The Criminal Responsibility Of The Judge For A Serious Professional Error (A Comparative Study)

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Abstract

It is recognized that judges are the guardians of the protection of rights and freedoms and the application of laws on the basis of which justice is established between individuals in society, so their actions and behavior must be above suspicion and at the level of trust deposited. Otherwise, the judge is subject to criminal responsibility if he commits a criminal act and is punished for it, and this penalty for acts of bribery and the treasury is a year, affecting the judge or the witness, impeding the course of justice and affecting the judiciary. Yes, the procedures provided that this is during his work, on the occasion of his work, or by virtue of his work. On the other hand, there are acts that may occur from the judge for which he is not criminally responsible. The absence of a text criminalizing and punishing them under Iraqi legislation. Among these acts: unlawful imprisonment, gross judicial error, judicial fraud, and judicial fraud, and this leads us to the necessity of careful selection of judges, and requires the qualities of competence, integrity, honesty, independence, integrity and honor, because the single judge committed any suspicious behavior. It would damage the reputation of the entire judiciary, the errors of judges may not be tolerated, and judicial immunity should not be confused with the judge's accountability for his mistakes.

Introduction

If the judicial error is contained in all kinds of cases such as civil, commercial and others, but its impact remains more serious and dangerous in the penal provisions, because it touches the most important legally protected interests, which are human life, freedom, reputation and the future. Judicial error in this sense goes in one direction, i.e. the verdict of the innocent or the acquittal of the guilty. Therefore, most contemporary legislations have established a special mechanism for reviewing the judiciary’s errors in issuing judgments as a basis for its independence, and the balance between achieving the right and the requirements of justice on the one hand, and legal principles that enhance the credibility of the judiciary. Judgments and the independence of the judiciary on the other hand. This requires that the procedures for questioning the criminal judge be surrounded by legal safeguards aimed at protecting the judge from subjecting him to malicious trials or other practices that undermine the prestige and independence of the judiciary. Opening the door wide and allowing those who consider themselves oppressed as a result of the ruling against them to review the competent authorities, corrupting the work of the judiciary and making it vulnerable to vibration and lack of confidence. On the other hand, the adoption of the principle and its restriction with impossible controls and conditions that make the supposed right holder unable to fulfill them to accept its revision, or even if it is accepted in the form, obtaining a result in the basis will not be guaranteed for several factors: the first of which is the text itself that is likely to be interpreted. The second is the course of the procedures and their complexities before reaching the stage of governance, which is almost monopolized by them. Error name. It should be noted that retaliation against the criminal responsibility of the judge is to prepare an exception from the original that specifically recognizes the immunity of judges, not their responsibility for their actions, protecting them from conspiracy and defamation, and undermining the prestige of the judiciary. Denial of the comparative Iraqi Penal Code. To judge criminal responsibility for a serious professional error. Is the judge's partial responsibility the result of a serious error in Iraqi legislation? What is the perceived interest in establishing criminal liability for a faulty judge?

The concept of error of serious positive for the responsibility of the criminal

Al-Sharwani’s professional error is “that mistake committed by the judge in the occurrence of a flagrant error that he paid to him if he was concerned with his usual duties of attention, negligence or negligence in his work as well, and whoever rewards him respects the law.” The principles or facts of the case established in the case file (1), or is it a flagrant mistake with a high degree of seriousness that the wise judge cannot commit. Reasonable behavior is considered normal for an employee in such circumstances, and wrong volitional behavior leads to a harmful result that is expected or should have been expected, but it does not accept its creation and the actor has not accepted the truth and reasonable behavior of an ordinary employee is governed
by social life, environment, habits and people’s knowledge of their work and the nature and conditions of their profession, or lack of insight or miscalculation that leads to miscarriage of justice and thus harm to others, and the assessment of what is attributed to the judge as dangerous or not dangerous is an objective subject to be evaluated by the competent court. Reasonably evaluate it and prove its origin in the case file, after taking into account the working conditions surrounding the judge, the possibilities available to him, the number of cases presented to him and the number of sessions held for each of them. Week, the system of judges’ jurisdiction, and the efficiency of the judge’s technical assistant staff, all of these factors affect the judge’s efficiency, because their availability or non-availability helps the judge in his work, or hinders him, so it must be taken into account. Calculation when determining the critical error. In conclusion, we share the opinion (4) in defining a serious judicial error as that error that occurs on the part of the judge when the judge violates the principles of law. Rules and simpler legal acts, such as imposing a certain penalty on a judge that is less than its minimum without a legitimate legal justification, or arresting a crime that does not require the legislator to issue it used an arrest warrant.

**Justifications for the criminal responsibility of the judge**

The judicial institution is like any other governmental institution. It should not remain outside the framework of accountability, especially if it is proven negligence or negligence by members of the judiciary, and this is justified in the international conventions ratified by Iraq, especially the International Covenant on Civil Rights. and political rights, as the text stipulates that “every person who has been arrested or detained has the right to compensation” (5), and what supports this is that the Iraqi legislature has not yet recognized the possibility of granting a decision to deport them before the trial to release them from the investigative judge, or a ruling for him The power of an order to invalidate their innocence or exempt them from any compensation, in contravention of the requirements of social justice. The statements of Walt Q. Dunk about the goal which the legislator sought to achieve by questioning the accused judge, is the desire to protect the legal rights of opponents, or the desire to preserve the reputation and integrity of the judge, boy from the stability of the situation. In the community? To understand this topic, we divide it as follows:

**Fulfillment of justice**

The protected interest is determined in the judge's responsibility by protecting the right of the litigants to a fair trial by giving them guarantees; it is a personal interest that only benefits the litigants. Rather, the legislator’s goal in questioning the judge was to restore balance to the society that had harmed the wrong ruling, as it led to the destabilization of confidence in the judiciary, which means that the judge had mistakenly waived his judicial immunity to grant him. . In order to complete the judicial work, making him responsible for his criminal actions as the case of the ordinary citizen, based on the principle of criminal justice, which is one of its most important pillars. If the judge exceeded the limits of his authority related to the trial, he exceeded the assault on the prestigious interest to secure the legislator to protect it, which is what the judge assaulted on the right wrong behavior for which he deserves criminal responsibility, because it is a breach of his duties that falls under the impartiality criterion that entails compromising the interests of protected law. Therefore, the reason for the criminal responsibility of the judge revolves around rebalancing tin fairness to the oppressed; his right was restored to him.

**Activating the principle of equality**

One of the justifications calling for recognizing the criminal responsibility of the judge for his judicial errors is the principle of equality, which states that all citizens are equal before the law. And whoever among them commits an act that violates the rule of law; he must bear the responsibility for his act. No one is excluded from this, regardless of his position, which is the text of the Constitution of the Republic of Iraq for the year 2005, which stipulates that “Iraqis are not equal before the law without discrimination. (6) Accordingly, the principle of equality between the judges’ right to independence in removing the ruling from interference, and the right of litigants to demand that the judge be held accountable for errors that affect their constitutional rights. It is not possible to get rid of the negative effects resulting from the error except by referring the accused judge before the judiciary to limit his arbitrariness and cut off the path in front of him to prevent him from carrying out his wrong ruling against the opponents. From the above, it is clear to us that the studied interest in the criminal accountability of the judge is focused on two aspects: The first is the protection of the constitutional rights of the judge. f- The accused and the person directed against him (the litigants). Second: Prosecuting the wrong judge in his crime and taking revenge on him as a result of breaching the legal obligations assigned to his obligations before the judiciary led to the accident in the errors of his violation of duty with the required caution and caution, and that is why the legislature adopts the criminal responsibility of judges because the judge is a human being who is infallible or free from error, and until he The judge does his work with caution, and in order to stay away from any illegal act, so as not to harm his work, and the litigants feel that their rights are safe, and we suggest the inclusion of penal provisions in the Penal Code that include an affirmation that any crime committed according to the judge is subject to questioning. The general rules of penal law, and this does not replace his disciplinary or civil liability.

**The official penal judge for the procedures workers**
Talking about the criminal responsibility of the judge for his procedural actions raises the question about what is the independence of the judiciary. Does this independence mean immunity from criminal responsibility? The independence of the judiciary means that the judiciary is on an equal footing with the executive, and may not be the first to issue judicial laws by rulers (a) and repeal on the basis of the right to legislate, and to abstain from the executive branch for the power to interfere in the affairs of the judiciary for the sake of the image of a. But that does not mean freedom in absolute rule to do what he wants without any controls and free of any responsibility, it does not mean immunity against illegal workers issued by the judge, and there is no contradiction between the independence of the judge and self-responsibility, if the conditions are not met, as one of the reasons for independence is called Unleashing and stripping the judge Contrary to what is stated in the report, responsibility is one of the guarantees guaranteed by the legislation to prevent the bad performance of the judge (8) on a judge subject to a special pattern of different responsibilities from the collective pursuit of ordinary individuals, providing them with the necessary measure to exercise their functions Which would protect them away from lawsuits brought by individuals, which could include, in essence, efforts malicious and abusive measures intended to pressure and undermine judges( 9) hence the immunity that should be provided to judges is not objective immunity from criminal liability. This is a list if the conditions are met. Rather, it is a procedural immunity against criminal procedures for ordinary individuals, which means that judges are not held accountable for the mistakes they commit, not in accordance with the rules stipulated by the laws of the judicial authority (10), and this clearly indicates d through the protection available to them at the stages of the lawsuit in terms of moving it, investigating it and the competent authority. The acts that constitute crimes committed by him while carrying out his duty, whether they are a felony, a misdemeanor or an infraction, as if the judge was torturing the accused to force him to confess, or with a punishment more severe than the punishment with which he should be sentenced. or wiThe law did not provide for other forms of procedural defects that lead to the invalidity of the judgment issued by the judge and thus determine his penal responsibility, especially if the judge’s bad faith and mediation is proven, and this is what Article (234) of the Penal Code stipulates as follows: “He shall be punished by imprisonment and a fine or one of the These two penalties are for each judge who issued a ruling that was proven to be incorrect and was the result of mediation with him. where the judge is considered, according to this article, to have committed one of the crimes against the course of justice, specifically in a crime affecting the course of justice.(11) The judge and the rest of the procedural persons, such as Members of the Public Prosecution and members of the judiciary, may be a reason for the occurrence of procedural violations that require determining invalidity, which at the same time constitute crimes criminal responsibility arises in accordance with the provisions of Chapter Three of Chapter Six of Book Two of the Penal Code that came under the title (Employees who exceeded the limits of their jobs) In Articles (330-333) thereof, where Article (330) states: “Any public servant or person charged with a public service unfairly refrains from performing one of the duties of his position or intentionally violates one of his duties as a result of an invitation, recommendation, mediation, or any other reason. Not indicated wow. Article (333) also stipulates that “Any public official or agent who tortures or orders the torture of the accused, witness or expert to force him to confess to a crime, make statements, secretly order things, or not give a specific order. Their opinion and be by virtue of torture or the use of force or threat. It is noted that these texts came in light of that it applies to all employees A and those charged with the locality in general, whether the procedural persons are the employees of pain other than him if he refrains from performing his job or deliberately breaches its duties in violation of the provisions The law, which leads to criminal liability for it.

**Officials of the penal judge for pre - trial detention**

Justice requires that a person shall not be deprived or restricted of his freedom except by a court ruling issued by a competent judicial authority. However, an exaggeration in the observance of justice is detrimental to the public interest, if you do not agree with the detention of some persons for the purpose of investigation and trial, but the foregoing considerations do not change the fact that detention is a measure that seriously violates the freedom of individuals, and must be taken in the narrowest manner, and has taken procedural legislation in consideration of this fact, and that it recognizes the powers of investigation and trial with broad powers, to order arrest or not, and those powers may result from the hasty use, if not arbitrary, which is arbitrary in two aspects, first, the excessive use of arrest, and secondly, the lengthening of the period, but Society or justice is the interest that has judged the harm, and in this case it does not lead us to question the right of the aggrieved to demand compensation for what they have suffered for the same reason, in applying the basis that pays the sheep, just as individual sacrifice. Fences. His freedom in order to preserve the security of society and the latter must compensate him for the damage he sustained. (12) It is known that arrest is a temporary measure required by the interest of the investigation, and it can be referred to in some cases to prevent the escape of the accused whose guilt may be proven after the issuance of the arrest decision, or for fear of the influence of this accused during the release of witnesses in the case, or tampering with evidence related to the crime The investigative authority has the right to issue arrest, detention and release orders. Or otherwise, even if the case is referred to the Court of First Instance, arrest and release become within its jurisdiction. (13) However, the Iraqi law did not allow the accused to compensate him if there was handwriting of the judge competent by virtue of his work or from the
compétent court, and the error mentioned systematic errors that occur because of the work. Ordinary spending, except for what is stated in Article (286) of the amended Civil Procedures Law No. 83 of 1969, but the Iraqi legislator permitted the accused to claim compensation for the reason for his arrest with the intention of conviction and harm. humiliation and revenge, such as if the informant, for example, or the one who gave false testimony against him, or one of the experts in the case, after the acquittal of the accused becomes final, but the question that arises is that if the responsibility for compensation is not assigned to a specific person, is it permissible for the victims of justice to claim Does the state compensate them for the material and moral damage they have suffered? Some say that individual release is better than compensating him for the suffering he endured in detention without considering whether or not justice has wronged him (14) the individual should not resort to the judiciary at the expense of the state. The way to complain is difficult and dangerous because of the difficulty of proof. Therefore, it cannot be described as a legal solution, as it is the path taken by the accused who was deprived of his freedom and days away from his family and his general social life, and his work and livelihood were disrupted. His reputation and dignity and other damages were tarnished as a result of his arrest, and he was acquitted of them after his release. And there are those who said the issue of compensation borne by the state, justifying this by saying that this responsibility is based on the harm that befalls the members of the group, because the social danger to which the individual is exposed is the one who caused his harm. The group and not the error in criminal procedures, and this principle was adopted by the French legislator, as the legislator did not ask to prove an error on the part of the judge, and thus prove the innocence of the accused, and the latter deserves compensation. As for the harm done to him, whether his release is the result of closing the case for insufficient evidence or the invalidity of the charge, this principle is one of the reasons why remote liability can be held as compensation for the harm done to the detainee. It is affected by the embodiment of the principle of social solidarity and the application of the idea of bearing responsibility and risks that the state must build and guarantee. (15th) It should be noted that the Iraqi legislator authorized the Public Prosecutor to monitor the legitimacy and to challenge decisions that violate the law, in any decision issued by the investigative judge regarding any reserve, if the Public Prosecution was found to be in violation or was moved arbitrarily on the spot. Take legal action on appealing such a decision to submit the appeal (16) accordingly, any decision that violates the law issued by the investigating judge, and carries with it an arbitrary use of the right and a violation of legal texts, the member of the Public Prosecution, is arrested. The person or his agent and any party related to the case and affected by this decision have the right to appeal it before the competent authorities. (17) To cancel the decision or claim compensation for arbitrary arrest and material and moral damages, when the accused is arrested and may spend a long or short time, then he is released either during the arrest period or after being referred to the specialist. Courts and some of the accused are punished less than the time spent in detention or the penalty of deprivation of liberty despite the time suspended for those arrested and convicted persons (18) Because of the Constitution of the Republic of Iraq for the year 2005, no citizen may be arrested or investigated except by a court ruling. He has also been deprived of physical and psychological torture and inhuman laboratories, and given the right to those affected by such abuses to demand compensation for moral and material damage in accordance with their law (19) where there are legal texts contained in the Iraqi Criminal Procedure Code and the Iraqi Criminal Procedure Code. The Judicial Oversight Council Law, all of these laws called for an investigation into violations that affect the freedoms of the citizen and the establishment of the necessary punishment, as well as the Universal Declaration of Human Rights. He emphasized respect for freedom. From people and non-violence is guaranteed only in accordance with the law, and in front of theses, we do not find a special law regulating a path that victims of justice take, for the purpose of filing a lawsuit and claim, and on which party are lawsuits filed, and is there a specific time limit for the establishment of such lawsuits, and who is responsible about compensation (20) The fact that compensation is an effect of judicial responsibility and the effect of an active role in the stability of public order in the country and in the protection of rights, because the right loses its value unless it is protected, and compensation also takes into account the psychological dimension of the right holder or the last victim (21) From the legal thrust to compensate people who have been ill-treated, whether as a result of arbitrary arrest, or as a result of arbitrary and physical torture inflicted by M on the effect of arrest, the legislation should be E. This regulates the subject of CM Z (Justice Victims Compensation Act) clarifying who is responsible and how to compensate And who are the defendants included in that and before any court such lawsuits are established, and compensation must include all those released, whether for the absence of a crime or evidence against them, or their release for lack of evidence and at all stages of the investigation and trial, and the details of compensation, the responsibility of The legislator, taking into account giving the right to whoever legally depends on the accused from his first-degree relatives to claim compensation in the event of the accused’s death, and the request is not limited to e- the accused himself, without affecting the course of justice, public money, and violating the law, and the duration of a lawsuit should not be Compensation is open, but is determined by a period of three months from the date of the judgment. Acquittal or release to a final degree. (22) Hence the necessity of reporting the judge’s responsibility for compensation for material and moral damage caused to the accused as a result in the event that a decision from the aspects of a case, complaint, or verdict of innocence is rejected, especially if such decisions are based on the
act, then the defendant’s deed does not fall under the weight of any punitive text, which reflects the judge’s negligence in his or her ignorance of primary legal principles, which should not be hidden, in, in many cases, investigative judges issue intent arrest warrants after hearing the complainant’s statements only, without hearing the statements of witnesses, relying on facts. The details are incomplete, which contributes to the occurrence of the error, and after the arrest of the accused for long days, a decision was issued by the investigating judge to reject the complaint and release the accused in accordance with the provisions of Article (130) fundamentalism, because the act is not punishable by law. e by a law, or the court issues its ruling acquitting the accused for the same reason, in accordance with the provisions of Article (182) of the Fund Law and examples of that are many in our practical reality. In addition to the above, it is necessary to activate Article (56) of the Judicial Organization Law regarding (obscene errors) committed by judges, including (arbitrary) arrests resulting from the judge’s negligence in the performance of his job or what is required by a. A long period of time to correct them, whether procedural or substantive, which ultimately contributes to motivating criminal judges to work hard to resolve cases as quickly as possible and reduce the errors they make. There is also a need to enact legislation regulating the process of pretrial detention for the victim of the right to obtain compensation for the damage resulting from the judgment issued against him, so as not to justify his criminal responsibility. A long period of time to correct. In cases where the act is not criminalized, and punishment, especially since the grave error is one of the highest levels of error, and its effects are dire, so he does not leave his work without criminal prosecution or accountability. The criminalization of grave errors does not affect the status of the judiciary, but rather confirms the independence and impartiality of the judiciary and preserves the rights of litigants.

Conclusion
Results
A. We did not notice that there are actions that the judge does not rise to the level of his criminal responsibility because there is no criminal text that contradicts them and decides that they have a penal penalty, and therefore when he commits them with his scepter, the criminal responsibility does not rise and he is not criminally prosecuted by hand, and he has been prosecuted, and the arbitrator decides not to bear Liability, and this punishment acts: wrongful arrest, gross judicial error, judicial fraud, judicial fraud does not constitute a crime and does not entail a criminal penalty, so as not to justify his criminal responsibility for it.
B. Comparing the procedural legislation with (a) the responsibility of the criminal judge for serious errors with the possibility of claiming compensation for the damage resulting from the judgment issued against her, because the errors of the judicial part of t indicate lack of foresight, neglect and disregard for the rights of others requires such criminalization and punishment.
C. The Iraqi legislator in the Penal Code ignored dealing with crimes related to the work of judges or perceived crimes committed before birth, but judges independently, but they came with general crimes regardless of the person of the offender, whether he was a judge. Or not.
D. The law does not prevent the criminal judge from being held accountable. A- In cases where the act is less than that to the point of a crime, he does not enjoy procedural immunity from criminal prosecution for violating laws that amount to crimes, where judges can be convicted of forgery, abuse of their powers, or disclosure. Of secrets. Their profession.
E. The legislator’s goal is the responsibility of the criminal judge to activate the principle of criminal justice on the basis of the constitutional principle of equality.

Recommendations
A. We suggest to the Iraqi legislator to include the legal texts that have been implemented and to punish the judge when committing serious mistakes, as there is no unpalatable and logical reason for obligating the judge to write Jesse in a way that causes great harm to the person. opponents and stays. Getting rid of incrimination and punishment, especially since the grave error is one of the highest levels of error, and its effects are dire, so he does not leave his work without criminal prosecution or accountability. The criminalization of grave errors does not affect the status of the judiciary, but rather confirms the independence and impartiality of the judiciary and preserves the rights of litigants.
B. Activating the role of monitoring the work of the judiciary on a continuous basis and working to refer the offender to the competent court to limit any possible error and impose appropriate penalties to the degree of error committed by the judge.
C. The Supreme Judicial Council invites clans as judges in specialized sessions and workshops held by the Judicial Institute with the aim of clarifying the requirements of judicial work and the mechanisms for evaluating the first judicial brother and ways to address them.
D. We demand the Iraqi legislator to approve a draft law to compensate the victims of justice to guarantee the rights of those affected by the arbitrary judicial procedures.


Article (9/V), International Covenant on Civil and Political Rights is a multilateral treaty adopted by the United Nations General Assembly in Resolution 2200 A of 16 December 1966, which came into force on 23 March 1976 in accordance with Article 49 of the Covenant, which allowed the treaty to enter into force three months after the date of.


Muhammad Asfour, The Independence of the Judicial Authority, without the name of the publisher and the place of publication, p. 214.


NabihSaleh, the mediator in explaining the origins of penal procedures, a comparative study, part 1, Al-Jalal Printing Company, Cairo, 2004, p. 243.

This is confirmed by Article (10) of the Universal Declaration of Judges, which states: “No action may be taken against any judge, whether it is a civil action in the circumstances that permit it, or a criminal proceeding, including Arrest, except under circumstances that ensure that no action will be taken against the judge. Impact on the independence of the judgeQuoted by Dr. Urjal Adnan Obaid, previous source p. 230.

This legislator organized crime in the first chapter of Chapter Four of Book Two under the title N (Prejudice to Judicial Conduct) in Articles (233-242) of the Iraqi Penal Code No. 111 of 1969 amended.

Fouad Ali Al-Rawi, Arresting the Accused in Iraqi Legislation (Comparative Study) I 1, 1983, p. 133.


Dr. Adnan Sudkhan Al-Hassan, same source, p. 81.

Dr. Adnan Sudkhan Al-Hassan, same source, p. 82.

Article (11 / first) of the Public Prosecution Law No. 49 of 2017 stipulates that a member of the public prosecution may appeal in accordance with the provisions of the law against the judgments, decisions, and procedures issued by the investigative judges. Courts and bodies stipulated in this law.

We recall the following decision in this regard issued by the (first expanded) commission No. 94, dated 3/1/1995, which states: ((The assigned judge (...) Najaf investigative judge committed a number of violations during the performance of his duties, which is his investigation In the case concerning the complainant (...) and the accused (...) and his acceptance of reconciliation between the two parties, despite the decisions to arrest the complainant, release him, then re-arrest him, and justify the act as a human right and not a crime, constitutes The judge acted in clear violation because he is supposed to be more careful and careful when dealing with the performance of his duties. His job and in the manner required by law shall be legally punished with the penalty prescribed by the Judicial Affairs Committee on 23/4/94 and No. 3/S/1994 which the court decided to ratify)) See Resolution No. 103/First Expanded/1994 dated 3/1/1992 issued by Decree No. 43/First Expanded/1995 dated 7/8/1995 issued by the Court of Cassation. Narrated by Adnan Sudkhan Al-Hassan, a previous source, p. 85.

Dr. Adnan Sudkhan Al-Hassan, a previous source, p. 70.


Dr. Adnan Sudkhan Al-Hassan, a previous source, p. 83.


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