

Received: December 2023 Accepted: January 2024

DOI: <https://doi.org/10.58262/ks.v12i2.075>

The Crime of Lying about the Commander on the Law of Penalties for Iraqi Internal Security Forces No. 14 of 2008 Amended

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Abstract

The legal Item (25) of the Iraqi Internal Security Forces Penal stipulates that “...anyone who lies to his commander about matters related to his duties shall be punished with imprisonment.” To explain the crime, one can divide it into two dimensions

First: Elements of the Crime

This crime consists of three elements:

1- The Supposed Dimension

This crime can only be committed by an employee holding police status, according to legal item (25) of the Iraqi Internal Security Forces Penal, which stipulates: “...Anyone who lies to his commander regarding matters related to his duties shall be punished with imprisonment...”, as this crime is required. The perpetrator must be an officer or member of the Internal Security Forces, and thus the crime does not occur to someone who does not possess this capacity. It is worth noting that the punishable lie in this crime is related to the duties of the job, but what is related to others is not considered a criminal, as the one who lies about his private affairs does not his act and the provisions of this crime apply, as well as what is related to public affairs outside the job.

2. Material Dimension

Naturally, the material element in this crime includes two elements. The first is criminal behavior, which is based on lying. Lying within the framework of the law means adopting appearances that are contrary to the reality that prompts the opponent to believe them and follow them, or it is claiming or stating an allegation that is deliberately contrary to the truth, to deceive³. This means that it includes everything that could be considered a change to the whole truth or part of it, and just as it may come with a general term to include all types and methods of lying, at the same time it may be described with certain characteristics depending on the angle from which it is viewed, depending on the effects resulting from it. Whether these effects represent the fulfillment of a specific crime, such as fraud or false information, for

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3 D. Nassif Muhammad Hussein, *The General Theory of Criminal Protection of the Consumer*, Golden Eagle Press, Egypt, Alexandria, 1998, p. 58 and Dr. Omar Abdel Baqi, *Contractual Protection of the Consumer*, Mansha'at Al Maaref, Egypt, Alexandria, 2004, p. 129.

example, or are they nothing more than mere acts that do not rise to be described as such, but are sufficient to be considered fraud against the other party, some jurists have described lying in the first case as criminal lying, and in the second as civil lying⁴.

Lying, in the aforementioned sense, has its own nature within the framework of this study, as it leads to a threat to the public facility, its order, and its safety. Moreover, the person accused of lying not only harms the public facility, but also affects the rights of others and breaches the duties assigned to police stations and internal security forces departments. Therefore, the matter required intervention by the legislator.

As for the Iraqi Military Penal, it is stated in legal item (39): "...Anyone who lies to his commander about matters related to his military duties shall be punished by confinement to the barracks or imprisonment for a period not exceeding (3) months...), and this text is consistent with the text contained therein." In the Iraqi Internal Security Forces Penal in terms of lying related to job duties, the punishment differs between the two jurists in some details.

As for the second element in the material dimension of this crime, it is the criminal result. This crime is considered a dangerous crime, and therefore we cannot expect the result to occur in its material sense. Rather, the meaning of the result goes to the legal meaning, which is the protection of the interest that is the subject of criminal protection in the crime. Thus, it occurs simply by lying. On the highest official, which is included in his concept - what is above⁵, and this is a praiseworthy position by the legislator because he seeks to ward off risks, so we find that he does not wait for the criminal result to occur until he intervenes in setting the legal text.

The Moral Dimension

The moral dimension represents the psychological relationship that links the materiality of the crime and the personality of the perpetrator, and the essence of this relationship is the will⁶, and the importance that this element enjoys appears as the crime cannot be completed except without it, and since this crime is intentional⁷, the moral element is represented by the general criminal intent and the establishment of this The two elements of intent must be investigated, which are represented by knowledge and will. For example, knowledge is directed by a commander to move the rescue vehicle from a station site to the site of a criminal accident, so he informs the commander that he has taken the necessary action, but in reality, he lies and does not carry out the order in the desired manner. The will must be free and conscious. To achieve the aim or evade the duty assigned to it. As for the specific criminal intent, we did not notice that the legislator requires a specific criminal intent, and therefore it was satisfied with the general criminal intent based on knowledge and will.

The Iraqi Internal Security Forces Penal stipulates in its legal item (25) that "... anyone who lies to his commander regarding matters related to his duties shall be punished with imprisonment...," and accordingly, the penalty has been released into the hands of the judge to rule for a period not exceeding five years, which is a penalty. one can see it as commensurate with the crime of perpetrators. The Iraqi Military Penal stipulates in item (39) that "... anyone

4 See Hala Miqdad Al-Jalili, *The Declaration*, a doctoral thesis submitted to the College of Law, University of Mosul, 2002, p. 149.

5 Arif Ali Arif Al-Qarghouli, *Contemporary Jurisprudential Issues (A Series of Jurisprudential Research on Contemporary Issues)*, Part 5, Dar Al-Kutub Al-Ilmiyyah, Lebanon, Beirut, 2012, p. 110.

6 Dr. Ashraf Tawfiq Shams Al-Din, *Explanation of the Penal Code, General Section, special edition for open education students at the Faculty of Law, Banha University, Egypt, Cairo, 2012, p. 142.*

7 (3) legal item (33/1) of the Iraqi Penal Code defines criminal intent as (... it is the perpetrator directing his will to commit the act constituting the crime to achieve the result of the crime that occurred or any other criminal result...). Second: Punishment for the Crime:

who lies to his commander about matters related to his military duties shall be punished by confinement to the barracks or imprisonment for a period not exceeding (3) months....” We find that the text regulating the crime in the Iraqi Internal Security Penal was more proportionate in terms of its punishment to the risks of lying about the matter, which represents a breach in the security of public security facilities, in contrast to the Iraqi Military Penal, which decided to limit the punishment to imprisonment for a period not exceeding three months, and there is a difference. Between lying before the commander and lying before the judiciary, in terms of the entity before which the lie was made, as well as the content of the lie, as it occurs before the commander regarding matters related to job duties, while what occurs before the judiciary is related to a criminal case or other.

This difference is represented by the following points:

- A - The legislator in the Iraqi Internal Security Forces Penal criminalized lying about the commander while he criminalized lying to non-authorities in item (248) of the Iraqi Penal.
- B - The criterion for distinguishing between items (25) of the Iraqi Internal Security Forces Penal and (248) of the Penal is the criterion of the party to whom the lie occurred and not the perpetrator who provided false information.
- C - The Iraqi legislator was successful in establishing legal item (25) of the Iraqi Internal Security Forces Penal because he tried to protect the reputation of the job because of its privacy from violations and suspicions that occur during the implementation of duties by the Ministry. For example, a member of staff claims that he has... He was robbed in his home, and among the stolen items was a government pistol. After some time, it turned out that he had disposed of his pistol, which was given to him as a guarantee to perform his job duties, but he disposed of it in exchange for a debt he owed, falsely claiming to his commander that the theft had occurred. Here we are faced with two crimes. The first crime is the loss of the pistol and the crime. The second is lying to the commander.

The legal item (34) of the Iraqi Internal Security Forces Penal stipulates⁸: (... First - Anyone who loses or destroys equipment or materials belonging to the Iraqi Internal Security Forces apparatus or uses them for purposes other than those intended for them through negligence shall be punished with imprisonment for a period not exceeding one year. The penalty shall be imprisonment for a period not exceeding three years if the acts are committed intentionally.

Second: The perpetrator of the acts stipulated in Clause (First) of this legal item guarantees the value of the damaged or lost money according to the prevailing prices at the time of the crime, and the existing damaged money or materials remain returned to the competent authority to dispose of them by the law, provided that the convict submits a surety bond that guarantees the recovery of Inclusion amount...).

Third: A policeman who has lost or damaged his weapon may be required to replace it with a replacement weapon of the same type, as an exception to the provisions of clauses (First) and (Second) of this legal item.

In terms of judicial application, the Iraqi Internal Security Forces Court went on to convict the accused who “... provided false information regarding his wife’s work as he claimed that she was a housewife when in fact she was a service employee...), it follows from this that the court expanded as for the

⁸ The decision of the Iraqi Internal Security Forces Court / Fifth Region / dated 6/15/2021, No. 228/H/2021 (the decision is not published), as well as the court’s decision, the decision of the Iraqi Internal Security Forces Court / Fifth Region / dated 7/9/2023, the same. Issue No. 544/H/2023 (the decision is unpublished), as well as the court’s decision, the decision of the Iraqi Internal Security Forces Court/Fourth Region/ dated 11/16/2020, No. 401/H/2020 (the decision is unpublished).

⁹ Decision of the Iraqi Internal Security Forces Court, Fifth Region, No. 544/2023, dated 7/9/2023 (decision unpublished)

meaning of lying, it did not make it limited to the job he follows, but rather it went beyond that to information related to his social status and his legal entity among members of society. It seems a surprising approach, so it would have been better to rely on the provisions of item (26) of the Iraqi Internal Security Forces Penal, not item (25). The fact that the accused has made official statements related to his job, specifically the marital allowances, and this information must be recorded in papers and does not necessarily have to be made before the command. The researcher believes that the boundaries between the two crimes are that lying to the commander relates to his assigned duties, while the crime of giving statements that do not conform to reality applies. It is subject to legal item (26) as it is not related to the performance of duty, and this is clear from legal item (26) of the law which stipulates that "...anyone who submits official papers, data, information or reports contrary to the truth and that is related to the service or job shall be punished with imprisonment." Or whoever intercedes to present this to a superior, knowing that it is contrary to the truth...), and accordingly, legal item (25) relates to the job duties that he was assigned to perform by his superior commander.

The Iraqi Internal Security Forces Court also ruled (...during the trial, it was proven to the court that the authorized accused had filed a false complaint and accused the complainant...the court found that the evidence was sufficient to convict the above accused under legal item (25) of the law...)⁸

In the context of explaining the criminal penalty imposed on an employee who lies to his superior, does it include a civil employee who lies to his superior?

The answer to this question is in two points:

First: The term "commander" is a military term that includes employees who are included in the description of the Iraqi Internal Security Forces, so the concept of the violation requires - without - for the description of the order to be applied.

Second: The Iraqi Internal Security Forces Penal applies to (...)

First: The provisions of this law apply to:

- A- Officers and members of the Iraqi Internal Security Forces who continue to serve.
- B- Students from the Police College or private institutes or schools training Iraqi internal security forces.
- C - Retired, discharged, expelled, dismissed, seconded, and resigned members of the Iraqi Internal Security Forces if they committed the crime while in service.

Second: For this law, the following terms shall have the meanings indicated next to them:

- A- Officer - a policeman of the rank of lieutenant or above.
- B- The member - the commissioner, non-commissioned officers, and the policeman.
- C - Student - every volunteer in the capacity of a student at the Police College or any institute or school for training internal security forces... 9, and therefore the civil employee is subject to Penal No. (111) of 1969 and does not fall under the scope of application of this law.

There is another question regarding juvenile students at the Commissioners Preparation Institute who are not yet of the age of majority about this crime in question, who lie to their commander in training. Does the text apply to them?

The juvenile student who commits a lie to the warden is subject to the Juvenile Welfare Law No. (76) of 1983 because legal item (48) of the Iraqi Internal Security Forces Law has referred the matter, in the absence of it, to the Penal or special penal laws, and since the Welfare Law Juveniles is a special penal law that applies to crimes committed by juvenile students.

Conclusion

- 1- The legal item (25) of the Iraqi Internal Security Forces Penal stipulates that “...anyone who lies to his commander regarding matters related to his duties shall be punished with imprisonment.”
- 2- This crime is committed only by an employee holding police status, according to legal item (25) of the Iraqi Internal Security Forces Penal.