



THE RELATIVE IMPACT OF CRIMES AT THE NATIONAL AND INTERNATIONAL LEVELS

DR. AHMED AUBAIS ALFATLAWI¹, KAREEM TALIB HAMMADI^{2*}

¹Professor in Public international law /Kufa University Faculty of law/ Al alamein institute for postgraduate studies/ Najaf /Iraq.

² Al alamein institute for postgraduate studies/ Najaf /Iraq.

*Corresponding author's email: karemtalib63@gmail.com

Abstract: *The law in general seeks to protect the foundations or pillars of society that are deemed necessary by satisfying specific needs upon which the comprehensive edifice of society stands. Or for fear of being affected by a crime that entails the responsibility of the perpetrator and then the imposition of a penalty on him, and the methods of criminal protection vary according to the place and time and depending on the circumstances of society and the foundations and pillars on which it is built, and these foundations or pillars are considered by the legislator as (interests) suitable in his assessment to satisfy a specific human need such as Security, public office, public and private money, life and body safety. The crime, whatever it may be, is an aggression against an interest that is protected by law, and the national criminal law is responsible for defining the interests that are subject to criminal protection. The crime is established whenever a person assaults one of these interests, causing harm to it or exposing it to the danger of harming it.*

Keywords: *relative weight in relation to prohibited behavior, identifying the most serious crimes, internal and international levels.*

INTRODUCTION:

The idea of criminal risk has brought about a revolution in the scope of criminal laws, especially after this idea recognized the great role in determining the criminal penalty that is imposed on the convict. Those who argue that the penalty must be severe whenever the seriousness of the crime is high, that is, if the relative weight of the crime is more serious than others, it will have a major role in determining the criminal penalty. However, the question that arises here is, how can the judge estimate the existence of criminal danger and determine the relative weight of the crime or not? What are the limits of the judge's authority to estimate? What is the position of criminal legislation in determining the most serious crimes and their relative impact?

Crime trials also aim to establish the facts about the events that occurred, establish accountability for the perpetrator, impose punishment, and acknowledge the suffering of the victims. After looking closely at the legal rules and procedures to determine the nature of the crime brought before the court and the extent of its jurisdiction over it.

But how can these crimes transcend the criminal threshold and rise to the level of danger to be considered by one court over another? The interesting question arises: How does prohibited conduct constitute a grave violation and then be held accountable for when it occurs?

The judges' perception or the legal description of the crime differs, the extent of its seriousness in relation to the international community and countries, and the extent of the punishment, if it is fair and just in general, as appropriate. On the basis of the extent of the criminal seriousness, the so-called (artificial legal crimes) or (pure legal crimes) arose. To clarify this matter, it can be considered that crimes in primitive societies reflected the interests and moral values emanating from society, and therefore they seemed to commit behavior that was forbidden to all members of society, but in modern societies, due to the increase and complexity of social relations, new interests emerged that required their protection through Punishment to make people respect it, which led to the emergence of a new type of purely legal crimes, or the so-called artificial crimes, which are crimes that have spread widely, but what is the standard or relative weight on the basis of which this or that crime is considered more serious than others, which requires intensifying its prosecution.



STUDY IMPORTANCE:

The importance of the study lies in the fact that it is an original legal research attempt, which will delve into a topic rarely written about at the level of legal studies. entailed.

The importance of this study appears in a subject of recent origin, although the idea of its application took many studies, legal interpretations, and research that examines its features, in addition to the exceptional and rapid increase of grave violations in armed conflicts, which requires identifying the most dangerous behaviors, whether they are international ones. Or patriotism, due to an inevitable necessity that embodies achieving justice in confronting them, and redressing the victims of crimes in the event that they are neglected by the national criminal judiciary of countries.

Also, the Arab, foreign and international penal legislation did not include a concept of relative weight or relative weight when determining crimes, so the issue of developing relative concepts and legal standards in general was at the core of the work of jurists and law commentators. On the basis of which the crime committed is considered very serious.

Study problem:

The legislator considers that criminal accountability for these “fundamental crimes” is of fundamental importance with regard to respecting the rule of law, deterring future violations, and providing fairness and justice to the victims, and this is in view of the danger that these crimes pose to society as a whole, and from here the problem of the study can be highlighted as follows :

- 1- What is the concept of relative weight in relation to prohibited behavior? What is its relationship to defining the concept of the most serious crimes? Then the relative weight for what?
- 2- How can the relative weight be extracted under customary international law or codified law in order to reach the level of danger and identify other prohibited acts?
- 3- Then how can we reach the role of relative weight in the field of crimes and their seriousness?

Study hypothesis:

The topic of theoretical analysis in the horizon of the current discussion arises about whether the role of relative weight may lead to a change in this basic pattern that has been known for a long time in the legal, judicial and jurisprudential discussion about criminal gravity at the national level, in order to reach the definition of those criteria that are of During which a certain behavior can be considered more dangerous than others, and international and national criminal accountability is established with it.

STUDY METHODOLOGY:

Among the issues that the majority agree on is that the use of different curricula at the same time is an inevitable necessity to absorb knowledge and raise problems, and then the study will adopt more than one approach that was required by necessity. The inductive approach was used by way of historical analysis, because we are going to list facts, events, legal precedents, and jurisprudential opinions that constituted a very important historical stage, and because they were the basis for serious thinking about establishing a specialized criminal judiciary that aims to combat the most serious crimes at the international and national levels.

Study plan:

In order to answer the problems raised above, the study plan will be divided into two requirements, as follows:

The first requirement: Defining the most serious crimes at the national criminal level

The first subsection: the definition of the most serious crimes according to the national legislative hierarchy

Section Two: The relative weight of the most serious crimes according to the national jurisdiction

The second requirement: the role of relative weight in determining the seriousness of criminal behavior

The first section: the role of relative weight in determining the seriousness of criminal behavior at the legislative level

The second section: the role of relative weight in determining the seriousness of criminal behavior at the judicial level.



The first requirement

Introducing the most serious crimes at the national criminal level

The goal of penal texts is to protect interests. The criminal legislator, when drafting legislative texts, is motivated by a specific benefit represented in the protection of a legitimate human interest, as there is no text without an interest that the legislator assessed its importance, so he bestowed his protection on it, no matter how small the value, and the interests are many and conflicting and it is not easy to achieve a balance between them. Except under the law, the law is considered an intellectual product that reflects the conditions of the society that governs it through the social, economic and political conditions that accompany its emergence, and the interests express the social values that prevail in the group that is protected by law. In criminalization through the criminal policy that it pursues and is linked to the thought that it adopts mainly in keeping pace with life matters in its various aspects, the penalty has been increased in the case of committing serious crimes affecting the interests protected by law, as dangerous criminal behavior leads in return to committing more serious crimes, and he gave The legislator has the power of the judge to intensify the punishment in the event that the crime committed is of a high degree of seriousness, so we will divide this requirement into two branches. In the first section, the relative weight of the most serious crimes according to the national legislative hierarchy, while in the second section we will discuss the relative weight of the most serious crimes according to the national jurisdiction.

First branch

The relative weight of the most serious crimes according to the national legislative hierarchy

The law in general seeks to protect the foundations or pillars of society that are deemed necessary by satisfying specific needs upon which the comprehensive edifice of society stands. Or for fear of being affected by a crime that entails the responsibility of the perpetrator and then the imposition of a penalty on him, and the methods of criminal protection vary according to the place and time and depending on the circumstances of society and the foundations and pillars on which it is built, and these foundations or pillars are considered by the legislator as (interests) suitable in his assessment to satisfy a specific human need such as Security, public office, public and private money, life and physical safety...etc ⁽¹⁾.

The crime, whatever it may be, is an aggression against an interest that is protected by law, and the national criminal law is responsible for defining the interests that are subject to criminal protection. The crime is based when a person assaults one of these interests, harming it or exposing it to the risk of harming it ⁽²⁾.

Crime, then, is a social phenomenon that the group has been fighting against. And the state took it upon itself, after its inception, to carry out this task, so it enacted laws in which crimes were indicated and specific procedures, measures and penalties that were taken to combat and reduce them ⁽³⁾. The crime was defined as every act criminalized by the law, whether it was positive or negative, such as abandonment and abstention, unless otherwise stipulated, meaning that it is an illegal act, whether positive or negative, emanating from a criminal will for which the law imposes a criminal penalty ⁽⁴⁾.

¹ Muhammad Mardan Ali Muhammad al-Bayati, Considered Interest in Criminalization, Ph.D. thesis submitted to the College of Law, University of Mosul, 2002, p.11.

² Dr. Mahmoud Salih al-Adly, International Crime, a comparative study, Dar al-Fikr al-Jami'i, Alexandria, 2004, p. 72.

³ Dr.Ali Hussein Al-Khalaf, d. Sultan Abdel Qader Al-Shawi, General Principles of Penal Code, 2nd edition, Al-Atak Foundation, Cairo, 2010, p. 129.

⁴ Dr. Akram Nashat Ibrahim, General Provisions in the Iraqi Penal Code, second edition, Baghdad, 1967, p. 19, as well as d. Ali Hamid Al-Obaidi, An Introduction to the Study of International Law and International Humanitarian Law, Al-Atak Foundation, Cairo, 2010, p. 234.



With regard to international crime, it is defined as, ((every behavior, whether act or omission, emanating from an individual in the name of the state or with its consent, emanating from a criminal will, entailing prejudice to an international interest, covered by the protection of international law through criminal punishment)) ⁽⁵⁾.

Therefore, a number of considerations can be identified, which, if available in behavior, are considered a crime, which is the existence of criminal behavior that contradicts the principles of law, customs, and human conscience, and carrying out this behavior with a conscious will without coercion and not by mistake, and committing the behavior may be positive, such as performing this behavior, or negative by abstaining For an act that leads to the occurrence of the crime, as well as the commission of this behavior entails the possibility of imposing a punishment that finds its basis in the general principles of law ⁽⁶⁾.

Concluding from the foregoing that the crime in general is every positive or negative act or behavior that is criminalized by law and that a criminal penalty is prescribed for the perpetrator.

The law does not only intend to protect individual interests, but its main objective is to protect higher interests of interest to society as a whole. specific. Therefore, the interests that relate to society as a whole are more important than those that pertain to individuals. If the damage is inflicted on the first, it is often grave and has a great impact on the lives of all individuals ⁽⁷⁾.

At the stage of application, the interest also plays an important role, as the judge and the jurist use it to interpret a specific text or to resolve some general legal problems. Waiver of the protection of the law to it regardless of whether that interest appears to be an individual concern of a particular individual or appears to be a general concern of society as a whole. The Penal Code came to protect multiple interests on which the social structure of the state is based, because by bestowing protection on those interests, security is spread and stability is achieved, whether it is public interests to protect the security of the state from inside and outside, or individual interests. This is because the criminal policy that leads the criminal legislator is nothing but a reflection of the group's needs and its various interests, so we find that the criminal protection of those interests, in order to be effective, must surround any act that would harm or threaten it with harm ⁽⁸⁾.

And the crimes are classified into several types, according to the criterion of their severity, severity and relative weight, as the criminal legislation did not follow a single approach in dividing the crimes. Some of them took the tripartite division, where he divided them into felonies, misdemeanors and irregularities ⁽⁹⁾. While we find others have been limited to the binary division, ie felonies and misdemeanours ⁽¹⁰⁾ or misdemeanors and infractions ⁽¹¹⁾.

There are also legislations that adopt the binary division of crimes based on the criterion of the severity of the crime, but in a different manner than those that preceded it, as it divided them into two categories or two types of serious crimes and non-serious crimes, and this division is based on the difference in the punishment in terms of its seriousness. Strong, large, harsh, coarse, or so on, it is described as "serious" and vice versa is also true, i.e. when it is low, simple, small, few, reduced, or the like, it is "non-serious." The importance of this division lies in the fact that it is the basis for

⁵ Dr.Mahmoud Saleh Al-Adly, previous source, pg. 66, as well as d. Montaser Saeed Hammouda, International Criminal Court, The General Theory of International Crime, Provisions of International Criminal Law, Analytical Study, First Edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2009, p. 15.

⁶ Dr. Akram Nashat, previous source, p. 22.

⁷ Dr.Muhammad Saeed Ramadan, Rules of Interest in Islamic Sharia and Positive Law, second edition, Al-Risala Foundation, Beirut, 1977, p. 67.

⁸ Dr. Muhammad Saeed Ramadan, previous source, pg. 24.

⁹ Many penal legislations adopted this division, for example, the Iraqi Penal Code No. 111 of 1969, and the Egyptian Penal Code issued in 1986.

¹⁰ Including, for example, the Yemeni Crimes and Penal Code issued in 1994.

¹¹ As is the case in most juvenile laws.



determining the type of crime whether it was serious or not serious depending on what the law decides for it in terms of the original penalty ⁽¹²⁾.

Therefore, crimes are traditionally divided in terms of their severity into three types: felonies, misdemeanours, and infractions. The felonies are more serious than the misdemeanors, and these are the most serious of the violations. The type of (principal) punishment prescribed by law for the crime or its maximum amount is the one that is resorted to in order to know the type of that crime in terms of its gravity and relative weight. As the gravity of the crime is measured to know its type in terms of its gravity by the severity of the punishment prescribed for it in the law ⁽¹³⁾.

This division of crimes is considered one of the most important divisions, as it is taken as a basis for the application of a large number of substantive and formal provisions of the law. Therefore, the majority of penal laws adopted it. The Iraqi Penal Code divided crimes in terms of their gravity into three types: felonies, misdemeanours, and infractions, as it stipulated in Article (23) thereof that ((crimes in terms of their gravity are of three types: felonies, misdemeanors, and infractions, specifying the type of crime With the type of the most severe punishment prescribed for her in the law...)). Article (25) of it stipulates the definition of a felony, where it states, "A felony is a crime

¹² Dr. Taher Salih Al-Obeidi, General Provisions of Penalties, previous source, p. 38.

¹³ Penalties are divided into several types according to the criterion that is taken as the basis for the division, and they are as follows:

First: In terms of seriousness: According to this criterion, penalties are divided into felony, misdemeanor, and infraction penalties.

Second: According to originality and subordination: Penalties are divided accordingly into three types: 1- Principal penalties: they are called as such because the judge must rule by them when convicting the accused, as the verdict can be limited to them, and this is the criterion for them, and their imposition is not dependent on the verdict. Other penalties usually include the death penalty, imprisonment, imprisonment and a fine.

2- Ancillary penalties: They are called so because they apply to the convicted person by virtue of the law without the need to stipulate them in the sentence and usually include deprivation of some rights and benefits and police supervision. 3- Complementary penalties: They are those that do not apply to the convict unless stipulated by the court in the conviction decision. They usually include deprivation of some rights and privileges, confiscation and publication of the judgment (which means publication of the judgment decision in the official newspapers).

Third: In terms of nature: according to this criterion, penalties are divided into ordinary penalties for ordinary crimes and penalties limited to political crimes. For both ordinary and political crimes.

Fourth: In terms of effects: the division according to this criterion is one of the most important divisions, as the effects resulting from the punishment differ according to the place where it inflicted pain on the offender. There are:

1- Corporal punishments: They are those that affect the convict's right to life, such as execution, or his right to body safety, such as amputation and flogging.

2- Freedom-depriving penalties: They are those that rob or restrict the freedom of the convict, such as life or temporary imprisonment, hard or simple imprisonment, and police surveillance.

3- Financial penalties: They affect the financial liability of the convict, such as confiscation and fines.

4- Rights-denying penalties: These are the ones that deprive the convict of some of his civil and political rights, such as depriving him of the right to run and vote.

E - Penalties affecting social consideration: They are those that harm the convict and reduce his status or affect his social status, such as publishing the ruling in newspapers.

Fifth: In terms of the duration of the sentence: According to this criterion, the penalty is divided into life sentences, temporary penalties, and a third indefinite period. The life of the convict and its example is temporary imprisonment, which does not exceed fifteen years.

punishable by one of the following penalties: (execution - life imprisonment - imprisonment for more than five to fifteen years).”

Article (26) defines a misdemeanor as, “A misdemeanor is a crime punishable by one of the following two penalties: simple or severe imprisonment for more than three months to five years, and a fine.”

Article (27) defines the violation as, ((A violation is a crime that is punishable by one of the following two penalties: simple imprisonment for a period of twenty-four hours to three months, and a fine that does not exceed thirty dinars)).

Thus, it appears to us that the Iraqi Penal Code adopted the tripartite division to clarify the types of crimes in terms of their seriousness and relative weight, and made the criterion for distinguishing between types of crimes the punishment prescribed for the crime in the law, i.e. the punishment as stipulated by the law with its maximum limit, not as the court ruled. If the law stipulates that the penalty for the crime is death or life or temporary imprisonment, then the crime is a felony. But if the penalty is a fine, its amount is considered. If its maximum amount is thirty dinars or less, then the crime is a violation, and if it exceeds that, then the crime is a misdemeanour. All of this is noted in the punishment as stipulated in the law, not as the court ruled ⁽¹⁴⁾.

In summary: the ordinary legislator has defined the interests protected by law, and then has established a logical sequence in defining prohibited behaviors first, then moved to qualify them as crimes, and then moved to define their types as political and ordinary crimes, and finally in classifying them according to their gravity, provided that this sequence must carry a certain weight, whatever its level, and violate a protected right according to the principle of objective legality (no crime or punishment except by text).

Section two

The relative weight of the most serious crimes by national jurisdiction

The legislator takes into account the intrinsic gravity of the crime when determining the penalty, but he places before the judge penalties ranging from a maximum and a minimum limit, leaving the judge with discretion in order to achieve a point of balance between the subjective gravity, or in other words the realistic gravity of the crime as estimated by the legislator and the seriousness of the offender as estimated by it. Thus, the seriousness of the offender is taken into account, but the first place in estimating the punishment and then determining the degree of pain is dependent on the gravity of the behavior itself ⁽¹⁵⁾. Therefore, emphasis is placed on the gravity of the crime and its relative weight, and the severity of the punishment for such serious crimes.

The severity of the punishment is a form of the circumstances accompanying the crime, according to the gravity of the crime and its relative weight, which the judge takes into account when there is a reason for that. Increasing the punishment prescribed for it ⁽¹⁶⁾, and others argued that the

¹⁴ And by applying this criterion to the penalties contained in the Rome Statute and included in Article (77) of this Statute, which stipulates that ((1- Subject to the provisions of Article 110, the court may impose on a person convicted of committing a crime within the framework of Article (5) of this Statute The main penalty is one of the following:

A- Imprisonment for a specified number of years, for a maximum period of 30 years.

B- Life imprisonment where this penalty is justified by the extreme gravity of the crime and the special circumstances of the convicted person.

2- In addition to imprisonment, the court may order the following:

A- Imposing a fine according to the criteria stipulated in the procedural and evidentiary rules.

B- Confiscation of proceeds, property and assets derived directly or indirectly from that crime without prejudice to the rights of bona fide third parties)).

¹⁵ Dr.Ali Abdul Qadir Qahwaji, Study in Criminology and Punishment, previous reference, p. 245.

¹⁶ Al-Saeed Mustafa Al-Saeed, General Provisions in the Penal Code, Al-Ahram Press, 1987, p. 678.

aggravating circumstances are, ((objective and personal cases and actions that affect or could affect the severity of the punishment for the crime committed)) (17).

All aggravating circumstances are considered legal aggravating circumstances, that is, their source is the law to guarantee the rights of citizens and in implementation of the rule that there is no crime or punishment without a text, as the judiciary adheres to them, and if aggravating circumstances are available that lead to an intensification of the punishment, it may exceed the maximum limit prescribed for the crime, and the ruling may be a punishment of another kind More severe, such as a prison sentence instead of a fine or imprisonment instead of imprisonment, and may lead to changing the nature of the crime from a misdemeanor to a felony, depending, of course, on the type of aggravating circumstance that the law decides for the crime (18).

That is, the severity of the punishment for the crime committed, according to the relative weight of the crime and the most dangerous behavior.

Among the examples of the aggravating circumstances of Iraqi legislation, we note that the legislator has stipulated in Article (405) of the amended Penal Code No. 111 of 1969 that "Whoever intentionally kills a person shall be punished with life or temporary imprisonment." As for Article (406), it stipulates The aggravating circumstances of the crime of murder, which carries a penalty of death due to the relative weight of the crime committed, and the seriousness of the dangerous behavior in that act (19).

And since the principle of legitimacy requires not leaving the penalty for its release to the judiciary, the legislator must decide penalties for actions that affect the security of society on the basis of approximate severity so that these penalties are flexible, by setting two limits for the penalty prescribed for each crime: a minimum limit and an upper limit, and the judge is left with the freedom of choice Between these two limits according to the circumstances of each crime, the degree of gravity, and the personal circumstances of each criminal (20).

¹⁷ Dr. Akram Nashat Ibrahim, Legal Limits of the Judge's Authority to Estimate Punishment, Dar Al Thaqafa for Publishing and Distribution, 1998, p. 75.

¹⁸ Dr. Ramses Behnam, Criminal Procedures in Origin and Analysis, Manshaat Al-Maarif, Alexandria, 1977, p. 38.

¹⁹ Article (406 / Paragraph 1) stipulates that ((1- Anyone who deliberately kills a person shall be punished with death in one of the following cases:

- A- If the murder was premeditated or premeditated.
- B- If the killing occurred by using a toxic, explosive or explosive substance.
- C- If the murder was for a vile motive or for a reward, or if the perpetrator used brutal methods in committing the act.
- D- If the murdered person was of the killer's bloodline.
- E- If the killing occurred on an employee or assigned to a public service while performing his job or service.
- F- If the offender intended to kill two or more persons, then this was done by one act.
- G- If the murder is accompanied by one or more crimes of intentional murder or attempted murder.
- H- If the murder was committed as a prelude to committing a felony or misdemeanor punishable by imprisonment for a period of no less than one year, or as a facilitation of its commission, or in execution of it, or to enable the perpetrator or his accomplice to escape or get rid of punishment.
- I- If the perpetrator was sentenced to life imprisonment for the crime of intentional murder and committed intentional murder and attempted it during the period of execution of the sentence.

²⁰ Whereas, the system of judicial quantitative grading of the penalty, which stipulates determining a minimum and an upper limit for the penalty, and some texts also include optional penalties and alternative penalties. Or a fine, or choosing both penalties together, and this is an



And that some of the most serious crimes for which we believe that the death penalty should remain, given that the death penalty is considered a legitimate defense by society to preserve the entity and lives of its members, but the phrase the most serious crimes should be understood in its narrow sense, which is that the death penalty should be a very exceptional measure, and that it does not It can only be imposed in accordance with the laws that were in force when the crime was committed.

And that the legislation gave great importance to the crime and the degree of seriousness of the act, and the circumstances and circumstances that surround it, and among these circumstances are the means of committing the crime, which is the dangerous method or behavior used by the offender in committing the crime. In such cases, the judge increases the penalty to the maximum penalty, because the method used indicates a complete criminal risk, and accordingly, if the offender commits the crime with material behavior devoid of any circumstance, such as someone who commits the crime as a result of his refusal to do an act, or someone who kills another with a single gunshot or using A machine that is not fatal in the normal course of things or is not likely to lead to death, so the judge should bring down the punishment to its lowest level ⁽²¹⁾.

Therefore, the judge depends on these things used in the commission of the crime to estimate the penalty, and when it reveals an increase in danger, he considers it aggravating circumstances related to the crime, and reveals serious criminal behavior that leads to the commission of the most serious crimes ⁽²²⁾.

The gravity of the crime and the behavior of the contemporary and subsequent offender help the judge to use his authority to estimate, and make the penalty with the minimum and maximum limits closer to the principle of legality of penalties, which requires the maximum degree of determination of penalties.

And the importance of criminal danger as the basis on which the death penalty is built, in order to protect society from dangerous criminals and eradicate them from society in order to preserve people's lives, given that the death penalty is applied only to dangerous criminals who have rooted in their souls the spirit of criminality or who have committed serious crimes that threaten the entity and security of society, and the evidence Accordingly, there are murders for which the Iraqi legislature was not punished with the death penalty, such as the crime of marital infidelity and murders in cases of legal defense, as the modern criminal policy aims to reform the offender so that the purpose of the punishment is to take the hand of the convict and help him to return to a useful member of society, except that This does not negate the existence of criminal elements or groups in whose souls the spirit of criminality is rooted, and reform is no longer possible because the penalties they receive as a result of committing crimes are no longer sufficient to return them to the path of righteousness ⁽²³⁾.

expansion of the criminal judge's authority to choose the punishment within the prescribed penalties, and the legislator's plan was to diversify the penalties prescribed for one crime sometimes and make the punishment range between two extremes in many cases, while giving the judge the ability to estimate the appropriate punishment for the criminal by standing On the circumstances and circumstances of his crime and the degree of gravity, d. Muhammad Odeh Al-Jubour, *The Mediator in the Penal Code, General Section, First Edition 2012*, Wael Publishing House, pg. 64.

²¹ Dr. Ali Al-Qahwaji, *Explanation of the Penal Code*, Al-Halabi Publications, first edition, 2009, p. 237.

²² Some laws may provide for a circumstance that is considered aggravating by the text of the law, and the criminal judge has no discretion in estimating the penalty based on it. If the judge determines that the killing was carried out with poison, he considers it an aggravating circumstance and, accordingly, increases the penalty to its maximum extent. Dr.. Akram Nashat Ibrahim, *The Legal Limits of the Judge's Discretionary Power*, the previous source, pg. 67 et seq.

²³ Dr.Ramses Behnam, the previous source, p. 169.



The criminal seriousness has a role in determining the death penalty. The judge, at the moment of pronouncing the death sentence, can determine the dimensions of the seriousness of the crime and its relative weight. Therefore, the generalization of the seriousness of criminal behavior is entrusted to the judge within the limits established in the criminal law and with the assistance of the technical means arranged by the Procedural Code, and experience. Artistic is a means of artistic evaluation of both material and moral evidence. It is a technical advisor to the judge to help him from his belief and opens the door to admissibility before the judge. It includes a technical and scientific opinion summarized from research, experiences and special studies ⁽²⁴⁾.

When pronouncing the death penalty, for example, the judge notes the “how much” and “extent” of the criminal danger of the offender, which depend on the circumstances, the degree of seriousness, and the relative weight of each crime. Therefore, the link between the circumstances and the seriousness is tight, but these circumstances are considered indications of the criminal danger. The circumstances are either objective or personal and are linked to the person of the perpetrator, and the circumstances are either aggravating or mitigating, so the criminal risk is represented by the variability of circumstances and the authority of the criminal judge to assess the penalty is the extent permitted by the law in terms of choosing the type of punishment commensurate with the gravity of the crime, it cannot be imagined The existence of a crime without punishment and without text.

For this penalty, there must be a fixed risk, and it is possible for the judiciary to identify the degree of gravity of the risk through its direct standing on the circumstances of the crime and the severity of the criminal behavior. crime and its aggravating circumstances. In order to determine the extent and seriousness of this risk and the extent to which it is closely related to the circumstances, the judge must determine the nature and subjectivity of the aggravating circumstances ⁽²⁵⁾.

This requires us to differentiate between serious aggravating circumstances that increase the penalty without affecting the specific legal description of the crime itself, such as recurrence whose provisions stem from articles (139 and 140) of the Iraqi Penal Code and represent the aggravating circumstance in its true meaning, and between circumstances that affect the specific legal description. For the crime without prejudice to its legal name, the description should be amended in a way that increases the severity of the crime, such as premeditation or premeditation in premeditated murder, the provisions of which included Paragraph (a) of Article (406) of the Iraqi Penal Code, as Article (406) Paragraph (1) states what It comes: “Whoever intentionally kills a person shall be punished with death in one of the following cases ((if the killing was premeditated))⁽²⁶⁾.

²⁴ As Article (69) of the Iraqi Code of Criminal Procedure No. (23) for the year 1971 as amended states that: “The judge or the investigator may, on his own initiative or at the request of the litigants, delegate one or more experts to express an opinion in connection with the crime being investigated.”).

²⁵ Dr.Ramses Behnam, previous source, p. 172.

²⁶ The Iraqi Penal Code specified the general aggravating circumstances in Article (135) which states that ((without prejudice to the special circumstances in which the law provides for the aggravation of punishment, and the following are considered among the aggravating circumstances:

- 1- Committing a crime with a vile motive
- 2- Committing the crime by taking advantage of the victim’s weakness of consciousness or his inability to resist, or in circumstances where others cannot defend him.
- 3- Using brutal methods to commit the crime or mutilating the victim.
- 4- Exploitation by the offender in committing the crime of his capacity as an employee or his intentional abuse of power or influence from the post. Article (136) of it also shows the extent of the severity of the penalty in the event that the aggravating circumstance is present, as it stipulates that the death penalty shall be instead of imprisonment:

- 1- If the penalty prescribed for the crime is life imprisonment, the death sentence may be passed.



Likewise, terrorism that affects the safe innocent is considered one of the most heinous crimes of the era, the most dangerous and the most serious, as it targets the innocent who did not show enmity or aggression against anyone, as these brutal and cruel criminal manifestations entail a great danger such as killing innocent people, acts of violence, spreading terror, violating their freedoms and wasting their rights.

In view of the increase in terrorist acts as the most serious crimes, the issue of terrorism has taken a large part of the attention of criminal law jurists, because this phenomenon poses a great danger to everyone and in Iraq in particular. The National Assembly issued the Anti-Terrorism Law No. 13 of 2005 ⁽²⁷⁾.

Article 4 of the Anti-Terrorism Law No. (13) of 2005 stipulates that: "Whoever commits, in his capacity as a principal or an accomplice, any of the terrorist acts mentioned in Article (2-3) of this law shall be punished with the death penalty. The instigator, planner, financier and all Whoever enables terrorists to carry out the crimes mentioned in this law shall be punished as the original perpetrator)) ⁽²⁸⁾.

Among the judicial applications for the most serious crimes and prohibited and gross behavior, is the decision of the Federal Court of Cassation No. 145 of the Public Authority, which approved the decision of the Central Criminal Court in Rusafa to execute the person named (G.M.) by hanging to death in accordance with the provisions of Article (1/4) of the Anti-Terrorism Law He is accused of committing the assassinations of a number of members of the National Guard and the police by cutting off their heads with the sword and then slaughtering them with a knife and then raising the heads in front of the people ⁽²⁹⁾.

We note here that this act indicates the seriousness of the crime as the most severe, by using the most serious and dangerous behavior.

In summary: the Iraqi legislator sought to deter crimes consisting of terrorist acts, so he adopted a policy based on strict penalties, and the national law indicated the relative weight of behavior and chose the most dangerous of them, which qualifies him to the threshold of legalization by special laws, and then to the threshold of the competent courts for investigation and accountability for them, therefore The selection of specific categories of the most dangerous behaviors is determined based on their type, which will reveal their relative weight. Therefore, the national legislator is usually interested in defining the types of behavior as crimes, and then dividing them according to their seriousness, especially those that affect the security of society and violate protected rights.

Second requirement

The role of relative weight in determining the seriousness of criminal behavior

Most of the jurists have accepted that criminal danger is, in fact, a psychological state within the criminal that makes him more ready to commit crimes in the future ⁽³⁰⁾. It was defined by the Italian

²⁷ Published in the Iraqi Gazette, issue (4009) on 9/11/2005.

²⁸ Article Two, in its seventh and eighth paragraphs, of the Anti-Terrorism Law stipulates the following: The following acts are considered terrorist acts ((7- Using, for terrorist motives, explosive or incendiary devices to take lives and have the ability to do so or spread terror among people by means of bombing or launching implants or booby-trapping mechanisms or objects of any shape, using toxic chemicals, biological agents, or similar or radioactive materials 8- Kidnapping or restricting the freedoms of individuals or detaining them for financial extortion for purposes of a political, sectarian or religious nature that threaten security and national unity and encourage terrorism.).

²⁹ Decision of the General Authority of the Federal Court of Cassation No. 145 of 2008, unpublished.

³⁰ Criminal risk is meant as a willingness in a person according to which he is likely to commit crimes in the future, i.e. the person's ability to commit crimes, and therefore it is a psychological state that the law relies on in estimating the punishment and the form in which it is, and dangerous implies the meaning of the danger that It is a situation that warns of the occurrence



scientist (Petrocelli) and said that the criminal risk is ((a group of personal and objective factors that if associated with the behavior of the person becomes a possibility of committing future crimes))⁽³¹⁾. The criminal risk is considered as a criminal case, as it is a legal regulation established by the criminal law and in which the personal position of a certain group of criminals is considered.

As the criminal behavior is nothing but evidence of the seriousness of that offender who behaves in an anti-social behavior that is inconsistent with the rules, morals and rules of the society in it, because the outward appearance of human behavior is linked to human nature, whether that behavior is criminal or anti-social,

There is no doubt that the scientific means used to determine the criminal risk are limited within the scope of the criminal law, as the law predetermines the crimes and their penalties, but determining the criminal risk is very difficult and difficult because it relates to the truth of what we do not know about the nature of man and the hidden potentials in it⁽³²⁾.

Hence the importance of our research on the issue of the seriousness of criminal behavior, and the role of relative weight in determining it at the legislative and judicial level, and therefore we will divide this demand into two branches. In determining the seriousness of criminal behavior at the judicial level.

First branch

The role of relative weight in determining the seriousness of criminal behavior at the legislative level
The prohibited criminal behavior is of great importance to the entire international and national criminal system as it touches on issues that stand on the border between criminal, punitive and legal problems⁽³³⁾.

And through what we will present of the laws that dealt with the idea of criminal danger, we find that most of them have been accustomed to taking the personal approach to criminal danger based on what the judge observes of indications and indications that suggest the presence of criminal danger within the person of the accused. This is because the criminal risk cannot be curtailed and its framework determined by setting certain conditions for it, as it is a changing idea according to the human personality, that personality that cannot be predicted or put its clear features and therefore cannot be unified among people until conditions can be set for its seriousness.

The following is a review of some of the laws that adopted the idea of criminal danger. As for the Italian law of 1930, it is considered the leading law in the field of adopting the idea of criminal danger, and a special text has been devoted to it related to its concept and signs revealing it, which is the text of Article (133) that expresses the concept of criminal danger as being The individual's readiness for crime⁽³⁴⁾, and the aforementioned article also laid down indications and evidence upon

of harm to a person or warns him of the occurrence of an illegal matter, and this danger may arise from behavior that occurs in the future from the same person, a potential matter, and the criminal risk is based on possibility, not on certainty, and probability is the control in determining the existence or absence of criminal risk Whoever committed a crime prior to that, so habitual crime is one of the forms that reveal the seriousness of the criminal. Probability means an expectation of what will happen in the future regarding the occurrence of a crime by the perpetrator of the previous crime, and this possibility is deduced from all the personal and objective circumstances of the perpetrator of the crime, and the dependent on it is that the occurrence of the crime is probable, not just possible. Based on the act and the means, but it is conceivable that it occurred rationally, d. Muhammad Saeed Nammour, A Study in Criminal Danger, Mu'tah Journal for Research and Studies, Annual Journal, Issue 3, Jordan, 2011, p. 231.

³¹ Dr. Muhammad Saeed Nammour, previous source, pg. 233.

³² Dr. Muhammad Odeh Al-Jabour, the previous source, p. 34.

³³ Dr. Ahmed Fathi Sorour, previous source, p. 500.

³⁴ Dr. Ramses Behnam, the previous source, pg. 63.



which the judge relies, on the basis of which he indicates whether there is a criminal risk available in the individual or not. These signs are: the relative weight and gravity of the crime extracted from:

- 1- The nature, type, means, subject, time, place, and every mode of action.
- 2- The severity of the damage and the danger caused to the person affected by the crime.
- 3- From the severity of the intent and the degree of error.

The judge also takes into account the criminal capacity of the convict, which is derived from:

- 1- The motives behind the crime and the morals of the offender.
- 2- Criminal and judicial precedents, and in general the behavior and life of the criminal prior to the commission of the crime.
- 3- Behavior during the commission of the crime and subsequent behavior.
- 4- The conditions of personal, family and social life.

As for Article (203), it defines a person of criminal danger as, ((Whoever commits an act is considered a crime if he is likely to commit subsequent acts stipulated by the law as crimes))⁽³⁵⁾.

As for the Spanish Penal Code issued in the year (1928), it defined in Article (71) of it the criminal risk as ((a special case of a person's willingness that results in the possibility of committing a crime)). This definition is characterized by being inclusive of both types of risk, whether the risk is criminal or social, because the article singled out the description of risk for every person, whether he is a repeat offender or a first-time perpetrator. It is also noted that the Spanish law has taken a personal approach in defining criminal danger, but it launched the definition in a way that leaves the judge with a discretionary power to judge each person in proportion to his condition and what is available to him of evidence and indications that reveal his latent danger ⁽³⁶⁾.

As for the positions of the laws of the Arab countries, which dealt with the idea of criminal danger in adopting both the personal and the objective approaches in defining criminal danger, the Lebanese Penal Code defined the idea of criminal danger under the name (danger to public safety) and it defined it in Article (211) Paragraph (3) From him by saying ((every person or legal entity that commits a crime is considered a danger to society if he fears that he will commit other acts that are punishable by law). And since the criminal danger is a latent state in the soul, therefore, it must be guided to it through indications that indicate it. Therefore, the Lebanese Penal Code set in Article (211) a general rule that indicated that a person cannot be sentenced to a precautionary measure unless it is proven that he is a danger to public peace or that the law This danger has been presumed de jure, and the article stipulates that ((no precautionary measure shall be taken unless it is a threat to public peace. Precautionary measures shall be taken after verifying the state of danger except in cases where the law presumes the existence of danger)) ⁽³⁷⁾.

³⁵ Dr..Mahmoud Naguib Hosni, *Perverted Criminals*, second edition, Dar Al-Nahda Al-Arabiya, Cairo, 1974, pg. 15.

³⁶ Whereas, the Brazilian Penal Code issued in the year (1940) defined criminal danger as ((a condition available to a person whose personality, past, motives, and circumstances of the crime allow him to have the possibility of committing a new crime in the future)). Brazilian law has embraced personal principles in defining criminal risk, and this matter is evident through the general principle set by the law on the dangerous situation without specifying exactly general conditions in which there is a criminal risk, but rather making the matter up to the competent judge who has the duty to extract from The person of the accused, his past, his motives, and the circumstances of the crime, that this person represents a future danger. Dr. Ahmed Fathi Sorour, previous source, p. 506.

³⁷ Likewise, the Lebanese Penal Code may presume a person as a danger to public safety in four cases: The first considers the person a danger to public safety if he is a habitual criminal sentenced to a fine other than a fine, and then he is sentenced to a penalty of deprivation of liberty for another legal recurrence. In this case, it is necessary that there be two repetitions for each crime committed by the recidivist (Article 1/264). As for the second case, it pertains to a repeat offender who was sentenced within fifteen years, in which the period he spent in



The Lebanese Penal Code defines, in Article (262), the dangerous criminal by defining the habitual criminal, so it defines him as, "He whose criminal act reflects a permanent psychological readiness, whether innate or acquired, to commit felonies and misdemeanours." It is clear from this definition that the habitual criminal, He is a criminal with a personality of great criminal danger because of the psychological readiness he has to commit crimes.

As for the Egyptian Penal Code, although it did not explicitly address the definition of criminal risk within it, the provisions it came with all indicate that the Egyptian legislator has taken into account the idea of criminal risk in all subjects that require the existence of this idea, especially with regard to the implementation of the penalty, but It can be said that the Egyptian legislator has touched, in Article (52) of the Penal Code and No. 58 of 1937 amended, on defining criminal danger by defining habitual crime by saying, "The court may consider the accused a habitual criminal when it appears that there is a serious possibility that he committed a crime." Committing a new crime.⁽³⁸⁾

This is evident to us through the following texts:

1- What was stated in Article (55) of the Egyptian Penal Code, which permitted the judge to rule to stop the execution of the penalty for those whose circumstances suggest that he is not dangerous, as if the court had seen from the morals of the convict, his past, his antecedents, his age, or the circumstances of the commission of the crime that lead to the belief that he will not It is due to a violation of the law.

2- The text of Articles (17) and (49) of the Egyptian Penal Code regarding the individualization of punishment in type and amount according to the degree of criminal seriousness. Article (17) permitted the replacement of the penalty prescribed for severe felonies with a light one, in cases that require clemency from judges. While Article (49) referred to recidivism and what it represents as a source of severe punishment, as it represents evidence of the danger of the recidivist.

3- Also, with regard to the second paragraph of Article (18) of the Egyptian Penal Code regarding the method of executing the penalty, based on an assessment of the extent of the criminal seriousness, as it states (every person sentenced to simple imprisonment for a period not exceeding

executing penalties and precautionary measures is not counted, either four sentences of imprisonment for excused felonies or intentional misdemeanours, provided that each of the last three crimes was committed after he became The ruling for the previous crime is final (Article 264/2, 3). As for the third case, which the Lebanese legislator considered as evidence of the existence of danger, it is that which is indicated in Article (264/4) where three judgments are issued against the person, two of which are similar to the provisions shown by the law in the previous paragraph, by imprisonment for felonies accompanied by an excuse or intentional misdemeanor, and a judgment A third issued for a felony penalty, provided that the three judgments were issued within fifteen years, in which the period spent in executing the penalties and precautionary measures is not counted.

Finally, the fourth case, indicative of legal criminal risk, is available if the person committed, during his stay in prison or in the five years following his release, an intentional felony or misdemeanor for which he was sentenced to one year in prison (Article 265).

These four cases established by the Lebanese legislator are cases in which the legislator assumes the existence of a criminal danger in the person of the criminal without the need to verify the extent to which this danger exists in the psyche of the criminal - as a psychological state - or not, and this means that the Lebanese legislator has followed the definition of danger Criminality is a physical course based on the fulfillment of certain conditions resulting from the criminal acts committed by the offender. In fact, we do not see any meaning in distinguishing between the state of danger to public safety, which the law requires verification of its existence, and the state of presumed danger involving the four cases mentioned by the Lebanese legislator, as the legislator In all these cases, material conditions have been set, with the existence of which it is assumed that this person has a criminal risk.

³⁸ Dr. Ahmed Fathi Sorour, previous source, p. 511.



three months may request, instead of executing the prison sentence, that he be employed outside the prison in accordance with what is determined from restrictions in the Criminal Investigation Law, unless the judgment states that he is deprived of this option.

4- As for the Prisons Regulation Law No. (396) of (1956), it adopted in many of the articles in which it came the idea of criminal danger, including what was stated in Article (52) thereof regarding the temporary release of the convict before the end of the execution of the sentence if the behavior The convict calls, while in prison, for confidence and self-correction.

Likewise, what was stated in Article (13) of the aforementioned law regarding the division of convicts into grades according to the seriousness of each of them. And Article (18) that dealt with granting the prisoner a period of transition during which the restrictions are eased before the time for his release comes, and this depends on the behavior of the criminal and what his personality reflects of the inherent danger in it.

The Egyptian law has recognized the importance of the role of criminal risk in this area, and this is evident to us through the texts cited by the Egyptian legislator, which include some punitive systems whose basis is entirely based on criminal risk ⁽³⁹⁾.

Among the other laws that acknowledged the role played by criminal risk in determining the criminal penalty, whether mitigating or severe, is the Libyan Penal Code issued in the year 1959, which is considered one of the best laws dealing with the issue of criminal risk. With regard to the issue of recidivism, the Libyan law singled out the two articles (96-97), which make it clear that recidivism is one of the reasons for the severity of the penalty, as Article (97) stipulates that ((the penalty shall be increased by an amount not exceeding one third in the cases of recidivism stipulated in the previous article. If the similar recurrence is repeated, the penalty must be increased by an amount of not less than a quarter and not more than half. Nevertheless, the term of imprisonment may not exceed twenty years.)

It is clear through this text the extent of the direct correlation between the idea of criminal danger and the criminal penalty, which is intensified with recidivism, which is considered one of the main clues indicating the seriousness of the returning offender.

It can be seen that the idea of criminal risk is associated with the criminal penalty under the Libyan Penal Code by examining what was referred to in Article (141) of it, which referred to the permissibility of canceling preventive measures, for the person against whom such measures were taken if it was verified that the danger of this person had disappeared. It stipulated (...however, if the danger of the person for which preventive measures were taken ceases, it is permissible to order their cancellation, such as the expiry of the minimum period imposed by the law or before the

³⁹ Article (17) of the Egyptian Penal Code, which includes the individualization of punishment in terms of type and amount, according to the degree of criminal seriousness, whereby it is permissible to replace the punishment prescribed for severe felonies with a light one, in cases that require the judge's clemency. Whereas, Article (18) in the second paragraph of it clarified the method of executing the penalty based on the assessment of the extent of the criminal seriousness, as it states: "Anyone who is sentenced to simple imprisonment for a period not exceeding three months may request, instead of executing the prison sentence, that he be employed outside the prison, in accordance with the restrictions established by the investigation law." felonies, unless the judgment states that he is deprived of this option. Article (49) of the Penal Code referred to recidivism and what it represents as a source of severe punishment, as it represents evidence of the seriousness of the returning criminal, which, along with its existence, requires the severity of the punishment. Whereas, Article (55) of it permitted the judge to order a stay of execution of the penalty for a person whose circumstances suggest that he is not dangerous, as if the court had seen from the convict's morals, his past, his age, or the circumstances of the crime's commission that lead to the belief that he will not return to violating the law.



expiration of the additional period ordered by the judge, even in the case in which the danger of the person is assumed).

Likewise, among these laws is the Syrian Penal Code No. 148 of 1949, which referred to the “habitual offender”, a person whose personality is usually high in criminal risk, as referred to in Articles (252-257) and clarified that the habitual offender ((He is the one whose criminal act reflects a permanent psychological readiness, instinctive or acquired, to commit felonies and misdemeanours)) In confirmation of the principle that the criminal penalty intensifies as the proportion of criminal danger increases in the person, the texts of Articles (253-254) of the Syrian Penal Code come to confirm this principle Also, Article (253) of it stipulates that ((whoever is sentenced to a penalty other than a fine for an intended felony or misdemeanour, and is sentenced before the lapse of five years from the end of his sentence or its lapse by statute of limitations, with a penalty depriving him of freedom for a period of at least one year in another intentional felony or misdemeanor, he shall be sentenced He must be isolated if it is proven that he is a habitual criminal and that he is a danger to public safety))⁽⁴⁰⁾.

The relationship between the criminal risk and the criminal penalty appears clear in the folds of the Syrian Penal Code through the mitigating and aggravating reasons (circumstances) that the judge uses in order to appropriate the appropriate punishment for the criminal⁽⁴¹⁾.

In the same direction, we find that the Lebanese Penal Code has also stressed the importance of criminal risk in determining the criminal penalty. or misdemeanors). So the usual criminal is, according to the previous concept, a criminal with a high criminal risk, so the penal treatment will go towards intensifying the penalty for him, which is what the Lebanese Penal Code has already adopted⁽⁴²⁾.

⁴⁰ This is the principle followed by Article (1/254), which indicates that “every habitual criminal is sentenced to a penalty other than a fine, pursuant to Articles 248-249.” Judgmentally, he is considered a danger to public safety and is sentenced to a fine if he is sentenced to a penalty of deprivation of liberty for the sake of another legal recurrence).

⁴¹ It is no secret that the system of circumstances has been found to face the person's criminal danger, by reducing the penalty if the judge finds out the circumstances of the criminal, the method of his commission of the crime, the weapon used in the crime and the motive for its commission, and finds from all of that that the punishment must mitigate its severity based on the small size of the criminal risk. This is what is called (punitive exclusivity). Article (243) of the Syrian Penal Code stipulates that ((...if mitigating causes are found in a case, the court shall rule instead of death penalty with life hard labor, or temporary hard labor for less than twelve years and instead Life imprisonment with temporary hard labor for less than ten years, and instead of life imprisonment with temporary imprisonment for less than ten years, and it may reduce by half every other criminal penalty...)). In the same direction, the Syrian legislator has approved the system of exempted excuses, which has been dubbed (preferred excuses). Article (242) represents a clear example that indicates that such a system is an application of the principle that the penalty is commensurate with the seriousness in quantity and quality. Among the mitigating excuses is the perpetrator of the crime who committed it in a fit of intense anger as a result of an unjust and dangerous act committed by the victim).

⁴² This appears clearly in Article (266) of it, which stated that ((it is possible to judge the denial of civil rights, the prohibition of residency, and the expulsion from the country against a person who is proven to be habitual in crime, and whoever is sentenced as a repeater to a criminal penalty depriving him of freedom))), the Lebanese Penal Code has adopted the principle of severe punishment in order to Confronting the criminal risk, and on the other side of the equation, the Lebanese law has also adopted the idea of mitigating the penalty in line with the low level of criminal risk, including that the Lebanese legislator has approved the idea of stopping the execution of the penalty if the level of risk is low or non-existent, as stipulated in Article (169) of it stating that, ((the judge may, upon passing judgment on a misdemeanor or



With regard to the position of the Iraqi legislator on the idea of criminal danger, he recognized in the Penal Code a special role within the limits that dealt with precautionary measures. Article (103) of the Iraqi Penal Code No. (111) of (1969) stated that: One of the precautionary measures stipulated by the law against a person who has not been proven to have committed an act that the law considers a crime and that his condition is considered a threat to the safety of society.

The condition of the criminal is considered a threat to the safety of society if it is evident from his circumstances, his past, his behavior, and the circumstances and motives of the crime that there is a serious possibility that he will commit another crime.

It is clear from the text that one of the conditions for imposing precautionary measures in addition to the previous crime is the condition of criminal gravity ⁽⁴³⁾, and the Iraqi legislator has given the judge a wide discretionary power to verify the extent of the existence of criminal risk, because the judge is entrusted with detecting this risk by examining the criminal's conditions and past And his behavior and the circumstances of the crime he committed and the motives that prompted him to commit it. Hence, this means that the Iraqi legislator has taken the personal approach in defining the criminal danger, and that is that the assessment of the existence of this danger in a person is entrusted to the subject matter judge, whose duty is to stand on each criminal and clarify through the scientific examination that he conducts with the help of experts whether he is This offender constitutes a criminal risk or not.

And from the text of Article (103), we can derive the legal definition of criminal danger from the point of view of the Iraqi legislator that it is ((a situation that gives rise to the belief that the one who committed a previous crime may commit a new crime, through what is evident from his conditions, past, behavior, and the circumstances and motives of the crime)).

However, the position of the Iraqi legislator on criminal danger does not stop at the limits of the text of Article (103) of the Penal Code, which was limited to stating the conditions for precautionary measures and defining the dangerous condition of the criminal. That is, many of the systems that are based on criminal risk have been adopted by the Iraqi legislator. The role of criminal risk in the folds of the Iraqi Penal Code is evident clearly in the punitive singularization system, that system that is intended to suit the punishment for the personal situation of the criminal represented by his biological, psychological and social composition, and the motive that prompted him to commit the crime, taking into account the material circumstances of the crime that appear in the method and means of committing it. And the resulting damages to the victim and society ⁽⁴⁴⁾. Punitive singularization in this concept has two aspects, the first is related to the personality of the criminal and the second is related to the material of the crime, and therefore the suitability of the punishment to the personality of the criminal means that this personality must be studied in depth so that we can reach through this study the extent of the danger in the personality and thus we reach the appropriate punishment for it, and therefore the Criminal severity plays a role in punitive exclusivity.

vexatious penalty, order the stay of its execution if he has not previously passed judgment on the convict with a penalty of the same type or more severe)), and in addition to that, the Lebanese legislator has taken into consideration the mitigating reasons for the penalty. In Article (252) thereof it states that ((if mitigating causes are found in a case, the court shall rule instead of death penalty with life or temporary hard labor from seven to twenty years, and instead of life imprisonment with temporary hard labor for less than five years, and instead of From life imprisonment to temporary detention for less than five years, and it may reduce every other criminal sentence to three years...)).

⁴³ Dr. Fakhri Abd al-Razzaq al-Hadithi, Explanation of the Penal Code, General Section, Baghdad 1992, p. 515. As well as d. Mohsen Naji, General Provisions in the Penal Code, first edition, Al-Ani Press, Baghdad 1974, 454.

⁴⁴ Dr. Akram Nashat Ibrahim, General Rules in Comparative Penal Code, first edition, Boys Press 1998, p. 376.



The punitive singularization is of three types (legislative, judicial, and executive). The legislative singularization is represented in that the legislator sets general and other specific standards to determine the penalties and their suitability for the circumstances of the criminal and the crime. Article (128) of the Iraqi Penal Code expresses excuses as follows: ((Excuses are either exempt from punishment or mitigate it, and there is no excuse except in the cases specified by the law...)). One of the reasons for creating a system of mitigating and exempting excuses is the person's lack of criminal risk. As if the crime was committed for honorable motives or based on serious provocation from the victim unjustly. While the strict legal conditions embody the way created by the legislator in order to confront the criminal danger inherent in the person of the criminal ⁽⁴⁵⁾.

The punitive singularity may be judicial, and the legislative singularity, despite its importance, may not be appropriate to the case of the criminal and his special circumstances, and for this we find that the legislator allows the judge, who is based on the application of the penalty, multiple systems by which he can determine the appropriate punishment, and this is achieved by the judicial singularization of the penalty, and one of the most important The means of judicial exclusivity that the judge possesses are:

- 1- The quantitative gradient between the lower and upper limits.
- 2- Qualitative discrimination between two or more penalties or a combination of them.
- 3- Reducing the penalty to less than the minimum limit or intensifying it to more than the maximum limit.
- 4- Suspension of execution of the penalty.

In sum: the focus on the seriousness of the criminal has a major role in determining the criminal penalty in the legislation, which confirms the distinctive role of the seriousness of criminal behavior, which is evident through the recognition of laws and legislations. Therefore, it is clear to us that the relative weight of the criminal risk has played, in light of the criminal legislation, a serious role in determining the criminal penalty, as it represents one of the main bases in assessing the criminal penalty.

Section two

The role of relative weight in determining the seriousness of criminal behavior at the judicial level
The system of quantitative gradation of the penalty is represented by the legislator defining the lower and higher limits for the penalties, and leaving the judge with the authority to estimate the amount of the penalty between its limits, and therefore the judge has a choice through the evidence that accompanies each criminal brought before him, and by studying the file of this criminal related to his personality, circumstances and the circumstances of the commission of the criminal act From all of this, the judge can deduce whether the offender has a high criminal risk, so he resorts to intensifying the amount of the penalty or reducing it to its minimum level if he finds that the criminal risk is non-existent or small ⁽⁴⁶⁾.

As for the system of qualitative discrimination between two or more penalties, it is a system based on giving the judge authority to choose between two types of punishment. The judge has the right to rule on the type of penalty that is more severe between the two penalties, but if the seriousness of the offender is small, then the judge here will choose the lighter penalty for the offender, and

⁴⁵ Aggravating circumstances are divided into general and special aggravating circumstances. Special aggravating circumstances are those that are specific to each crime, meaning that they are available in one crime but not in others, such as the aggravating circumstances of theft and the aggravating circumstances of wounding, beating and abuse, except In these circumstances, there are general aggravating circumstances that extend to include all or most of the crimes. The Iraqi legislator did not know the general aggravating legal circumstances in the Iraqi Penal Code. Dr.. Fakhri Abd al-Razzaq al-Hadithi, previous source, pg. 468.

⁴⁶ Dr. Akram Nashat Ibrahim, General Rules in Penal Code, previous reference, p. 355.



the authority to qualitatively distinguish between two penalties is based on the two systems of optional penalties and alternative penalties ⁽⁴⁷⁾.

As for the system of commuting the sentence to less than its minimum limit or intensifying it to more than its maximum limit, it is what is known as the system of mitigating judicial circumstances and aggravating judicial circumstances. Iraqi Penal Code ⁽⁴⁸⁾.

So, the judge, if he finds that there is a circumstance that calls for clemency for the criminal, has the right to drop it below the minimum penalty prescribed for the crime, and thus the role of criminal risk comes in the system of judicial mitigating circumstances. - That is, the danger - to a small degree that does not deserve the punishment prescribed for it in the law.

Contrary to the system of mitigating judicial circumstances, the judge must intensify the punishment to more than the maximum limit prescribed by law if he finds that the circumstances of the crime and the criminal and his criminal gravity deserve strictness, as indicated by Article (135) of the Iraqi Penal Code, which clarified in its provisions some aggravating circumstances that If available, the judge may exceed the legally prescribed maximum penalty for what these circumstances indicate of the seriousness of the offender's personality, such as ((committing the crime for a sordid motive, and committing the crime by taking advantage of the opportunity of the victim's weak awareness or his inability to resist, or in circumstances that do not enable others to defend him and use Brutal methods of committing the crime or mutilating the victim and exploiting the perpetrator in committing the crime his capacity as an employee or his abuse of his power or influence deriving from his occupation .

Such as the systems for the judicial singularization of the penalty, the system of stopping the execution of the penalty stipulated in Article (144) of the Penal Code, which permitted the court to decide to stop the execution of the sentence of the convict when the conditions for stopping the execution are met, which are conditions related to the crime and others related to the criminal and conditions related to the penalty, as the above article stipulates However, ((the court may, when passing a judgment in a felony or misdemeanor with imprisonment for a period not exceeding one year, order in the same ruling to stop the execution of the penalty if the convict has not been previously sentenced for an intentional crime and it finds that his morals, past, age and the circumstances of his crime give reason to believe that he will not Committing a new crime. According

⁴⁷ With regard to optional penalties, it stipulates that the law leaves the judge with the freedom of choice in sentencing the criminal to one of two penalties of different type, or both, and its example is in the Iraqi Penal Code, Article (401), which is punishable by imprisonment for a period not exceeding six months and a fine not exceeding (50) dinars, or one of these two penalties. Whoever publicly commits an immoral act, as for the alternative penalties, it allows the judge to substitute a penalty of a certain type in place of a penalty of another type originally prescribed for a crime, in order to suit the implementation of the alternative punishment more than the implementation of the original punishment due to the criminal's personal situation, i.e. his seriousness, for example, Article (446) of the Penal Code Al-Iraqi, which permitted commuting the prison sentence prescribed for the crime of theft with a fine not exceeding twenty dinars if the value of the stolen money did not exceed two dinars.

⁴⁸ Article (132) of the Iraqi Penal Code stipulates the following:

(If the court deems in a felony that the circumstances of the crime or the criminal call for clemency, it may change the penalty prescribed for the crime as follows:

- 1- The death penalty is the penalty of life or temporary imprisonment for a period of no less than fifteen years.
- 2- The penalty of life imprisonment is the penalty of temporary imprisonment.
- 3- Temporary imprisonment is the penalty of imprisonment for a period of no less than six months.

As for Article (133), it states: "If there is a circumstance in the misdemeanor that the court considers calls for clemency for the accused, it may apply the provisions of Article (133).

to this article, for the permissibility of stopping the execution of the penalty, the offender must not have been previously convicted of an intentional crime, regardless of its type, provided that the court finds that the criminal's morals, past, age, and the circumstances of his crime lead to the belief that he will not commit a new crime again, and all of this is considered UAE. This indicates that he has no criminal risk, i.e. the absence or weakness of his criminal tendencies, and this confirms to us that the criminal risk has a major role in the system of stopping the execution of the penalty, because the judge cannot order a stay of execution for a criminal who has a future tendency towards committing the crime, i.e. a dangerous criminal list ⁽⁴⁹⁾.

As for the executive individualization, it is intended to give the department concerned with the implementation of the punishment the necessary authority to determine the appropriate punitive treatment to reform each person sentenced to a penalty depriving him of liberty. ⁽⁵⁰⁾

Conditional release is a system that permits the release of a person sentenced to a penalty depriving him of his liberty before the expiration of the term of the sentence he is sentenced to, if the court finds that he has straightened his conduct and good behavior while he is in the social reform departments, which calls for reforming himself, provided that he remains straight after his release during a period Experience until the term of the sentence imposed on him expires, otherwise he will be returned to the social reform departments without the need for him to commit a new crime ⁽⁵¹⁾. The Iraqi legislator has devoted Articles (331-337) of the Code of Criminal Procedure No. (23) of 1971 to the provisions of conditional release, as it permitted the conditional release of a person sentenced to a custodial sentence if he spent three quarters of its term, provided that it is not less than six months, during which it is clear He is well behaved.

The approval of the Iraqi legislator for the conditional release system also means his recognition of the importance of the idea of criminal danger, because our access to such systems and systems similar to them means that we have access to the idea of looking at the person of the offender in a way that is equivalent to the crime through the manifestations of individualization, including the conditional release, and these aspects have severe The connection with criminal risk and this matter appears evident from the extrapolation of the texts that referred to the conditional release in the Code of Criminal Procedure, and in particular those related to the conditions that must be met by the convict when ruling on conditional release ⁽⁵²⁾.

⁴⁹ And the Iraqi Court of Cassation decided that ((to stop the execution of the sentence issued against the accused, the court must verify that the accused has not been sentenced before, by reviewing his precedent sheets))). Decision No. 386, separate penalties 87-88 of 9/26/1987, Issue 3, 1987.

⁵⁰ Dr. Akram Nashat Ibrahim, previous source, p. 374

⁵¹ Dr. Fakhri Abd al-Razzaq al-Hadithi, previous source, pg. 412.

⁵² These conditions are as follows:

- 1- That he had upright conduct and good behavior while he was in the social reform department, which calls for confidence in his reformation (Article 331 / a).
- 2- He should not have been sentenced by the military courts established according to the Code of Military Procedure (Article 331/b).
- 3- He should not be a recidivist who has been sentenced to more than the maximum penalty prescribed for the crime in accordance with the provisions of Article (140) of the Penal Code (Article 331/a-1).
- 4- He should not have been convicted of a crime affecting the external security of the state or a crime of counterfeiting currency, stamps or government financial bonds (Article 331/a-2).
- 4- That he has not been convicted of a crime of sexual intercourse or sodomy or assault on honor without consent or a crime of sexual intercourse or assault without force, threat or tricks on the honor of those under eighteen years of age or a crime of sexual intercourse or sodomy with incest or the crime of incitement to debauchery and debauchery (Article 331/a-3).



Among the systems of individualization of execution for other punishment is the system of classification and individualization of punitive treatment, as Article (2) of the Public Institution for Social Reform Law No. (104) of 1981 stipulates that ((the institution works to correct inmates who have been sentenced to penalties and measures depriving them of freedom, by classifying them and rehabilitating them behaviorally and professionally and educationally). Article (17) of the institution's law stipulates the establishment of a special place known as the Reception and Diagnostic Center in each department of social reform, in which inmates are interviewed when they join the department, medical, psychological and social examinations are conducted for them, and they are classified accordingly, that is, on the basis of the criminal risk they represent, within a period of time. A maximum of two months from the date of joining the center. There is no doubt that the creation of such a system within the correctional institution means the importance of the criminal danger of the prisoners, in that it will be the decisive factor in classification among the convicts.

Therefore, the judge, when exercising his discretionary power in estimating the criminal danger of the criminal, which is one of the material legal facts, may be surrounded by some difficulties in demonstrating it, and that is when it is latent in the same offender and the signs of that case do not hint at the imminence of the crime. He may base his judgment only on evidence, that is, his freedom is restricted, so it is fair that there is complete evidence in the criminal incident. If this evidence is available, his freedom is released from every restriction ⁽⁵³⁾.

The Iraqi Central Criminal Court ruled, in a case whose facts are summarized, that on 24/7/2007 the victim (M) was severely beaten while he was detained in (Bucca) prison, which led to death. e) By agreement and participation among themselves in killing the victim, the victim was severely beaten and died due to the severity of his injury. food in health facilities, as stated in the statements of the two witnesses, which prompted the criminals to beat the victim with iron bars used for the purpose of supporting the electrical wires in the camp. Some of them generated complete certainty that the aforementioned had committed the crime of murder, based on the authority of the court to assess the testimony of the witnesses in terms of objective and personal aspects, and what the court noticed about the witnesses during listening to their statements of a state of confusion and anxiety, between their fear and confusion of the accused even though the witnesses had been fired Their release, which indicates the power of the accused, their power of influence, and their power to influence the witnesses, even if they are outside the prison, so the court decided to sentence the defendants to death by hanging (H, F, R, D, H) ⁽⁵⁴⁾.

5- A person sentenced to life or temporary imprisonment for a theft crime shall not benefit from this system if he was previously sentenced to this penalty for another theft crime (Article 331/a-4).

6- He should not have been sentenced to life or temporary imprisonment for the crime of embezzlement of public funds, if he was previously sentenced to this penalty for a crime of this kind, or to imprisonment for two embezzlement crimes consisting of two or more consecutive acts, even if its sentence has expired for any legal reason (Article 331 / a-5).

7- That a decision of conditional release has not been issued in his interest and then canceled (Article 336).

These conditions clearly indicate that whoever commits the previous acts involves a criminal risk that negates the reasons for ruling the conditional release of this accused.

⁵³ The judge must take into account the offender's ability to commit the crime in relation to:

1 - Motives for criminality and the character of the criminal. 2- Criminal and judicial precedents, their quality, and the behavior of the criminal's life before the crime. 3- The individual, family and social living situation of the offender. 4- Contemporary and post-crime behavior.

⁵⁴ Central Criminal Court Decision No. 1502/C 2011/2012, dated 7/8/2011.

In summary: By extrapolating this decision, we notice that the court imposed the most severe punishment due to the seriousness of the criminal behavior of the prisoners, in terms of their commission of crimes of relative weight and the most serious, and also on the assumption that the returning criminal is more criminally dangerous than the novice criminal, since he did not Deterred from punishment from the previous offense. It is noted that the punitive nature of the death penalty is related to political purposes that achieve national interest. The death penalty is used to eliminate criminal risk in addition to achieving general deterrence in society.

CONCLUSION:

- 1- The goal of penal texts is to protect interests. The criminal legislator, when drafting legislative texts, is guided by a specific benefit represented in protecting a legitimate human interest, as no text is devoid of an interest that the legislator assessed its importance, so he bestowed his protection on it, no matter how insignificant it is.
- 2- The law in general seeks to protect the foundations or pillars of society, whose necessity is estimated by satisfying specific needs on which the comprehensive edifice of society stands, and that the form of this protection is graded according to the extent of the importance assigned to its subject, and if this importance in the view of the legislator reaches a great position, he gives it criminal protection, considering Infringement or the fear of infringement is a crime that entails the responsibility of the perpetrator and then the imposition of a penalty on him.
- 3- The crimes are classified into several types, according to the criterion of their seriousness and relative weight, as the criminal legislation did not follow a single approach in dividing the crimes. Some of them took the tripartite division, where he divided it into felonies, misdemeanours, and infractions.
- 4- The legislator takes into account the intrinsic gravity of the crime when determining the penalty, but he sets before the judge penalties ranging from a maximum and a minimum, leaving the judge with discretion in order to achieve a point of balance between the intrinsic gravity of the crime.

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