodstuffs he offers for sale are safe and free from fraud. Food fraud on the basis of unintentional error [49] and the applications of food fraud in an unintentional way in the Egyptian legislation and judiciary:

Negligently causing the spoilage of some human foods as a result of a failure to control the offering, offering for sale, or selling any of these fraudulent, spoiled, or expired foods.

Causing negligence as a result of not being careful in the production, offering, display, or sale of materials, packages, or packaging used in food adulteration.

- Accidental possession of food, products, or materials.
- An error in importing or importing spoiled, adulterated, or expired food by mistake [50].

The evidence of these types of fraud in French legislation and the judiciary does not incite. In French legislation, the French Consumer Law No. (949) in 1993 stipulates the criminalization of food fraud by negligence [51], and this is a commendable tendency of the French legislator to block the way for those who commit this crime, and their lack of knowledge and criminal intent is invoked as a deterrent and motivating factor for producers and traders of food commodities to carry out the duty placed upon them to verify the condition of the commodity before proceeding to trade it and put it on the market. We hope the Iraqi legislator will follow his example and criminalize negligent food fraud. As for the French judiciary, it was stated in a ruling by the French Court of Cassation that "whoever produces a commodity undoubtedly knows its composition and specifications." There is a personal duty on the manufacturer or producer that dictates that he checks the condition of his products before they are put into circulation [52].

Second branch: Criminal penalty for food fraud

The Egyptian Fraud and Fraud Law (48) for the year 1941, as amended by Law (281) for the year 1994, states that: "He is punished by imprisonment for a period of not less than one year and not exceeding five years and a fine of not less than ten thousand pounds and not more than thirty thousand pounds, or the equivalent value of the commodity in question. Which crime is greater:

First: Whoever cheats or attempts to cheat something from human food... The penalty shall be imprisonment for a period of not less than two years and not exceeding seven years, and a fine of not less than twenty thousand pounds and not exceeding forty thousand pounds, or the equivalent value of the commodity subject of the crime, whichever is greater, if the food... adulterated... is harmful to human health, and the prescribed penalties shall be applied.

In this article, even if the buyer or consumer is aware of the fraud of the goods..." [53], and it is noted that this text has included the upper limit of food fraud or the attempt to commit it with materials not harmful to human health, which is imprisonment for a period not exceeding five years and a fine not exceeding thirty thousand pounds. Or it is estimated at the value of the commodity subject of the crime [54].

In Iraq, the (dissolved) Revolutionary Command Council Resolution No. (146) for the year 1998, when selling dog and donkey meat was considered a crime of food fraud related to health when it was substituted for meat intended for human consumption, such as beef and livestock, and in this decision the following: -

First: Selling dog or donkey meat or other meat that is not prepared or unfit for human consumption as sheep or cow meat or other meat intended and suitable for human consumption is considered a crime related to health and the general principles of the constitution.

Second: The perpetrator of the crime specified in Clause (First) of this decision shall be imprisoned for a term of no less than seven years and no more than ten years.

Third: The commission of the crime stipulated in this resolution in war conditions is considered an aggravating circumstance [55].

It is noted that the Iraqi legislator has been strict in this decision when it stipulated a prison sentence for the perpetrators of the crime of cheating in animal meat and considered it a felony in terms of the prescribed penalty, which is imprisonment. S stated in the legislation of most other countries, especially in the Iraqi legislation, which in general dealt with some forms of fraud without specifying food fraud, but rather came with timid treatments ranging from closing the activity, stopping or destroying the material, or confiscating it, and to the maximum extent it may reach imprisonment, While this resolution stipulates a prison sentence of no less than seven years and not more than ten years in item (Second) of the resolution, the penalty is tightened in the case of war. In times of war.

As for the amended Iraqi Penal Code in force, it stipulates that: "A person who deceives the contracting party as to the reality, nature, or essential qualities of the goods or the elements included in its composition, type, or source of the goods shall be punished by imprisonment for a period not exceeding two years and a fine not exceeding two hundred dinars." In the cases in which this is considered an essential reason for contracting "[56], and it is noted that in this general text, it comes with the word "goods," and this term expands to many different forms of products,

It is known that food commodities have a specialty over other commodities, as they are directly related to human health, and the effects resulting from their fraud are more serious and severe than fraud in non-food commodities and products, especially after the great developments in the field of the food industry and the accompanying expansion of food crimes and the multiplicity of forms of fraud and their devastating effects and advanced methods compared to the era of the legislation of this law, as well as the requirement of fraud in this text to have a contract so that the text applies to the situation, has narrowed the protection of food products from fraud. Therefore, we renew our call to the Iraqi legislator to remedy this deficiency and stipulate this crime, like the legislation of other countries (Husár, Jaššo, & Dillinger, 2020).

About the position of the Iraqi Food System No. 29 of 1982, the amended and effective, it was not better than the previous two laws in providing protection for food from fraud crimes, it came in the third chapter of it that: "It is forbidden to sell or circulate food if it is harmful to public health or is corrupt and decomposing or spoiled or adulterated" [57](Duke & Osim, 2020; Emina & Ikegbu, 2020).

However, this system did not include penalties for food fraud. Rather, the legislator sufficed with the general punitive provisions in Public Health Law No. (89) for the year 1981, the amended and effective, and issued pursuant to this system, included in Article (99). Amended by it: "...imprisonment for a period of not less than one month and not more than two years..." In the event of recurrence, the penalty shall be imprisonment and the cancellation of the health permit with the confiscation of adulterated foodstuffs and materials used and included in their

composition, as well as the penalties stated in Article (96) It is a penalty of a fine in excess of (250,000) two hundred and fifty thousand dinars, or closing the shop for a period not exceeding (90) ninety days, or both, by a decision of the Minister or his authorized representative in the most severe cases [58].

As for food fraud crimes that result in death or permanent disability, it was stated in the Egyptian Law for the Suppression of Fraud and Fraud (48) for the year 1941, amended by Law No. When it results in permanent disability of a person and a fine of not less than twenty-five thousand pounds and not more than forty thousand pounds, or the equivalent of the value of the commodity subject of the crime, whichever is greater!

If the court applies the provision of Article (17) of the Penal Code in this case, the freedom-restricting penalty may not be reduced to imprisonment for a period of one year. When a crime results in the death of one or more people, the penalty is hard labor and a fine of not less than 50,000 pounds and not more than 100,000 pounds or the equivalent of the value of the commodity that is the subject of the crime, whichever is greater. If the crime results in the death of one or more people, the penalty is life imprisonment with hard labor and a fine of not less than 50,000 pounds and not more than 100,000 pounds, or the equivalent value of the commodity under investigation, whichever is greater!

As for the Iraqi legislator in the Penal Code, it considered the crime of fraud in merchandise a misdemeanor and stipulated the penalty of imprisonment and a fine for the crime of fraud in contracts only in its simple form for goods and in general without strictness, bearing in mind that the criminalization of fraud was absolutely without taking into account the specificity and effects of food fraud and distinguishing it from other fraud in commodities. As was previously indicated, as it did not address fraud crimes that led to death or permanent disability, while the special legislation in Iraq did not provide for these crimes, the researcher suggests addressing this deficiency in the food system by including a text to punish the perpetrators of the crime of fraud and tightening the penalty for crimes that lead to death or permanent disability, so that it is commensurate with the size of the crime and its great effects on human life and health.

Conclusion

The right to life and food safety is one of the most important human rights that he has obtained since his birth, and this right is one of the highest rights that should be preserved.

The familiar picture of food fraud crimes may be committed intentionally; that is, it is one of the crimes of criminal intent that requires knowledge and will, but it is possible that the crime is committed by an unintended mistake when the merchant or professional neglects to check the condition of the food and verify that it is not contaminated and cheated. When imported, manufactured, or traded, or at any stage of production, to reach the consumer.

It is noted that the Iraqi Penal Code (111) of 1969, as amended, did not provide for fraud crimes that cause human food contamination, and there is no explicit treatment in this law to criminalize acts that cause food contamination. (467), As for the position of the special laws in Iraq regarding food fraud crimes, it is also noted that they did not bring a deterrent punishment to the perpetrators of these crimes. The penalty may reach a maximum of imprisonment for some crimes, despite the development of cheating methods and their widespread spread, especially after 2003, and with Iraq's opening to global markets, opening borders to the movement of goods, including food, and allowing the entry of adulterated foodstuffs that do not conform to standard and health specifications, the existing legislation has become unable to confront these crimes, especially since it was initiated decades ago.

Recommendations

The proposals they call for adoption are:

We propose the enactment of a special law to suppress fraud and fraud similar to the Egyptian Law for the Suppression of Fraud and Fraud, which includes a chapter on the criminalization and punishment of food fraud offenses with the most severe penalties commensurate with the effects of these crimes.

In the event that it is not possible or delayed in enacting a fraud and fraud suppression law, we suggest amending some legal rules in the legislation in force as an alternative solution to legislating the law of suppressing fraud and fraud referred to in paragraph (a) as follows:

The researcher proposes to the Iraqi legislator to amend Article 467 of the Iraqi Penal Code No. (111) for the year 1969, the amended effective, by adding a paragraph criminalizing food fraud and tightening the penalty if the act of cheating leads to death or permanent disability, and it is as follows: - ((Second: The penalty shall be imprisonment and a fine, or one of these two penalties if the goods are a food item, and the penalty shall be intensified if the consumption of the adulterated substance leads to death or permanent disability.

The researcher suggests to the Iraqi legislator in the food system in force, criminalizing food fraud and equating it with attempting it, and tightening the penalty for cheating that leads to death or permanent disability by including a text in the food system No. (29) for the year 1989, the effective rate, so that the penalty is proportional to the crime and its great effects on human life and health, and the text is as follows: "Whoever cheats or attempts to cheat something from human food, as well as whoever offers or offers for sale, shall be punished with imprisonment and a fine." Or sells any of these adulterated foodstuffs while being aware of the fact that they are deceived; and the penalty shall be imprisonment and a fine if the consumption of the adulterated food results in the death of a person or permanent disability with the perpetrator's knowledge of the food being deceived.

The researcher also suggests drafting a text in the Iraqi food system that prohibits the sale or circulation of food that contains pork meat or its derivatives

or any alcoholic substances without prior permission from the competent authorities.

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- [11] نظرا نص المادة (467) من قانون العقوبات العراقي (111) لسنة 1969 المعدل النافذ.
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