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The Mitigating Excuses for Punishment in The Iraqi Traffic Law No. 8 of The Year 2019 (A Comparative Study)

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ABSTRACT

In this research, we will rely on two scientific research methodologies, the first of which is: the analytical approach in order to review the penal texts and opinions related to the research topic, analyze and recommend one of them, in addition to the comparative approach, as we compare the position of the Iraqi legislator with the positions of other legislations, and we will rely in the comparison on traffic laws in both Egypt and France. The significance of our research lies in the fact that the legal provisions for legal excuses in the traffic law are among the important topics that have not received sufficient research despite the large number of criminal cases in traffic crimes that results in the large number of detainees and convicts, which burdens the state in terms of caring for those arrested and convicts. The Iraqi legislator has identified the mitigating legal excuses in a separate provision to achieve deterrence considerations. In Paragraph (2) of Article (37) of the Traffic Law, it stipulates three cases for applying the mitigating excuse for the crimes of manslaughter and wrongful personal injury arising from traffic crimes. that are the initiative of a vehicle driver involved in a run- over crime, punishable by law, to transport the injured person immediately to the nearest hospital or health centre or informing the police immediately after the accident if it is not possible to transfer the victim for any reason or in case the accident occurred outside the area of pedestrian crossing. The mitigating excuse entails a mandatory reduction of the penalty by virtue of the law, and the judge has absolute authority in assessing and imposing the penalty within the limits of the legal provision. Some jurists believe that the mitigating excuses do not change the crime description, while others argue that they do, because when the legislator decides a misdemeanor penalty for a crime that is originally punishable by a criminal penalty, this means that the law has reduced the gravity of the crime in its new form coupled with the excuse and considered it in term of gravity, a misdemeanor, rather than a felony. Whoever benefits from a mitigating excuse does not benefit from the mitigation of his civil liability, and this entails his obligation to perform all kinds of civil obligations stipulated in the Penal Code or required by this civil law, and the civil obligations that can be judged by the penal courts. The mitigating excuse does

not affect civil liability. Every crime that inflicts material or moral damage on others obliges the perpetrator or the civilly liable person to compensate the injured for such damage. Therefore, the beneficiary of the mitigating excuse must compensate for the damages incurred by others. Hence, whoever commits a traffic crime and causes damages as a result of his act, either to the vehicle or persons, must compensate for such damage.

Key words

Comparative Study, Mitigating Excuses, Punishment

Introduction

First: The Research Topic:

Excuses are divided into two types. Legal excuse either discharges a person from a penalty or reduces that penalty. Excuses that discharge a person from a penalty assume that all the elements of the crime are fulfilled. Despite that, the offender is exempted from a penalty based on considerations related to criminal policy, which is up to the legislator's discretion, since the interest achieved by the penalty in certain cases is less important than the interest that is achieved if the penalty is not imposed, and exemption from a penalty in some cases is a reward decided by the legislator in return for a service rendered by the perpetrator of the crime. Such excuses were not mentioned in the Iraqi traffic law. The second type of excuses are mitigating excuses, which also come in two types, general mitigating excuses, and special mitigating excuses related to specific crimes, and this is the topic of our research (Nasse, 2022; Nasse et al., 2022).

Second: Research Significance: -

The significance of our research lies in the fact that the legal provisions for legal excuses in the traffic law are among the important topics that have not received sufficient research despite the large number of criminal cases in traffic crimes that results in the large number of detainees and convicts, which burdens the state in terms of caring for those arrested and convicts.

Third: Research Problem:

The research problem focuses on the fact that legal excuses contribute either to exempt the offender from a penalty or mitigate such penalty. The Traffic Law provides only for mitigating excuses, and in the midst of this provision, was the legislator successful in terms of identifying cases of mitigating excuses, or are there cases that requires the exemption, and they should have been stipulated by the legislator in the traffic law, rather than being satisfied only with mitigating legal excuses.

Fourth: Research Methodology:

In this research, we will rely on two scientific research methodologies, the first of which is: the analytical approach in order to review the penal texts and opinions related to the research topic, analyze and recommend one of them, in addition to the comparative approach, as we compare the position of the Iraqi legislator with the positions of other legislations, and we will rely in the comparison on traffic laws in both Egypt and France.

Fifth: Research Scope:

The scope of the research is determined by studying the mitigating legal excuses, and the research will be within the framework of the Traffic Law No. (8) of the year 2019 and other relevant substantive laws.

Research Plan:

The research plan is drafted as follows: In the first topic, we address the concept of mitigating legal excuses, and the second topic deals with the legal provisions related to the mitigating excuses in the traffic law. The research ends up with a conclusion that includes the findings and recommendations.

First Topic:

The Concept of Mitigating Legal Excuses

It is originally settled that everyone who commits a crime receives a penalty. However, traffic crimes often face certain circumstances that require mitigating the penalty. There are special reasons or cases related to the crime itself or its perpetrator, which results in the necessity to replace the penalty legally prescribed for the crime with a mitigated penalty either in type or amount. In order to study the mitigating legal excuses, they are addressed in two themes, the first of which deals with the meaning of mitigating excuses, while the second handles distinguishing mitigating legal excuses from their likes.

First Theme:

The Meaning of Mitigating Excuses

It should be noted first that every excuse has a title in the law, as Article (128/1) of the Iraqi Penal Code states that: (..... Excuse only exists under conditions that are specified by law.....). Therefore, legal excuses are excuses that exempt the offender from a penalty or mitigate such penalty, as concluded by the legislator himself, considering that exempting excuses requires exemption, and the mitigating ones require mitigation. The legislator has stipulated such excuses in the law, so that the judge shall abide thereby within the limits stipulated by the legal provision ⁽¹⁾. In order to determine their meaning, it is necessary to clarify their definition.

They are the reasons stipulated in the law, which require reducing the legally prescribed penalty for the crime, and they are defined as cases stipulated by the law in which the judge is obligated to reduce the penalty to less than the minimum set for the crime according to rules and limits set by the law ⁽²⁾ According to Article (128\1) of the Iraqi Penal Code, mitigating excuses only exists under conditions that are specified by law exclusively, and when fulfilled, the court must reduce the penalty according to certain rules stipulated by the law. Therefore, it differs from the mitigating circumstance and causes for leniency that are left by the legislator to the court discretion. ⁽³⁾ It is worth noting that Article (130-131) of the Iraqi Penal Code indicate the general limits for mitigating legal excuses, for which the law did not specify certain limit in the provision stipulating them. The mitigating legal excuses are divided into two types: general mitigating legal excuses and special mitigating legal excuses.

Part One

General Mitigating Legal Excuses

They are defined as: excuses whose scope extends to include all or most of the crimes ⁽⁴⁾, where the judge is obligated to reduce the penalty for each crime in which any of these excuses are available ⁽⁵⁾, and the Iraqi Penal Code stipulates them without specifying the type of crime on which they apply. Paragraph (1) of Article (128) of the Iraqi Penal Code states that: (..... Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse).

Through this, we note that these excuses pertain to intentional crimes exclusively and have nothing to do with unintentional crimes, and therefore they cannot be imagined in traffic crimes as one of the unintentional crimes.

Part Two

Special Mitigating Legal Excuses

They are the legal excuses that pertain to a crime or a specific group of crimes⁽⁶⁾ , and the legislator stipulates them explicitly, or they are those excuses that the offender benefits from if their conditions are met, and the law expressly stipulates them. The Iraqi legislator has identified mitigating legal excuses and stipulated some of them in the traffic law, as we will explain later.

Second Theme:

Distinguishing Mitigating Legal Excuses from Their Likes

We will devote this theme to studying the similarities and differences between legal excuses and other similar legal terms such as mitigating judicial circumstances and legal excuses that exempt the offender from the penalty.

Part One

Distinguishing Mitigating Legal Excuses from Mitigating Judicial Circumstances

Mitigating legal excuses are confused with mitigating judicial circumstances although there are basic and essential differences between them. Mitigating circumstances mean (reasons that require leniency for the offender and allow the mitigation of a penalty, according to the established limits).⁽⁷⁾ Jurisprudence and the judiciary have disagreed about defining the concept of mitigating judicial circumstances, and this is due to the difference regarding their nature. Mitigating circumstances are also defined as: Objective or personal unspecified characteristics that could allow the reduction of the legally prescribed penalty for the crime in accordance with the criterion established by law ⁽⁸⁾ . The Iraqi legislator has stipulated mitigating judicial circumstances in Articles no. (132 and 133) of the Penal Code, leaving their assessment to the court discretion, subject to the judge's discretionary authority. These circumstances include all the circumstances and conditions surrounding the crime and the criminal. Article (132) of the Iraqi Penal Code states that: "If the court considers that the circumstances of a felony or of the offender call for leniency, it may substitute a lesser penalty for the penalty prescribed for the offence, as follows: ..." It was also stated in the aforementioned article that: "If the court considers that the circumstances of a misdemeanor call for leniency, it may apply the provisions of Article 131." Article 17 of the Egyptian Penal Code in force states that: "In felony counts, if the conditions of the crime for which the popular action is brought necessitate the judge's lenity, the penalty may be changed, as follows:"

The criminal court judge has wide discretionary authority in determining the appropriate penalty according to the actual situation of the accused and the circumstances of committing the crime⁽⁹⁾, provided that the minimum and maximum limits stipulated by the law shall be taken into consideration. The judge decides on the penalty between the maximum and minimum penalty legally prescribed for the crime according to the circumstances of the crime with an explanation of the grounds on which his decision is based. He may bring the penalty below the minimum limit stipulated by the law, provided that the grounds that necessitate such mitigation must be stated.⁽¹⁰⁾ It may happen that the legislator gives the criminal court judge a wide discretionary authority to face any kind of disturbance suffered by the offender. ⁽¹¹⁾ The Court of Cassation ruled that (if the convict commits a crime of murder out of psychological pain caused by the assault on him... Then, this shall be considered a justifiable circumstance to mitigate the penalty). ⁽¹²⁾ The provisions of the Penal Code shall be basically applicable in all matters for which no specific provision is included in the Traffic Law, so such provisions are considered applicable when the competent courts consider traffic crimes. Paragraph (2) of Article (37) indicated that legal excuses mean the reasons that the court can find concurrent with the criminal act of the accused, and these

excuses either exempt the offender from a penalty or reduce such penalty. Excuse only exists under conditions that are specified by law, i.e. these excuses are not absolute, but are rather set by the law along with the controls for their application. Legal excuses have conditions that are exclusively stipulated by law, and the court shall abide thereby.

As for the mitigating judicial circumstances, it is up to the court to derive them from the case facts based on its discretionary authority in such regard. The discretionary authority is entrusted to the trial court, as estimated by the judge through the information provided by the case on the circumstances of the accused in addition to the judge's foresight, and perceptiveness in concluding the circumstances and reasons related to the complainant, the accused and the case. This authority is not subject to cassation, but the judge who wants to apply them must clarify those circumstances and reasons in the penalty decision.

In order to distinguish between legal excuses and mitigating circumstances, we state the similarities and differences between them, as follows:

First: Similarities:

- 1- They both reduce the penalty to less than the minimum limit legally prescribed for the crime.
- 2- Each of them was stipulated to achieve the individualization of penalty, in order to achieve the proportionality sought by the legislator.

Second: Differences:

- 1- The mitigating circumstances are reasons whose assessment was left by the legislator to the discretion of the judge, who extracts them according to the circumstances of each incident. As for the mitigating excuses, they are the reasons that have been expressly stipulated in the Penal Code or in other laws, and the judge does not have the authority to estimate them himself.⁽¹³⁾
- 2- The mitigating circumstances are broad and numerous and cannot be enumerated, while the mitigating excuses are exclusively stipulated by the penalty.⁽¹⁴⁾
- 3- Mitigation in mitigating circumstances is permissible for the judge, so he can either apply or overlook it. As for mitigating excuses, they are obligatory for the judge, and wherever there is a mitigating excuse, he must reduce the penalty.⁽¹⁵⁾

Part Two

Distinguishing Legal Excuses That Exempt the Offender from The Penalty from The Mitigating Legal Excuses

Exempting excuses are the ones that absolutely exempt the offender from the penalty, while the mitigating excuses reduce the penalty for the offender, but

do not exempt him therefrom. Therefore, we must clarify the most important mitigating excuses, including those stipulated in the traffic law, which are related to the offender himself, and that may necessitate reducing the penalty without exemption, and we will talk about the legal cases in which the offender is completely exempted from the penalty. Hence, we have to briefly present the similarities and differences between these two.

First: Similarities:

- 1- legitimacy: An excuse, either exempting or a mitigating may exist only by a legal provision, because the general rule governing all excuses is that: (Excuse only exists under a legal provision), and accordingly the judge may reduce the penalty only based on the powers assigned thereto by law, as the judge exercises his right to reduce the penalty without exemption according to the powers established within the mitigating judicial circumstances. paragraph (1) of Article (128) of the Iraqi Penal Code states that: (..... Excuse only exists under conditions that are specified by law. ⁽¹⁶⁾
- 2- Obligation: The judge is obligated to apply exemption or mitigation whenever expressly stipulated by the law, and the exemption or mitigation is applied only in accordance with the legal provision. For example, Article (311) of the Iraqi Penal Code refers to two cases of exemption or mitigation of penalty in relation to the crime of bribery, as this article expressly states that: (A person who offers a bribe as well as the intermediary is exempted from the penalty if he undertakes to notify the legal or administrative authorities or confesses to the offence before an action is brought. It is considered a mitigating excuse if such notification or confession occurs after an action is brought but before the end of the proceedings). This article combines the exempting excuses and mitigating excuses, as the criminal court is obligated to exempt or reduce the penalty according to the time of confession or notification.⁽¹⁷⁾
- 3- Crime Survival: The availability of an exempting or mitigating excuse does not result in the demise of the crime or a change in its nature, so the criminal liability remains with the perpetrator and the court does not change the crime due to the availability of a mitigating excuse.⁽¹⁸⁾

Second: Differences:

The difference between them can appear in two aspects that are:

- 1- Exempting excuses are always special excuses, i.e. related to a specific crime. As for mitigating excuses, some of them are special, i.e. related to a specific crime(s), while others are general.
- 2- The authority that is competent to examine the availability of each of them: The authority competent to examine the availability of exempting excuses is the judicial authority, i.e. the trial court is the competent authority that decides about the availability of the exempting excuses, and decide that the

criminal should not be punished despite the fact that liability for the crime is established ⁽¹⁹⁾. As for mitigating excuses, the question of concern here is that: Is it permissible for the investigating authority to decide upon the availability of a mitigating excuse?

It becomes evident that there is a great difference between the position of the penal laws on the issue of the competence of the examining magistrate in considering the availability of a mitigating excuse in the case investigated thereby. It is clear that the Iraqi legislator was successful with regard to giving the authority to resolve the availability of legal excuses, either exempting or mitigating to the trial court, because it did not give the examining magistrate the right to decide upon the extent of their availability. The Iraqi legislator restricted the powers of the examining magistrate to issuing a decision to close the case permanently or temporarily or refer the case to the competent court and did not give him the authority to consider legal excuses because the examining magistrate, as we have explained, does not have the authority to issue judgments, since this lies within the jurisdiction of the trial judge, and whereas the excuses are considered for the purpose of exempting or mitigating the penalty, and this penalty is decided only by the trial judge, so he is the only one who has the power to consider it, while the examining magistrate does not. The duty of the investigative authority is to collect evidence, whether in favour or against the accused, and to refer the investigative papers to the competent criminal court regardless of the assessment of the extent of the accused liability for the crime or the penalty that will be imposed thereon, because all of this falls within the jurisdiction of the trial court (criminal, misdemeanours or juveniles), which determines the liability of an accused, decides to convict him and impose the penalty he deserves.

This is the originally practiced procedure, and the exception is that the examining magistrate is entitled to issue a penal order, pronounce the penalty and estimate it, apply legal excuses, and estimate the mitigating judicial circumstances in the rare cases in which the law allows the examining magistrate to issue the penal order, when the crime forms a violation in which the law does not require imprisonment, and there is no claim for money refund or compensation.

Second topic:

Legal Provisions for Mitigating Excuses in The Traffic Law

To clarify the legal provisions for mitigating excuses in the traffic law, we will dedicate this topic to studying the forms of mitigating excuses in the traffic law, and the effects of the mitigating excuse in the traffic law, in two themes.

First Theme:

Forms of Mitigating Excuses in The Traffic Law

The Iraqi legislator has identified the mitigating legal excuses and stipulated some of them in the Traffic Law in Paragraph (2) of Article (37) thereof, which

stipulates that: "The initiative of a vehicle driver involved in a run-over crime, punishable by law, to transport the injured person immediately to the nearest hospital or health centre or informing the police immediately after the accident if it is not possible to transfer the victim for any reason or in case the accident occurred outside the area of pedestrian crossing, shall be considered a mitigating legal excuse for the purposes of implementing the provisions of Articles (130 and 131) of the Penal Code, and the imprisonment penalty shall be dropped in case of waiver and conciliation". It is clear from this provision that the legislator has identified three cases for the application of a mitigating legal excuse for the crimes of manslaughter and wrongful personal injury arising from traffic crimes.

Part One

The Initiative of The Vehicle Driver to Transport The Injured to The Nearest Hospital or Health Centre (20)

The initiative of the vehicle driver involved in the run over crime to transport the injured person to the nearest hospital or health centre is considered a mitigating excuse, because this indicates the perpetrator's attempt to rescue the injured as a result of traffic accidents. The legislator's objective sought from mitigating the penalty is to encourage the initiative to transport the injured in any traffic accident, whether it is a run-over, car crash, collision or overturns, in order to achieve the humanitarian goal, envisaged by the legislator in trying to save the injured, as a result of traffic accidents, especially from death or injury. Therefore, it necessitates the mitigation of the penalty in traffic crimes in the cases specified by the Traffic Law, when the driver takes the initiative to transport the injured to the nearest hospital or health centre, considering this a mitigating excuse. The initiative may mean that the vehicle driver tries to transport the injured person in his own car or in another vehicle, which reflect the driver's concern and care for the injured person, so the mere fact that the driver carries the injured person and puts him in his car is considered an initiative, and it is also considered an initiative to transport the victim by another car such as an ambulance ⁽²¹⁾, because the provision did not require that specifically. The Iraqi legislator has used the term (immediately), as the driver who commits a traffic crime and takes a period of time until he decides to transport the injured person does not benefit from this excuse, and the matter is here left to the judiciary's discretion, as for example, if the offender is in a confused psychological state, after committing the crime, or he fears that he will be attacked by the victim's relatives or by the residents of the area close to the accident scene ⁽²²⁾, or due to circumstances related to the victim himself, such as those related to the type of injury he sustained, that may be a broken bone or head injury (brain), and his injury may be exacerbated in the event of being transported by the offender because the injury requires special care and high medical technical expertise to avoid the occurrence of any complications and all these and other cases. Due to the legislator's assessment of these cases and its desire to give the

vehicle driver a legal excuse that reduces the penalty, it stipulates that the police station is informed of the accident immediately in the event that it was not possible for the driver to transfer the victim to the hospital.

The fact that the offender takes the injured person immediately to the nearest hospital or health center indicates the offender's concern and care for the victim, and this is the ground for mitigating the penalty.

In this regard, Salah Eddin Criminal Court ruled that: Upon examination and deliberation, and from the progress of the investigation and trial, the court found that the case facts are summarized as follows: on 02/09/2019, in Al-Alam district, Salah Eddin Governorate, when the accused (F.A.) was driving his car on the main street, he ran over the victim (Z.A.) while crossing the street, and she was taken to the hospital and later died as a result of the injury. His negligence was (25%). The testimony of the personal right claimant (M, A) was recorded, and he stated that on the date of the accident, he received a phone call, informing him that his wife, the victim (Z, Z) had been run over, and when he went to the hospital, he found her dead, and due to reconciliation and clan settlement, he waives his claim. The testimony of the accused was recorded in the investigation stage and before this court, in which he stated that on the date of the accident he was driving his car, and he was surprised by the victim crossing the street. Due to the close distance separating between the car and the victim, he could not avoid the accident, and he ran her over. Then, he took her to the hospital, after which she passed away, and he turned himself into the police station. From the progress of the investigation and trial, the court found that the evidence obtained in the case, which is the accused confession that he ran over the victim, that was supported by the testimony of the personal right claimant, the accident scene survey and plan, and the traffic technical report that stated that the accused negligence was (25%) and was reinforced by the anatomical medical report of the victim. Therefore, the evidence obtained is sufficient to convict the accused of the charges pressed against him. Based on the forgoing, the court decided to convict the accused in accordance with the provisions of article (36 \first) of the traffic law in force, sentencing him to simple imprisonment for o a period of one year, and a fine of (3) million Iraqi Dinars based on the provisions of the above article with inference to article (132/1) of the (amended) Iraqi Penal Code no. 111 of the year 1969, upon imposing the penalty thereupon, as he is a young man, and has not been convicted before. Due to the claimants of personal rights and the inheritors of the victim (Z.A) waiver of their claim, the court decided to drop the afore mentioned simple imprisonment sentence, based on the provisions of article (36\ first). The judgment was issued in presence on the basis of the provisions of Article 182/a of the Iraqi Criminal procedure law , as an appealable judgment, and it was publicly recited on 30/12/2019 ⁽²³⁾

Part Two

The Driver's Initiative to Inform the Police Immediately

A person does not in all cases have the same strength that enables him to deal with the situation correctly, as some people might develop a psychological

condition that makes him unable to transport the injured to the hospital, his vehicle might suffer a technical malfunction that prevents him from doing this, the offender himself might have an injury that makes him unable to transfer the injured, or the victim might suffer an injury that may be exacerbated upon his transfer. All he can do, in such case, is informing the police of the accident, and the legislator regards this as a proof of the offender's concern and care for the victim, so it considers this a legal excuse. However, sometimes the driver is unable to do so, because some areas are devoid of police officers, especially on highways, and remote areas far from city centres and districts. As a solution for this problem, the researcher believes that the phrase "or any other official body in the absence of a police station" or any other similar phrase that satisfies the purpose should be added to the legal provision.

In this regard, Al-Qadisiyah Criminal Court decided that: "it appears from the progress of the investigation and the public trial that on 29/09/ 2020 in the morning, when the accused (M.A.) was driving his car coming from Dhi Qar Governorate towards Al-Najaf Governorate and upon reaching the Shafi'i district, he ran over the victim (M.K) while he was crossing the public street. The accused hastened to inform the police, and legal procedures were taken against him. The statement of the personal rights claimants was recorded, and they have waived their claim against the accused. The court reviewed a copy of the civil status record of the victim issued by Al-Soneyia Civil Status Department, the accident scene survey report and plan, the examination report of the victim corpse dated 29/09/2020 carried out by the investigator, the vehicle seizure and delivery record, the technical survey report of the vehicle, object of this lawsuit, and the anatomical forensic medical report, which stated that the cause of the victim's death was fractures in the skull and ribs and haemorrhage as a result of his injury. The court has also looked into the accused criminal record. The accused has admitted the charges pressed there against in both the investigation and trial stages. He stated that on the accident date morning, he was driving his car coming from Dhi Qar Governorate towards Al-Najaf Governorate, when he ran over the victim (M.K) and informed the police. Based on the foregoing, the court considered the evidence obtained in the case, represented by the accused confession during the investigation and trial of the charges pressed against him. The court was convinced of the authenticity of such confession, as it was detailed and consistent with the case facts. It was also supported by the statements of the plaintiff and claimants of personal right, the traffic report and the survey report of the accident scene, the arrest report and the victim corpse examination report, the initial forensic medical reports of the plaintiff, and the anatomical medical report of the victim (M.A) corpse, all of which are sufficient and convincing evidence to convict the accused of the charges pressed against him in accordance with the provisions of Article (36, First) of the Traffic Law. Based on the foregoing, the court decided to convict the accused in accordance with the provisions of article (36 \first) of the traffic law in force, sentencing him to simple imprisonment for o a period of one year, and a fine

of (3) million Iraqi Dinars based on the provisions of the above article with inference to article (132/1) of the (amended) Iraqi Penal Code, upon imposing the penalty thereupon. Due to the claimants of personal rights waiver of their claim, the court decided to drop the afore mentioned simple imprisonment sentence, based on the provisions of the above stated article and setting his punishment according thereto. The judgment was issued in presence on the basis of the provisions of Article 182/a of the Iraqi Criminal procedure law , as an appealable judgment, and it was publicly recited on 07/02/2021.⁽²⁴⁾

Third: The accident occurrence outside the pedestrian crossing area

The legislator considered the occurrence of the crime outside the pedestrian crossing area as one of the mitigating excuses, and the rational for this is that the legislator intends to protect the well-intentioned driver, as not committing a traffic accident outside the pedestrian crossing area is difficult, and exceeds the ability of the normal driver, because in this area, the vehicles move very fast. However, the legislator has left the estimation of this circumstance to the judge's discretion and not to the discretion of the vehicle driver so as not to take advantage of this to take innocent lives ⁽²⁵⁾ The Iraqi legislator considered the perpetrator committing a run - over crime outside the areas designated for pedestrian crossing in the streets in which traffic signs are installed a mitigating legal excuse for traffic crimes in the traffic law in force, which provided for this excuse in paragraph (2) of Article (37). The application of this provision and for the offender to benefit from the mitigating excuses, it is required that the crime has occurred outside the areas designated for the pedestrian crossing, that the street in which the accident has occurred have areas designated for pedestrian crossing and provided with signs indicating them, and that these signs and are installed in the street before the accident occurrence. Therefore, the offender shall benefit from the mitigating excuse only if these conditions are met ⁽²⁶⁾After reviewing the mitigating legal excuses stipulated in the Traffic Law, the availability of these cases or one of them obligated the court to take them into consideration and infer the provisions of Article (130) of the amended Penal Code No. 111 of 1969, as Article (130) of the Iraqi Penal Code states that; " If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than 1 year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law).

Second Theme:

Effects of The Mitigating Excuse in The Traffic Law

At one time, the crime was viewed as an abstract legal entity that required the punishment of its perpetrator with one specific penalty, as the crime was viewed in terms of its gravity without regard to the person of its perpetrator, his circumstances and the special reasons that prompted him to commit it.

Hence, criminal jurisprudence used to be concerned with the crime rather than the criminal, i.e., it was concerned with the act rather than the perpetrator. However, the society's perspective regarding the penalty has changed to get it out of its stagnation and make it flexible allowing the mitigation or aggravation of the penalty according to the requirements of the circumstances and conditions surrounding the crime and the offender. This has already been taken into account by the Iraqi legislator in The traffic law in force, as it stipulated certain grounds that, if available, result in the mitigation of the penalty, and it stipulates other grounds that, if available, result in the aggravation of the penalty. Consequently, the penalty has become subject to a relative determination aimed at its individualization, i.e., its conformity with the gravity of the crime and the person of the offender.

Whoever commits a crime, whether against individuals, such as the run-over crime, or against society, such as spreading chaos, must receive a deterrent penalty that works to purify society of such criminals. However, the crimes facts are not always the same, as circumstances may exist in a crime, and differs from others, the offender may go through circumstances that requires aggravating the penalty imposed thereon, and in return, there may be circumstances that require reducing the penalty for the perpetrator based on the person of the offender, the crime committed and the surrounding circumstances.

The effects of mitigating excuses must be explained in this section, Therefore, we will first show the effect of the mitigating excuse on criminal liability, and secondly, we will show the effect of the mitigating excuse on civil liability.

Part One

The Effect of Mitigating Excuses on Criminal Liability

Criminal liability means the competency of a sane and conscious person to bear the punitive penalty determined by the law as a result of committing a crime stipulated in the Penal Code. When a person violates the provisions of the penal code, this means he has committed a crime that makes him subject to accountability. If the elements of the crime are available, the violator of the penal law provisions is criminally liable, and therefore deserves a penalty as a result of this liability. In order to show the effect, the criminal liability must be defined.

Criminal liability arises from the existence of the relationship between the offender and the crime considered by the competent courts, which entail a legal penalty for violating an order or prohibition stipulated by law. The criminal liability is defined idiomatically as "bearing the consequences of the crime and the commitment to the criminal penalty legally prescribed for such crime ⁽²⁷⁾, and for the establishment of the criminal liability, there must be a relationship between the accused and the crime, before the investigative authority. ⁽²⁸⁾

With regard to the legal definition of criminal liability: Most of the contemporary criminal legislation, when defining their parameters, were devoid of

the definition of criminal liability, contented with referring to it in repeated provisions, without specifying conditions there for, which leaves a heavy burden on the shoulders of jurisprudence related to determining and controlling the parameters of the criminal liability theory or the conditions for its establishment. ⁽²⁹⁾

As for the Iraqi legislator, it has organized the criminal liability and its impediments in Articles (60 - 65) of the Iraqi Penal Code. It did not define the criminal liability, but it defined the criminal act that constitutes the crime, according to the provision of Article (19/4) of the said law, which states that: "An act is any criminal behaviour prohibited by law whether or not it is positive or negative such as negligence or omission, unless stipulated to the contrary."

The jurists disagreed on finding a single definition of criminal liability that is comprehensive of its concept. However, the difference in definitions is a dispute over the form, rather than the content. Many jurists have adopted the definition given by the French jurisprudence stating that criminal liability is an obligation to bear the legal consequences arising from the availability of the elements of the crime, and the subject of this obligation is the penalty or precautionary measure imposed by the law on the person liable for the crime. ⁽³⁰⁾

Legal excuses are the grounds for the obligatory mitigation of the penalty as enumerated and stipulated by the legislator in Article (37) of the Iraqi Traffic Law in force. Excuses are specific cases exclusively stipulated by the law that result in the establishment and the liability of the crime and the penalty mitigation. As for the effect on the penalty, the mitigating legal excuse affects the penalty, in the sense that it results in reducing the penalty to less than the minimum limit. The mitigating legal excuse, if proven, has an effect on the penalty, and this effect is limited to the penalty without extending to jurisdiction or to the civil lawsuit. When the Traffic Law provides for a mitigating excuse, the penalty imposed is reduced as follows, as indicated by the provision of Article (130) stating the rules for mitigating the penalty, in the event that the felony is combined with a mitigating excuse as follows:

If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than 1 year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law).

It is clear from this provision that reducing the penalty due to the availability of a mitigating excuse is related to the principle of legality, which is mandatory to the court. It is also evident from the provision of the article that the Iraqi legislator has adopted the rule of unifying freedom-depriving penalties, content with imprisonment in addition to imprisonment in the case of felonies. Article (131) stipulates that: "If there exists a mitigating excuse for a misdemeanour, the reduction of the penalty shall be as follows: (1) If the penalty has a minimum limit, the court will not be bound by that in its assessment of the penalty. (2) If the penalty is detention plus a fine, the court will rule for only one of those penalties.

(3) If the penalty is detention without a minimum limit, the court will rule for a fine instead.”

The effect of excuses on incidental or supplemental penalties:

The Iraqi legislator did not authorize the extension of mitigating legal excuses to incidental or supplemental penalties, but their effect was limited to the primary penalties only. ⁽³¹⁾

The mitigating excuse entails a mandatory reduction of the penalty by virtue of the law, and the judge has absolute authority in assessing and imposing the penalty within the limits of the legal provision. Some jurists believe that the mitigating excuses do not change the crime description, while others argue that they do, because when the legislator decides a misdemeanor penalty for a crime that is originally punishable by a criminal penalty, this means that the law has reduced the gravity of the crime in its new form coupled with the excuse and considered it in term of gravity, a misdemeanor, rather than a felony.

Part Two

The Effect of Mitigating Excuses on Civil Liability

Civil liability means that liability resulting from damages incurred by others, either to themselves or their money. The harmful act requires a guarantee, i.e. the liability of the perpetrator to compensate for the damage. Whoever causes damage to others becomes liable before the injured and obligated to compensate him for the damage he sustained. Since civil liability does not mean reprimand but rather compensation for the damage, it is not concerned with the psychological state of the liable person, but rather with the incurred damage and who bears its consequences, the injured or the perpetrator. Articles (128 - 134) have shown the effect of the mitigating excuse on the penalty without addressing such effect on civil liability. ⁽³²⁾

Whoever benefits from a mitigating excuse does not benefit from the mitigation of his civil liability, and this entails his obligation to perform all kinds of civil obligations stipulated in the Penal Code or required by this civil law, and the civil obligations that can be judged by the penal courts. The mitigating excuse does not affect civil liability. Every crime that inflicts material or moral damage on others obliges the perpetrator or the civilly liable person to compensate the injured for such damage. Therefore, the beneficiary of the mitigating excuse must compensate for the damages incurred by others. Hence, whoever commits a traffic crime and causes damages as a result of his act, either to the vehicle or persons, must compensate for such damage. ⁽³³⁾

Conclusion

After we have finished this research, we must reconsider it again, so as to record the most important results and recommendations we have reached.

First: Findings:

- 1- Excuses are divided into two types: exempting excuses and mitigating ones. Exempting excuses were not mentioned in the Iraqi traffic law, which was satisfied by the mitigating excuses, which also come in two types, general mitigating excuses, and special mitigating excuses related to specific crimes.
- 2- The Iraqi legislator has identified the mitigating legal excuses in a separate provision to achieve deterrence considerations. In Paragraph (2) of Article (37) of the Traffic Law, it stipulates three cases for applying the mitigating excuse for the crimes of manslaughter and wrongful personal injury arising from traffic crimes. that are the initiative of a vehicle driver involved in a run- over crime, punishable by law, to transport the injured person immediately to the nearest hospital or health centre or informing the police immediately after the accident if it is not possible to transfer the victim for any reason or in case the accident occurred outside the area of pedestrian crossing.
- 3- The mitigating excuse entails a mandatory reduction of the penalty by virtue of the law, and the judge has absolute authority in assessing and imposing the penalty within the limits of the legal provision. Some jurists believe that the mitigating excuses do not change the crime description, while others argue that they do, because when the legislator decides a misdemeanor penalty for a crime that is originally punishable by a criminal penalty, this means that the law has reduced the gravity of the crime in its new form coupled with the excuse and considered it in term of gravity, a misdemeanor, rather than a felony.
- 4- Whoever benefits from a mitigating excuse does not benefit from the mitigation of his civil liability, and this entails his obligation to perform all kinds of civil obligations stipulated in the Penal Code or required by this civil law, and the civil obligations that can be judged by the penal courts. The mitigating excuse does not affect civil liability. Every crime that inflicts material or moral damage on others obliges the perpetrator or the civilly liable person to compensate the injured for such damage. Therefore, the beneficiary of the mitigating excuse must compensate for the damages incurred by others. Hence, whoever commits a traffic crime and causes damages as a result of his act, either to the vehicle or persons, must compensate for such damage.
- 5- The Supreme Judicial Council issued circular no. (478), dated 06/06/2021 and for the requirements of the public interest and due to the increase in the phenomenon of that passers-by or those people near the accident refrain from providing aid for the injured as a result of traffic accidents, for fear that the paramedic or the reporter of the accident would be subject to legal accountability, which may put the injured at risk of death, it required

directing all competent courts to deal with the paramedic in a way that avoids legal accountability or accusation of committing this accident in order to preserve the lives of the injured and to encourage paramedics to take measures that would expedite the aid process and rescue the injured as a result of the aforementioned accidents, taking into account not to prejudice the necessary investigation procedures to find out the accident causes.

Second: Recommendations:

1- The Iraqi legislator should amend the provision of Paragraph Two of Article 37 of the Traffic Law by adding the phrase "or any other official body in the absence of a police station", so that the text shall be as follows: "Second: The initiative of a vehicle driver involved in a run- over crime, punishable by law, to transport the injured person immediately to the nearest hospital or health centre or informing the police, or any other official body in the absence of a police station, immediately after the accident if it is not possible to transfer the victim for any reason or in case the accident occurred outside the area of pedestrian crossing, shall be considered a mitigating legal excuse for the purposes of implementing the provisions of Articles (130 and 131) of the Penal Code, and the imprisonment penalty shall be dropped in case of waiver and conciliation".

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(32) Article (17) of the Iraqi Penal Code stipulates that: "The provisions of this Code do not apply to liabilities for damages or compensation."

(33) Article (10) of the Iraqi Code of Criminal Procedure states that:

"A person who has suffered direct material or ethical damage from any offence has the right to bring a civil case against the accused and the person responsible under civil law for the actions of the accused, under the provisions of Article 9. The complaint is made by petition or by oral request, confirmed in the written record during the gathering of evidence or during the initial investigation or before the court which is already considering the criminal case, up to the issue of the definitive judgment. It is not permissible to raise it for the first time at the cassation stage."

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