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Punitive Policy of the Iraqi Legislature in the Face of Normalization Crimes with the Zionist Entity "A Comparative Study"

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Abstract

Criminal policy is used to achieve its objectives of combating criminality by other criminal sciences, including punitive policy, which is incorporated in the science of punishment, which is of particular importance in the field of criminal policy, the policy of punishment is intended as the instrument that provides the protection provided for in the text criminalizing the legitimate interests of individuals and society and working to provide treatment and reform for offenders against manifestations of delinquency and their integration into society through various means of punishment and precautionary measures. It is also the punitive policy that determines the punishment and the manner in which it is applied and implemented, and it complements the criminalization policy, there is no punishment without prior criminalization of the criminal offence for which the penalty is due, which seeks to protect the fundamental interests of the survival and continuation of society, accordingly, the legislation stipulates the duties for which the offence is considered to have been infringed, the intentions for which the offence is punishable, and the legislation may vary in the amount of punishment it prescribes, so it is necessary to have a criminal policy for each State that may differ from other States.

Keywords: Punitive Policy, Iraqi Legislature, Normalization Crimes, Zionist Entity.

1. Introduction

The punitive policy has an important role to play in examining the extent to which the penalties prescribed by the legislature are compatible with the values and customs of society and the need for them during the period prescribed therein. Societies in this area vary according to their level of social and economic development (Omar, 2008, p. 5). The policy of punishment also plays a prominent role in the implementation of the criminalization provided for in the Penal Code, since the incision of the mandate in the Penal Code must be offset by a punitive incapacity in order to be effective (Al-Jabouri, 2010, p. 110). A successful punitive policy must ensure the effectiveness of criminalization and punishment laws by achieving the punitive law of public and private deterrence (Lynda, 2018, p. 207). The importance of this study is to identify the punitive and comparative criminal policy introduced by the Iraqi legislature sufficient to counter normalization with the occupied Zionist entity and to identify why the punitive policy differs between the national legislator and the comparative legislator in terms of the minimum and the upper limit.

The problem with the study is to identify the punitive policy taken by national legislation and comparative legislation to combat normalization crimes with the Zionist entity, to determine

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the role of penalties in the face of normalization crimes with the Zionist entity and to indicate the adequacy of these measures in the face of such crimes. The curriculum adopted in this study is the comparative analytical curriculum. The analytical curriculum includes the description and analysis of the legal texts of the law criminalizing normalization with the Iraqi Zionist entity No. (1) of 2022. For the comparative curriculum, the study used the comparative approach to compare the law criminalizing normalization with the Iraqi Zionist entity and the law of the boycott of Israel ycott of Lebanon Lebanon. No. 1 of 1955, in addition to the Israeli Occupying Entity Boycott Act No. 21 of 1964, as amended.

2. Role of Sanctions in the Face of Normalization Crimes with the Zionist Entity

Before we talk about the role of sanctions in the face of normalization crimes with the Zionist entity we give an idea of the penalty, and the first principle must be entrenched when talking about the role of the penalty in any crime. Penal Code ", the Criminal Code envisages the existence of punishment only by legislative provision contained in the State's laws, whether in the Penal Code or the law criminalizing normalization with the Zionist entity (Sadqi, 1998, 304).

Moreover, the legislation does not address the definition of punishment but defines its sections and types. The reason that the legislation does not define punishment is that the tariff order is competent due to the jurisprudence and the judiciary (Ibaina, 2016, p. 73). Scholars of criminal jurisprudence define punishment (as a penalty determined by law and signed by the judge who is found responsible for an offence in law for the offender's personal or financial injury) (Ibrahim, 2015, p. 82). With regard to the offences of normalization and relations with the Zionist entity, the national penal code and the law criminalizing normalization are defined by the national penal code. As well as the comparative legislature, harsh penalties for normalization crimes with the Zionist entity, the maximum penalty in national legislation for such offences is death and is one of the original penalties this is why we have described the role of the various original, supplementary and dependent penalties in normalization crimes with the Zionist entity.

2.1. Role of the Original Penalties in the Face of Normalization Crimes with the Zionist Entity

The original penalties are defined (as the penalty that is the basis of the offence established by law and must be sentenced when the accused is found guilty of the offence) (Ibrahim, 2007, p. 44); The sentence can only be executed if expressly stipulated in the judge's judgement, pronounced alone or with a supplementary penalty if necessary, and with a consequential penalty imposed by law or with both supplementary and consequential penalties (Khalaf, 2020, p. 280). The Iraqi Penal Code also prescribes the original penalties: 1. Death, 2. Life imprisonment, 3. Temporary imprisonment, 4. Severe imprisonment, 5. Simple imprisonment, 6. Fine, 7. Detention at the Boys in Delinquency School and 8. Detention at a correctional school (article 85 of the Iraqi Penal Code al Code), amended.

For the offences of normalization with the Zionist entity only, the Penal Code as well as the law criminalizing normalization with the Zionist entity, as well as the comparative legislation concerning the boycott of the Zionist entity, includes the following:

A. Role of the Death Penalty in the Face of Normalization Crimes with the Zionist Entity

The death penalty is defined as the murder of the convict by hanging to death. Execution is

the loss of life of the perpetrator sentenced to death. (Al-Halabi, 2011, p. 246), and I knew as well (the death row) (Al-Gorani, 2008, p. 36). Noting the definition, we find that the death penalty as an original punishment is one of the most severe corporal punishment, because it deprives the human person of one of its most important rights, the right to life (Mustafa, 2021, p. 46). With regard to the role of the death penalty in national legislation and by consulting the provisions of the law criminalizing normalization with the Zionist entity, as well as the Penal Code, the Iraqi legislature stipulates the death penalty for normalization crimes with the Zionist entity in more than one text. The Penal Code stipulates this penalty in article 201 of the Iraqi Penal Code al Code al Code. (111) of 1969, as amended, which states that "anyone who favours or promotes Zionist principles, including Masonry..." In the foregoing text, the death penalty is punishable in case of normalization with the Zionist entity through promotion and favour.

The Law on the Criminalization of Normalization with the Zionist Entity also stipulates the death penalty as one of the original penalties in more than one of the provisions of article 6 of the Law on the Criminalization of Normalization with the Iraqi Zionist Entity No. (1) of 1969. "Anyone who maintains any relationship with the Zionist entity, diplomatic, economic, political, military, security, cultural or any other kind shall be liable to death or life imprisonment." The Act on the Criminalization of Normalization also provides for the death penalty for the offences of promotion and interception with the Zionist entity in article 7, which stipulates that: "Anyone who prints or informs the Zionist entity or promotes it or any ideas, principles, ideologies or behaviour of Zionist or Masonic by any means shall be liable to death or life imprisonment". The Law on the Criminalization of Normalization also provides for the death penalty for the crime of belonging to the institutions of the Zionist entity. Article 8 stipulates that "Anyone who belongs to any institution of the Zionist entity shall be liable to death or life imprisonment".

By examining the provisions of the law criminalizing normalization with the Zionist entity and the Iraqi Penal Code, the Penal Code, when stipulating the death penalty, made the death penalty alone as an inherent part of the crime of favour and promoting Zionist principles, including Masonry, the Act on the Criminalization of Normalization with the Zionist Entity, contrary to the Penal Code, prescribes the death penalty but not alone but with life imprisonment. This means that the Act on the Criminalization of Normalization with the Zionist Entity granted the judge discretion in sentencing either the death penalty or life imprisonment. It further implies that the Penal Code has increased the punishment of printers with the Zionist entity and contrary to the law criminalizing normalization, which reduced the penalty in relation to the Penal Code. For our part, we do not fully agree with the Iraqi legislature's law criminalizing normalization with the Zionist entity in its decision to impose the death penalty on the perpetrator of this crime, making it an optional penalty with life imprisonment, We fully agree with the direction of the Iraqi Penal Code to make the punishment alone, because of its direct threat to the State's internal and external security, as well as the Arab national sense, as for the role of the death penalty in crimes of normalization with the Zionist entity in the comparative legislation under discussion, whether in the Boycott of Israel in Lebanon Law No. (1) of 1955 or the Boycott of the Israeli Occupying Entity in Kuwait Law No. (21) of 1964, there is no role for this penalty in these legislations.

B. Role of the Prison Sentence in the Face of Normalization Crimes with the Zionist Entity

Life or temporary imprisonment is one of the most severe penalties prescribed after the death penalty, and is intended to deprive the convicted person of his liberty and obligation to perform

acts determined by the State in the penal institution (Murir, 2021, p. 89). The Iraqi Penal Code defines it in article 87 as "imprisonment is the placement of a convicted person in a legally designated penal institution for a period of 20 years if he is life and the periods specified in the sentence are temporary. and the term of imprisonment of more than five to fifteen years unless otherwise provided by law, The total length of sentences for deprivation of liberty shall not exceed 25 years in all cases If the law promulgates the term ".

The role of this penalty in national legislation is in the crimes of normalization with the Zionist entity The law criminalizes normalization with the Zionist entity in more than one text, By consulting these texts, we find that the law criminalizes normalization with the Zionist entity when it stipulates it either alone or with the death penalty. Under the Act on the Criminalization of Normalization Alone for the Offence of Travel to the Zionist Entity or Visiting an Embassy or Institutions in All Countries of the World, article 4 of the Act on the Criminalization of Normalization with the Iraqi Zionist Entity, No. 1 of 2022. Article 5 of the same law stipulates that the role of this penalty shall be the crime of providing any kind of assistance, donations or donations to the Zionist entity and also accepting such donations, assistance and donations from the Zionist entity or its institutions.

However, the Act on the Criminalization of Normalization with the Zionist Entity and the Death Penalty are stipulated in more than one of the provisions of article 7. The penalty shall be imposed on anyone who prints or interacts with the Zionist entity or promotes it or any ideas, principles, ideologies or behaviour of Zionist or Masonic people by any means whatsoever in public or secret, including conferences, assemblies, literature, publications, social media or any other means; Article 8 of the same Act also provides for the death penalty for the offence of belonging to any institution of the Zionist entity. In this regard, the judge exercises his discretion in this matter within the scope permitted by the legislature in the imposition of either sentence and in the light of the considerations, circumstances and circumstances of the case. The judge's discretion in the choice of sentence is commensurate with the penal limits prescribed by the legislature in the text of the sentence (Hashim, 2015, p. 32).

C. Role of Hard Labour And Imprisonment in the Face of Normalization Crimes with the Zionist Entity

The penalty of hard labour is defined as the obligation to compel the convicted person to perform stressful work commensurate with their sex and age both in and outside the prison (Chosen, 2017, p. 16). The penalty for hard labour may be life or temporary. The first shall be for every life of the convicted person, while the second shall be for a minimum of three years alone, up to fifteen years (Abdelmenim, 1999, p. 551). Detention is defined as "the robbery of the convicted person for a period specified by law and is two types of imprisonment with operation and simple confinement" (Taqwa, 2021, p. 11). The penalty of imprisonment is also one of the original penalties (Rosary, 2017, p. 33). The role of these penalties is the comparative legislation on normalization offences with the Zionist entity penalties ", which have no role in national legislation, as the law of the boycott of Israel in Lebanon stipulates that any person who violates the provisions of articles 1 shall be liable to a penalty of three to ten years' imprisonment for hard labour. penalties ", the Special 2 for the Boycott of Israel, and if the provisions of article 3 are violated, the penalty shall be three months to three years' imprisonment, article 7 of the Law on the Boycott of Israel in Linan, No. (1) For the year 1955, it should be noted that the term of imprisonment in Lebanon's Penal Code is 10 days to 3 years, unless the law otherwise provides for article 51 of Lebanon's Penal Code No. 340 of

1943.

Kuwait Occupying Israeli Entity Boycott Act No. (21) of 1964, as amended, punishable by hard labour, but more severe than the Boycott of Israel Act in Lebanon. Article 6 of the Kuwaiti Occupying Israeli Entity Act No. 21 of 1964, as amended, stipulates that the penalty shall be a term of up to three years' imprisonment.

D. Role of the Fine in the Face of Normalization Crimes with the Zionist Entity

The fine defines "it is the obligation of the convicted person to pay to the State treasury the amount approved in the judgement". In relation to the role of this penalty in normalization offences with the Zionist entity in national legislation, it is not possible to apply this penalty to such offences, but the role of the fine penalty is in the comparative legislation in question. Article 6 of the Law on the Boycott of the Occupied Israeli Entity No. (21) For the year 1964, the penalty shall be a fine not exceeding 10,000 Kuwaiti dinars, after such fine before the amendment does not exceed 5,000 Kuwaiti dinars. It is noted from the text of the law that the Kuwaiti legislator has made the imposition of such a fine permissible to the judge, which he notes from the phrase (It may also be noted that the Kuwaiti legislature has imposed this fine with the penalty of temporary imprisonment and not with the sole penalty. For Lebanese legislators, article 7 of the Law on the Boycott of Israel in Lebanon No. (1) For the year 1955, the fine shall also be imposed on anyone dealing with Israel and the amount of this fine shall be from 5,000 Lebanese pounds to 40,000 Lebanese pounds, and notes that the Lebanese legislature has made the opportunities for such a fine with a penalty of three to 10 years' hard labour, not a penalty alone, which is the same as that of the Kuwaiti legislature. However, the Lebanese legislator disagreed with the Kuwaiti legislator on this penalty. "The Lebanese legislature has not made the imposition of the fine permissible to the judge but compulsory; Contrary to the Kuwaiti legislator, he made the order imposed by it a judge's discretion.

Having completed the role of the original penalties in normalization crimes with the Zionist entity, it can be noted that the punitive policy regarding punishment differs between the Iraqi legislator and the comparative legislator. That the punitive policy of the Iraqi legislator has been severe in comparison with the comparative legislator, the maximum penalty in Iraqi legislation is death. The minimum penalty is temporary imprisonment. Crimes of normalization with the Zionist entity ", which means that crimes of normalization with the Zionist entity are characterized by the Iraqi Penal Code No. (111) for the year 1969, as amended in article 25 of the Criminal Code, "is an offence punishable by death, life imprisonment or temporary imprisonment for more than five to fifteen years". The penal policy in comparative legislation was lighter than the Iraqi legislature. The maximum penalty for normalization offences with the Zionist entity in Kuwait was up to 15 years' imprisonment. The minimum penalty was a fine and three months' imprisonment, as in Lebanese legislation.

3. Role of Subsidiary Sanctions in the Face of Normalization Crimes with the Zionist Entity

By referring to the provisions relating to normalization offences with the Zionist entity, we note that they are free from reference to subsidiary penalties. Therefore, reference is made to the general rules contained in the Penal Codes on this matter, as there are other penalties in addition to the original penalties, namely, subsidiary penalties. These penalties are defined as: "It is the punishment imposed on a person sentenced by law by virtue of the fact that the original penalty is imposed, i.e., it does not need to be stipulated in the sentence" (Al-Mutairi, 2004N 26). These penalties reflect the deprivation of rights and benefits during the original

sentence (Al-Othman, 2006, p. 41). In other words, this penalty is not based on the court's opinion, but on the perpetrator in the event that he commits a criminal offence, the original penalty being life or temporary imprisonment (Lakhdar, 2013, p. 24), since it is with us that a person who has committed any normalization offence with the Zionist entity shall be automatically imposed by law.

The penalties referred to in article 96 of the Iraqi Penal Code (No. 111) of 1969, as amended, include: "A sentence of life or temporary imprisonment shall be imposed by law from the day of its promulgation until the release of the convicted person from prison, depriving him of the following rights and benefits: 1. The functions and services he was carrying out. 2. To be elected or elected to representative councils. 3. To be a member or director of administrative or municipal boards or a company. 4. To be a trustee, a trustee or an agent - be the owner, publisher or editor of a newspaper".

Kuwait's Penal Code No. 16 of 1960, as amended, provides for penalties under article 66 and 68, as well as supplementary penalties. It stipulates that the penalties provided for in this Code are: 1. Denial of the rights and benefits provided for. 2. Dismissal from public office. 3. Denial of profession. 4. Close public shops. 5. Police surveillance. 6. Confiscation. 7. Alien's removal from the country. 8. An undertaking to maintain security and a commitment to good conduct on bail or unaccompanied.

Lebanon's Penal Code, No. 340 of 1943, refers to these penalties, but it is called subsidiary and additional penalties. Article 65 stipulates that anyone sentenced to imprisonment or house arrest in cases of misdemeanour shall be deprived of his civil rights during the execution of his sentence: 1. Right to hold public office and services. 2. The right to hold posts and services in the administration of the civil community's affairs or the administration of its trade union. 3. The right to be elected or elected to all State councils. 4. The right to be an elector or elected in all community and trade union organizations. 5. The right to bearing Lebanese or foreign decorations. "

4. Role of Supplementary Penalties in the Face of Normalization Crimes with the Zionist Entity

The supplementary penalty may be defined as "Punishment consistent with the accessory penalty in that it belongs to the original penalty and differs from it in that it is not applied by law but must be explicitly mentioned in the judge's judgement" (Al-Mohammadi, 2019, p. 53). Or they are "secondary penalties that are not imposed upon the convicted person immediately after the sentence but must be provided by the judge after the expiration of the original sentence" (Solomon, 2018, p. 184), i.e. that the supplementary penalty differs from the accessory penalty in that it is not mandatory but is permissible for the judge to sentence or not on the one hand.

On the other hand, the execution of the supplementary penalty shall be after the execution of the original sentence, such as imprisonment, and shall be carried out immediately after the execution of the original sentence (Al-Khafaji, 2021, p. 184). The supplementary penalties in Iraqi legislation are the deprivation of certain rights, benefits, confiscation and the publication of the provisions of articles 100/101/102 of Iraq's Penal Code No. 111 of 1969, as amended.

One of the supplementary penalties provided for in the Law on the Criminalization of Normalization with the Zionist Entity No. 1 of 2022 is confiscation. Article 10 stipulates that

publications, literature or any other means promoting normalization shall be confiscated with the Zionist entity, without prejudice to the perpetrator's criminal responsibility under this law. "Confiscation is defined as a measure intended for the purpose of the State to possess seized objects relating to the offence in conjunction with the author and without charge, which is a supplementary penalty" (Abu Labda, 2015, p. 7).

Confiscation is one of the penalties covered by the comparative legislation on the criminalization of normalization with the Zionist entity, as stipulated in the Boycott of Israel in Lebanon Act No. 1 of 1955 in articles 7. "The court shall order the confiscation of items and funds that have resulted from offences of normalization or which have been used in conjunction with the retention of the rights of others of good faith. The court may order the confiscation of the means of transport used to commit the offence if the author is aware of the offence and if the offence is committed by a legal person, which may impose a fine and confiscation as well as the precautionary measures provided for in the Penal Code al Code". Article 6 of the Kuwait Occupying Israeli Entity Boycott Act No. 21 of 1964, as amended, stipulates that: "In any event, confiscation of items seized in normalization offences with the Zionist entity shall be ordered on the part of the Government and the confiscation of means of transport used in the commission of the offence shall be ordered upon the owners' knowledge".

One of the supplementary penalties provided for in the comparative legislation examined in respect of normalization offences with the Zionist entity is the publication of the judgement. Article 9 of the Boycott of Israel in Lebanon Act No. 1 of 1955 stipulates that: "The summary of each sentence shall attach to the offences set forth in this Act, namely the offences of normalization with the Zionist entity. This method of publication shall be in large letters on the front of the place of trade of the convicted person, factory, warehouse or other place of operation at the expense of the convicted person for a period of three months". This text is similar to Kuwaiti legislation. Article 6 of the Occupying Israeli Entity Act No. 21 for the year 1964 as amended, "summaries of all convictions for normalization offences with the Zionist entity shall be published at the expense of the convicted person in large letters on the facade of his business, factory, warehouse or other premises where he operates for three months."

Conclusion

First: Results

The punitive policy pursued by the Iraqi legislature in the face of normalization offences with the occupying Zionist entity differs from that of most comparative legislators in terms of aggravating punishment. The comparative legislator decided on penalties ranging from temporary imprisonment of at least three to fifteen years' imprisonment to a fine.

Second: Recommendations

We recommend that the Iraqi legislator correct the material error he made in article 9 of the law criminalizing normalization with the Zionist entity because the articles (6/8/7) of the Law on the Criminalization of Normalization with the Zionist Entity stipulates that its punishment shall be life imprisonment or death. It then reiterates the same when these offences are aggravated and stipulates that the penalty shall also be life imprisonment or death. Therefore, the legislator should have confined the emphasis in this provision to articles (4/5), since these articles are punishable by temporary imprisonment or life imprisonment, which merit emphasis

in this text and thus the purpose of the emphasis in this text.

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