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The Role of The Courts in The Application of Criminal Policy to Reduce Drug Crimes

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Abstract. The Iraqi judiciary has been keen to reduce crimes in general, and has paid a high degree of attention to drug crimes, because of their negative effects on the entire society, as the weakness of the state apparatus in general, and the spread of terrorist groups, in the past twenty years have led to an increase in these crimes, which prompted the Iraqi legislator to update the Drug Law No. (68 of 1965) by legislating the Drugs and Psychotropic Substances Law No. (50 of 2017), in addition to taking preventive measures concurrent with punitive measures, by working to create an environment free of elements that encourage the commission of this type of crimes, by removing the factors and circumstances that can contribute to the formation of the criminal personality. However, the judiciary has worked hard to reduce these crimes by forming courts specialized in the crimes of drugs and psychotropic substances in each governorate, and imposing the most severe penalties and measures on the perpetrators of this type of crimes.

Keywords: politics, criminal, drugs, crimes, judiciary, courts, psychotropic substances.

INTRODUCTION

The use of drugs and addiction to them is one of the dangers of the problems facing societies at the present time, it is a source of concern and threat at a very high level, because the security, safety and stability of countries in addition to the negative consequences on all aspects, the most important of which are (health, economic and social), the phenomenon of drug use and addiction has increased dramatically, as it has not affected certain classes of society, and it has developed social segments Different, and in Iraq, good reports indicated an increase in the use of these poisons among young people in a worrying way, which prompted the Iraqi legislator to tighten the hand of sanctions by updating previous legislation to reduce these crimes in Iraq, where confronting this has become an urgent and inevitable demand to protect society from its effects, the previous drug law number (68 of 1965) is no longer sufficient and effective in facing this criminal phenomenon, so it was forced Courts resort to the dissolved Revolutionary Command Council Resolution No. (39 of 1994), amended by Resolution

(135 of 1996) on pharmaceuticals and medical devices and their possession with the intention of trafficking them to fill the legal gap. However, these decisions were also not sufficient to combat this type of crime or that scourge, which led the legislator to reconsider its penal policy to produce a new policy, aimed at deterrence , andto confront the spread of illicit trafficking in narcotic drugs and psychotropic substances, and with criminal gangs. These are among the reasons that limited the legislator to enacting Law No. (50 of 2017) because the crime of abuse is the gateway to committing other serious crimes, foremost of which is murder, theft , armed robbery and other moral crimes .

The Importance of The Study:

The importance of the study is generally highlighted by the seriousness of the spread of drug abuse and addiction crimes , the health, economic, social and security damage caused by these crimes, and the frequent commission of this type of crime in Iraq in recent times, which in turn leads to an increase in the commission of other crimes such as murder, theft and domestic violence in addition to moral crimes.

Study Problem

The phenomenon of the spread of the abuse of narcotic drugs and psychotropic substances is one of the most complex and dangerous phenomena for the individual and society,

which requires studying this crime and the policy of criminalizing and punishing it , to determine its requirements and review the practical rulers approved by the judiciary, especially that the problem of the subject sometimes arises in the difficulty of discrimination in some cases while it is considered a drug and psychotropic substances, and certain types of treatment that are prescribed in some diseases.

Methodology

To take note of the subject in all its aspects, we see that the descriptive analytical approach is the best approach that can be followed by analyzing the texts of laws. We will also follow the practical applied approach by addressing the latest decisions issued by the Misdemeanor and Fairy Courts and the Federal Court of Cassation.

IV /Study Plan

We will address this study by dividingit into two requirements and each requirement contains two branches, where the first requirement will be (the nature of drugs and their prevention) divided into two branches, the first of which is (drugs, their types and the reasons for their spread), while the second section will be (the policy of prevention of drug crimes).

In the second requirement, we will address (the role of legislation and the judiciary in curbing drug crimes) in two sections. In the first, we will address (the policy of criminalization and punishment in drug crimes). In the second, we will address (the position of the judiciary on drug crimes) and conclude the research with a conclusion that includes conclusions and recommendations as follows:

The first requirement: What are drugs and their prevention

Section I: Drugs, their types and causes of their spread

Section Two: Drug Crime Prevention Policy

The second requirement: The role of legislation and the judiciary in curbing drug crimes

Section One: Criminalization and Punishment Policy in Drug Offences

Section Two: The Judiciary's Attitude to Drug Crimes

Conclusion: Conclusions and Suggestions

First Topic

What drugs are and their prevention

Drug crimes in all their forms are illegal acts, prohibited by the people and criminalized by law, and considered one of the most serious crimes facing the international in general,

and hardly escaped from any society, whether it is a society that has been outlawed or developed. Punitive laws have reached the majority of countries that have enacted drug laws on crimes of drug abuse, trafficking

because of its direct impact on human life, health

and behavior, as well as its impact on societies in general

and in order to surround this topic. We will address this requirement in two sections that will be the first (drugs, their types and reasons for their spread). As for the second section, it will be a measure of scarcity).

Section One

Narcotics, their types and reasons for their spread

Jurisprudence has not agreed on a comprehensive definition of narcotic drugs and psychotropic substances, as some of them have defined it as (a substance with certain properties, its abuse and addiction affect it other than the purposes of treatment, negatively, whether physically, mentally or psychologically, whether it is used by swallowing, smelling, injecting or any other way) [10] and others have defined it as (every stimulating or analgesic substance that adversely affects the individual psychologically, physically and socially [5]

It is stated in one of the definitions that they are (natural or synthetic substances, most of which are used for medical and scientific purposes, and when used incorrectly, they cause harm to public health, and international agreements limit them to tables or lists, provided that these tables or lists are subject to modification, to facilitate and facilitate control over them, and to confront their continuous development, to protect humanity from their destructive dangers, especially as they are in continuous development [4]

Narcotic substances are identified in the legislation using two methods, the first of which is to mention narcotic substances in the texts of the law, or in tables attached to the law exclusively, while the second determines the drug adjective attached to the substance, so that when that adjective is achieved in the article, it is considered a drug, and to determine what is considered a drug and what is not considered a drug, by referring to the competent experts in this regard, and this role is played in Iraq (Institute of Forensic Medicine) affiliated

to the Ministry of Health, and the legal definition according to the Narcotic Drugs and Psychotropic Substances Law No. (50 of 2017) includes the expression of drugs of all types of natural and synthetic drugs, mentioned in the tables attached to the aforementioned law, and what can happen to those tables by changing their types and increasing their types according to scientific discoveries developed in the future [52]

The scientific definition of drugs are chemicals that cause sleep and lack of awareness associated with pain relief, because they are chemical products that have biological effects on humans and living organisms, and are used in the field of medicine and pharmacy

as substances for treatment and prevention of diseases, and they also promote physical and mental activity and are used for a limited time. Until this moment, there is no universal or unified international agreement on the classification of drugs, and the dispute in the classification of all these types of drugs is from different angles of view [10]

As for their types, they are divided into many and multiple types according to the angle of view, but the best divisions depend on their source, and accordingly they are divided into two types, the first type of which is (natural drugs), which is the narcotic substances of plant origin that remain in their natural state, while the second type is (synthetic), which is the substances that will be extracted, mixed, added, or prepared in an industrial way from natural drugs, where their use results in a partial or total loss of perception.

There are general reasons that have led to an increase in the spread and use of drugs, and each society and even each individual has its own reasons, and among the general reasons we mention the weakness of religious scruples, emptiness, unemployment, the impact of bad friends, problems of secrecy, travel abroad, foreign labor, poverty, disease, blind imitation, courtesy to others, and the spread of false ideas about drugs [16]

In Iraq in particular, we are currently facing the most violent and fiercest attacks in the field of the spread and abuse of drugs, due to the openness of borders to neighboring countries, and the lack of stability of the political situation, which is reflected in the spread of organized criminal gangs, and Iraq has become the appropriate environment for the presence and spread of drugs, with the weakness of social control institutions such as the family, school, and the media, and their reluctance to carry out their basic duties in raising the awareness of individuals and groups, in addition to the economic crises and the great vacuum experienced by young people, due to the spread of unemployment, the lack of youth centers, libraries, parks and entertainment places, the lack of income and the large number of homeless people, and the weak control of the competent authorities and most importantly the weakness of drug control means [25]

In addition, for political and security reasons, there are some regional and international forces that aim to weaken the state politically, security fully, economically and educationally, all in order to draw up its plans to achieve goals inside the country, and with regard to Iraq, which was a corridor for smuggling Iranian, Afghan and Pakistani drugs to the Gulf countries, especially Kuwait and Saudi Arabia, it has now turned into a drug-consuming focus, and this is all due to the reason that it is a politically unstable country, and because of the change that occurred after (2003) resulting from the entry of US forces into Iraq, and comprehensive changes, the most important of which is the political change represented by the overthrow of the former regime, and helping to establish a new political system based on democracy and multiparty, and then the emergence of major events such as the spread of terrorism and sectarianism, the spread of uncontrolled weapons, and the control of ISIS over all parts of Iraq, which led to the weakness of the state and its institutions [29].

As a result of these events, the control of the state and its security services in general over the events taking place within the borders has been weakened, as well as the great weakness in imposing control over the political borders between Iraq and neighboring countries, which helped and strengthened the spread of organized crime, including the spread of drug crimes in a large and unexpected manner, in addition to the aforementioned reasons of a very important reason, and may even be considered one of the most important things that reflect the political confusion experienced by Iraq and its reflection on the fight against drug crimes of all kinds. However, it is the weakness of the legislative authority in legislating laws that combat this dangerous phenomenon, as the first and last law enacted is the Narcotic Drugs and Psychotropic Substances Law No. (50 of 2017) currently in force,

as well as the weakness of the executive authority represented by the Iraqi government, due to its failure to establish and adopt new formations concerned with implementing the law and prosecuting the perpetrators of drug crimes, and it has taken into account the reliance on the provisions of the aforementioned law, through the establishment of the Supreme National Authority for Narcotic Drugs and Psychotropic Substances Affairs, as well as the establishment of the General Directorate for Narcotic Drugs and Psychotropic Substances Affairs of the Ministry of Interior, which emerges Among them are sections distributed over all governorates, in addition to the purchase of administrative and financial corruption, including the perpetrators of drug crimes (traffickers in particular) from buying the receivables of some officials, managers of the concerned agencies or politicians, for the purpose of promoting their trade and its success, and helping them overcome difficulties in the processes of introducing large quantities of drugs, distributing and spreading them in different areas of Iraq, and the contribution of drug dealers in electoral campaigns, as well as their support for some candidates or they may nominate those of them, for the purpose of reaching senior positions in the state and helping them to enter and promote their goods through his authority and influence derived from his position in the state [32]

The fight against narcotic drugs and psychotropic substances has become one of the general rules, and the subject of legislation agreement in all countries of the world, after science has revealed its harmful effects, and then all countries of the world have declared a relentless war against all illegal access to narcotic drugs, and one of the most important things that the state has done to combat this scourge that kills societies, is that it has subjected all crimes of this type (narcotic drugs and psychotropic substances) to what is known as universal jurisdiction or as some call (the principle of the universality of criminal law), which requires the application of the rules of the criminal law of the state to every crime committed in the territory of the state, regardless of the nationality of the perpetrator [9]

These national criminal rules have become because of the agreement of the State on them, to form the so-called international criminal law, as they are national criminal rules for States, which have risen and become international rules according to the agreement of the State on them [6].

The principle of modern penal laws has been adopted for some high-risk crimes, such as drug crimes, trafficking in women or children, and other crimes. It is worth mentioning that the Iraqi legislator has taken full jurisdiction in

Article (13) of the Iraqi Penal Code No. (111 of 1969), which is in force. It stipulates that " In other cases stipulated in Articles 9, 10 and 11, the provisions of this law shall apply to anyone found in Iraq after being committed abroad as a perpetrator or accomplice of a crime of sabotage, disruption of international intelligence and transportation means, and trafficking in women, children, slaves or drugs."

The reason for adopting universal jurisdiction and giving national law the power to hold accountable persons who have committed crimes outside their countries is that all countries seek to combat some types of crimes, including drug crimes, to join international efforts to combat crimes that threaten the security of societies in their various situations [11].

One of the manifestations of the Iraqi legislator’s fight against drug crimes is that it excluded this type of crime from being covered by the general amnesty laws it issued in general, with the exception of the general amnesty law No. (255 of 2002), which was issued during the time of the previous regime. It did not exclude drug crimes from it, as this law was issued in special circumstances during the war of 2003.

The rest of the amnesty laws did not cover drug crimes, the last of which was the general amnesty law No. (27 of 2016).

Section Two

Prevention Policy in Drug Crimes

Modern criminal policy has highlighted a remarkable interest in preventing the risk of crime in general, and it has also paid more attention to the crimes of narcotic drugs and psychotropic substances in particular, because prevention is based on a basic idea, which is to work continuously and permanently to provide a crime-free environment, by removing factors and conditions that can contribute to the formation of the criminal personality.

The Iraqi legislator has realized that the success of any strategy to combat the crimes of narcotic drugs and psychotropic substances should not rely solely on deterrent laws. Rather, preventive measures must be taken simultaneously with punitive measures, and we cannot say (To eliminate the phenomenon of the spread of this dangerous scourge), but we can say to limit or reduce it as much as possible, and as we know that criminal policy is divided into three types, which are preventive policy, criminal policy and punishment policy, preventive policy is one of the branches of criminal policy, and it is a set of methods and methods produced by the criminal legislator, to combat and prevent crime, by confronting the perpetrator and imposing the appropriate criminal penalty on them and treating them in order to reform them, as a prelude For their return to society, it is mentioned in this regard that the German jurist (Feuerbach) was the first to use the policy of prevention, in the nineteenth century, and defined it as the set of decisions that can be taken at a certain time, and a certain country in order to combat crime [13]

Prevention of crime in general means that the crime is prevented before it occurs, as defined as any action or measure that would change one of the circumstances or conditions that help in the commission of the crime, with the aim of preventing its occurrence [3].

This includes all efforts aimed at curbing the occurrence of crimes and their dangerous and harmful effects on individuals and societies, including the fear of crime and seeking to influence the multiple causes of crimes. In this context, the issues of the enforcement of the law and criminal penalties are not included, despite the great impact on preventing crime and narrowing opportunities for criminals. It also means concerted community efforts, actual scientific survival based on procedural policies and plans, containing programs and practical measures, including the elimination of crime, reducing its rates and reducing its risks and effects [24].

Accordingly, societies in general do not wait for the occurrence of criminal acts (for the prevention of crime), but rather moves to combat them and prevent the emergence of causes, factors and circumstances that lead to their commission, in order to prevent their dangers from the society before they occur, and in the field of crime prevention there are different trends, depending on the difference of their owners in the scientific and professional specialization, but the most famous and most common of these trends are two main trends, the first of which is(the direction of situational prevention of crime) and the second (social prevention of crime) [56].

As for the first trend (the positional crime prevention trend), it focuses on dealing with the situation or the criminal pattern itself, and then moving to another criminal pattern or situation, and thus this trend adopts certain policies, including reducing or not providing favorable opportunities to commit the criminal act, which the perpetrator exploits in committing his crime, as well as the policy of making the criminal goal difficult and complex, and making it far beyond the ability of the perpetrator, and that is by increasing measures, physical barriers and obstacles, so that the intended targets by potential criminals are difficult to reach (difficult to reach) [7]

While the second trend (unanimous prevention of crime) is to deal with the criminal will, by adopting the previous treatment of economic, social, psychological and other factors and conditions that can lead individuals to commit crimes, while working as hard as possible to reduce all factors that can highlight the criminal personality, it aims to neutralize or curb the criminal will, and promote and strengthen the will that rejects and prevents the trend of committing crimes among normal people in general, and when people who are likely to be saved in the criminal slope in particular [23].

Preventive crime policy also benefits preventing the occurrence of crime, by addressing the basic causes responsible for the formation of criminal behavior, and this goes to preventing the establishment of the criminal personality as a basic step, to prevent the emergence of causes and factors that lead a person to commit the criminal act [34].

As for the preventive policy in the crimes of narcotic drugs and psychotropic substances in particular, as they have a great importance due to the advantages of these crimes over other crimes, and this is due to the seriousness and magnitude of their effects, whether direct or indirect, which makes it difficult to inflict punishment and deterrence, and it may be impossible to refrain from misusing these toxins or with regard to their general effects, which threaten the structure of entire countries and societies [55].

Through what we have already discussed in the previous lines, we can divide the prevention of crimes of narcotic drugs and psychotropic substances into two parts, the first part of which is concerned with (the goal) by limiting the increasing presence of dangerous criminal personality, and reducing and reducing dangerous criminality such as drug trafficking and abuse, and dealing illegally with it, while the second is related to (the means) and one of its advantages is its wide complex nature, especially with regard to social, economic and legal public means of prevention [19]

The crimes of narcotic drugs and psychotropic substances are classified as social crimes because of their specificity related to preventive mechanisms. They require measures of a different nature from those of other crimes by improving the conditions and removing the reasons that lead the perpetrators to misuse those substances [26].

Hence, the legislation of most countries, including Iraq, has come in line with what is stated in the international agreements, on the special nature of this type of crime, which requires preventive deterrent measures of a social and health nature, which may sometimes reach a regulatory nature, with the aim of regulating the legitimate dealing in narcotic drugs and psychotropic substances, all this in addition to awareness and education measures to prevent further victims, provided that the education measures are issued by persons specialized in psychology and criminal society, and by specialized cadres to combat this type of crime by adopting special methods [18].

Combating the crimes of narcotic drugs and psychotropic substances requires continuous intervention by the state as crimes that threaten societies, and did not leave negative effects on all levels of health, social and economic, and the Iraqi legislator to combat them, and this is represented by the issuance of many national legislation, and joining international conferences and charters [17].

The Iraqi legislator issued the Law on Narcotic Drugs and Psychotropic Substances No. (50 of 2017) to include a modern criminal and preventive policy, keeping pace with developments at the internal and external levels, and as stipulated in the international agreements related to the crimes of narcotic drugs and psychotropic substances, especially after the criminalization of narcotic substances and acts that were not included in the previous laws, where the law includes (51) articles, and an annex to it (11) a table, and includes many expressions related to import, export and transfer, in addition to obligations related to pharmacists, doctors, and plants that are prohibited to cultivate.

The criminal law is the most important means possessed by the state to maintain order, security and stability in society, where the jurisprudence will define the penal law as a set of objective criminal legal rules, unjustifying legitimate acts, which the criminal law is the most important means of preserving order, security and stability in society, where the penal measures were imposed as a result of updating the criminal law, whether as a result of the criminal policy, the criminal law was the most dangerous [21].

The Iraqi legislator in the Narcotics Law has criminalized the acts committed as crimes of psychotropic substances and pursued a punitive policy based on the introduction of penalties of extreme severity, and added new penalties not previously stipulated, and at the same time, the Narcotic Drugs and Psychotropic Substances Law, the main source for combating the crimes of narcotic drugs and psychotropic substances [36].

Here, we must build a little on the concept of preventive criminalization policy, because of its great importance in modern criminal policy and its advanced protection of criminally protected interests, and to prevent the commission of crimes of narcotic drugs and psychotropic substances. Preventive criminalization policy in crimes of narcotic drugs and psychotropic substances is to protect interests, by criminalizing criminal acts that precede the crime to prevent its occurrence, it is criminalization by means of which it gives criminal protection to the rights of individuals to life and physical security to prevent them from being endangered [20].

Others defined it as the criminalization of any negative or positive behavior, temporary or continuous, that threatens to harm a legal interest, and automatically leads to the threat of harming another legal interest of a nature and gender, or deserves legal protection from the point of view of the legislator [14].

Because the crimes in society have more benefits, including the maintenance of security and peace than if the crime occurred and its results were achieved, and then the role of the law comes to punish the perpetrator, and it is worth mentioning that there are other names that call the term preventive criminalization, including (precautionary criminalization), (precautionary criminalization), (precautionary or pre-emptive or envisaged),

but the most common name is (preventive criminalization), it differs from the traditional form of criminalization, in terms of the duration of time

being prior to the commission of the criminal behavior, while criminal policy according to its traditional concept comes after the perpetrator of the criminal behavior, and in terms of the criteria for adopting the preventive criminal policy, it is based on the criminal seriousness, and it is related to the person in which the perpetrator expects the existence of this type of sin to occur [22].

In terms of the end, it is that the legislator protects a protected interest from a crime before it occurs, and the traditional is based on the idea of deterrence and reform, because the crime occurred, and then comes the role of the rules of criminalization and punishment in confronting it , and through which the group adopts the theoretical and philosophical foundations that it adopts in criminalizing the actions and behaviors of individuals [14].

Second Topic

The role of legislation and the judiciary in curbing drug crimes

The Iraqi legislator criminalized drug acts and punished the perpetrator in a number of previous Iraqi legislations. From

(1933) to (2017), several legislations were issued, which dealt with the criminalization of drug use and trafficking in addition to severe penalties for those who commit these crimes, and this is what we note when reviewing the decisions issued by the misdemeanor and felony courts and the Federal Court of Cassation.

We will divide this requirement into two sections. In the first part, we will deal with the policy of criminalization and punishment in drug crimes.

In the second part, we will deal with the position of the judiciary on drug crimes.

Section One

Criminalization and Punishment Policy in Drug Crimes

Although the policy of prevention represents the most important types of criminal policies in drug crimes, but the policy of criminalization and punishment is based on the material of criminal policy, and even the criminal system is concerned with protecting the interest of the individual and society at once, and

the task of punishment policy is shown by extending the protection stipulated in the text of criminalization to all members of society and

working to reform criminals and reintegrate them into society.

We will address the two types of criminal policy in this section with regard to drug crimes only, as follows:

First: Criminalization Policy

Drug acts have been criminalized and punished since ancient times, and in a number of Iraqi legislations, the beginning of criminalization was in legislation No. (12 of 1933). Its provisions dealt with the prohibition and prohibition of the cultivation of cannabis plant specifically and

did not address the subject of smuggling and trafficking of narcotic substances, or the subject of abuse and then (1938), specifically in April, Law No. (44) was issued, which will criminalize narcotic substances, and that Through the inclusion of dangerous and narcotic drugs and plants from which narcotic drugs will come out, the law also limited the manufacture, import and export of narcotic substances to the Iraqi government, and limited them to scientific and medical purposes only, with the provision of the right of the court to decide to confiscate narcotic substances, and punish those who are related to their promotion, import and cultivation, or even possession. After that, the Narcotic Drugs Law No. (68 of 1965) was issued, under which all substances that are considered narcotic substances were clarified, and this was stipulated in (13) articles, and it also touched on how to deal and dispose of those substances before Persons granted a license under which

they can trade these materials and prepare prescriptions that contain them by pharmacists.

Under the provisions of this law, the legislator also punished each of the cannabis, poppy and opium plants and refrained from reporting them to the competent authorities with a fine, and if this person is a licensed person to deal with them, he is prevented from practicing his profession for a period

not exceeding three months, and then the law was amended in (1967) by Law No. (4) to tighten the punishment of trafficking and cultivation, as the penalty amounted to temporary hard labor, provided that the criminal intent of the perpetrator is available

and his criminal status is an aggravated circumstance if he is a customs officer or one of the officials in charge of combating drugs or controlling their circulation, and the abuser was punished by imprisonment for a period not exceeding five years and not less than one year and in 1970 The law No. (11) was

issued, which tightened the penalty against the returnee in drug offenses, as well as in 1979 (Law No. 144) was issued [31], and the punishment was tightened and the penalty was increased by imprisonment for the armed forces and the death penalty was increased.

The policy of criminalization is the statement of the protection and interests worthy of penal protection, and the prevention of harm to them, by wasting them in

whole or in part, or threatening to violate them, because the criminal damage is only an activity that disrupts social life, which is inflicted on the protected interests, which are determined according to the circumstances and needs of each community, affected by its economic, social and political system.

Therefore, the state carries out its penal function, in order to protect social interests, so it chooses the most proximate and appropriate penalty

to express the extent of the community's appreciation of the importance of these interests, if the state decides that the reform is worthy of protection, including through the provision to criminalize the act and determine an appropriate penalty [1].

Criminalization is a restriction on the exercise of individuals' rights and freedoms, so there must be an urgent and necessary need that requires criminalization after the absence of options to address deviation in human behavior, that is, the absence of other means through which it is possible to restore illegal behavior to its status [27].

As already mentioned, it is possible that when the policy of criminalization is used, in order to preserve the community and its interests, it does not achieve the desired feasibility, but may reach the point of non-acceptance if it exceeds its own limits, that is, if the act is of a degree of seriousness that requires criminalization [30].

The crimes of narcotic drugs and psychotropic substances are one of the most prominent legal and novel crimes, and one of the most important manifestations of expansion in terms of criminalization in contemporary penal legislation. However, by extrapolating the texts of the Iraqi

Penal Code No. (111 of 1969), which is in force, we did not notice the existence of a text that criminalizes narcotic drugs and psychotropic substances, except for some texts that refer to alcoholic beverages (intoxicants) and the like, and it is worth mentioning that there are other texts contained in the Penal Code related to the prohibitions of liability, indicating that committing a crime under the influence of narcotic substances

is considered one of the prohibitions of liability, but if dealing with these substances intentionally and to the satisfaction of committing a crime, this circumstance is intended (Articles 60 and 61 of the Iraqi Penal Code are considered).

The researcher believes that the Iraqi legislator did well when there was no provision for drug crimes in the Penal Code and their provision in a single law of its own, because these crimes are constantly evolving and talking as a result of scientific research that indicates the emergence of new narcotic substances. As for the Penal Code, it must often be characterized by stability and stability, but drugs are characterized by change and evolution in the way they are manufactured, especially manufactured according to the results of scientific research.

The crimes of narcotic drugs and psychotropic substances differ in nature from other crimes, as they are among the crimes that have to do with scientific development, and what can be reached by the scientific research conducted by the Ministry of Health in the field of identifying narcotic substances and psychotropic substances, which requires the legislator to pursue a criminal policy characterized by flexibility, in the face of drug crimes, which prompted the legislator to follow the method of (the criminal rule in blank) and what called us to the need to stand on the criminal policy followed by the Iraqi legislator in the field of criminalization of acts that represent crimes of narcotic drugs and psychotropic substances. The criminal rule in blank is the rule contained in a criminal legislation that contains the element of punishment, but the element of decriminalization in determining and describing another legislative text [28].

This trend is an exception to the general principle in the method of criminalization, which is based on criminal legislation, which is based on the provision of criminalization and punishment in one law, and this means that the legislator has not definitively specified narcotic substances in the texts of the Anti-Narcotic Drugs and Psychotropic Substances Law, and this is referred to administrative authorities, and perhaps to other legislation represented by the instructions and data issued by the Ministry of Health to implement this law [36].

After looking closely and carefully at the Iraqi Anti-Narcotics and Psychotropic Substances Law No. (50 of 2017) and studying it carefully, we find that the Iraqi legislator, like the rest of the legislators in the state, has adopted a policy (the criminalization in blank) with regard to drug crimes by stipulating the general framework of the crime and its punishment, and referring to the concerned authority represented by the Ministry of Health and the relevant bodies with the task of determining the elements of the crime, through the instructions and data issued by it, to facilitate the implementation of the law.

This is what we note from reviewing the text of Article (49) of the aforementioned Law: "The Minister of Health may issue the following: First: Instructions to facilitate the implementation of the provisions of this Law. Second: A statement that includes the amendment of the schedules attached to this law except for the Eleventh Schedule of Fees by deletion, addition, or by changing the percentages contained therein in accordance with the amendment of the schedules attached to the Single Convention of 1961 and its amendments, the Convention on Psychotropic Substances of 1971 and its amendments, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and its amendments, or in accordance with the results of studies carried out by the Ministry of Health or based on narcotic substances or psychotropic substances, provided that the statement is published in the Official Gazette. " Therefore, this text indicates that the physical identification of criminal facts in this type of crime is not only one of the provisions of the law, but it is necessary to refer to the instructions and statements issued by the Ministry of Health, and this indicates that the Iraqi leader has taken the measure of flexibility in this type of crime and the Iraqi leader has done well.

As for the policy of the Iraqi legislator regarding the amount of the narcotic substance that warrants criminalization and punishment, which is seized by the perpetrator, no limit has been set at a minimum, meaning that any amount seized is sufficient for criminalization and the issuance of a penalty against the person who was seized, but the quantity here is considered a criterion if the crime is abuse or trafficking, and from what we have previously found that the main source of criminalization or direct is the Anti-Narcotics and Psychotropic Substances Law No. (50 2017), while the non-main or indirect source is the instructions and data issued by the Iraqi Ministry of Health [18].

Second, the policy of punishment

The drug law in force No. (50 of 2017) is considered to be more modern and exemplary than the previous laws, and that is because its texts have addressed in a clear and accurate legal manner the crimes of narcotic drugs and psychotropic substances, whether industrial or agricultural, and what is calculated for it or one of its advantages, to address the narcotic substances and psychotropic substances without indicating what these substances are and to list them in the tables of its right to the Single Convention on Narcotic Drugs and Psychotropic Substances (1961), the Amended Protocol to the Convention on Narcotic Drugs and Psychotropic Substances (1972), the agreements on psychotropic substances of the tooth (1971) and the United Nations Convention to Combat Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) in consideration of the considerations of narcotic drugs and psychotropic substances in industries and industries (1971) (The text of Article (1) Paragraph (I) is considered (III) of the Narcotic Drugs and Psychotropic Substances Law).

The law also established the Supreme National Authority for Narcotic Drugs and Psychotropic Substances Affairs, and a police directorate in each governorate for the rehabilitation of addicts in the Ministry of Labor and Social Affairs, and gave the authority to the Supreme

National Authority to supervise public policy, and coordination and cooperation between ministries, official Arab and international competent authorities and international community organizations specialized in those affairs and issues of combating illegal trafficking in narcotic drugs and psychotropic substances, or their misuse (The text of Article (3), Paragraph (5) (first, first , second, eighth and ninth) and Articles (6) and(7) of the Psychotropic Narcotic Drugs and Psychotropic Substances Law shall be considered). It is worth mentioning that the Law on Narcotic Psychotropic Substances in the Kurdistan Region No. (1 of 2020) was initiated in the footsteps of the Iraqi Anti-Narcotic Drugs and Psychotropic Substances Law [35].

The policy of punishment shows the principles and foundations that determine penalties and their impact. This policy complements the policy of criminalization, as the policy of punishment cannot be implemented without criminalization. Criminalization is closely related to punitive policy. This is because the legal rule is twofold. The first part is to be assigned to a specific behavior, to do a specific act, or to refrain from a specific act. The second is the criminal penalty resulting from violating this mandate by refraining from doing something ordered by the law, or to do an act prohibited by the law [1].

The modern criminal policy alone is insufficient to limit and reduce the criminal risk of criminals, and it is possible or likely that he will commit the act committed another time, and on this basis the system of precautionary measures appeared, so if it is achieved in the crime of abuse of narcotic drugs and psychotropic substances stipulated in the Narcotic Drugs and Psychotropic Substances Law (50 years 2017), its pillars, the perpetrator must be punished, as long as the court has reached the occurrence of the act [20].

As for the penalties prescribed for that crime, before we address them, the meaning of the penalty must be defined as (a penalty determined by law and imposed by the court in the name of the people, on those who are proven responsible for the crime and commensurate with it), and here it becomes clear that the penalty is a penalty for the crime aimed at combating the crime, and reforming the offender. Penalties prescribed by law may not be imposed for a crime except by virtue of a decision issued by a competent court, and the original penalties are (death, life imprisonment or temporary imprisonment, severe and simple imprisonment, fine, and detention) according to the text of Article (85) of the Iraqi Penal Code No. (111 of 1969), as amended in force, and the crimes are divided in terms of their gravity into (felonies, misdemeanors and violations) according to the text of Article (23) of the same law, and the penalties stipulated in the Narcotic Drugs and Psychotropic Substances Law No. (50 of 2017) , including felonies and misdemeanors of drugs. The Iraqi legislator considered crimes of drug abuse such as the misdemeanors stipulated in Article (32) of the Narcotic Drugs Law (The text of Article (32) of the drug law in force shall be considered) and punished them with (imprisonment) for a period of no less than (one) and not more than (three) years and a fine Less than (five million dinars) not exceeding (ten million dinars) for each import, production, manufacture or acquisition..... to the end of the article.

As for Article (33), paragraph (I), it was punished by imprisonment for two years and a fine of no less than (three million dinars) ..... To the end of the article, it is clear that the punishment for the crimes of using narcotic drugs and psychotropic substances insists on imprisonment and fines in their lower and upper limits, as permitted in Article (39/First) of the court instead of imposing the punishment stipulated in Article (32) of the law to deposit whoever is proven to have abused it in one of the health institutions prepared for this purpose [33]. It is worth mentioning that the repealed Narcotic Drugs Law No. (68 of 1965), the punishment for abuse was up to imprisonment for a period of (15) years, as it was accepted by the felonies in accordance with the text of Article (14 / Second) of the aforementioned law (The aforementioned article stipulates that "Whoever possesses or possesses the drugs mentioned in Article 3 of this law, or grows cannabis, opium poppy, khat, and coca bush, shall be punished by imprisonment for a period not exceeding fifteen years and not less than three years, and a fine not exceeding one thousand dinars and not less than five hundred dinars. If the accused is a member of the Iraqi armed forces or is employed in it or works with it or for its benefit, the penalty shall be life imprisonment or

imprisonment for a period not less than ten years and a fine not exceeding two thousand dinars, and the death penalty may be imposed, if the crime occurred during the confrontation with the enemy).

The penalties for the crimes of the original crimes of narcotic drugs and psychotropic substances stipulated in the Iraqi Narcotic Drugs and Psychotropic Substances Law are either physical (death) or (depriving freedom). The imposition of these penalties by the court varies according to the intention of committing the crime. There are penalties for the crimes of narcotic drugs if they are intended for trafficking, and there is a second sect of the crimes of narcotic drugs and psychotropic substances. The legislator suffices in punishing them to achieve the general intent without the requirement of achieving a special intent, so the various penal laws on the crimes of narcotic drugs and psychotropic substances related to trafficking have been tightened and made The most severe penalties that can be imposed, as they are the basis for the spread and spread of these materials or this scourge, and the dangerous role they play in society, and the work to tighten these penalties to keep individuals from committing such acts, stipulated in Article(27) (Article (27) stipulates: "Whoever commits one of the following acts shall be punished by death or life imprisonment: First: Importing, bringing or exporting narcotic substances, psychotropic substances or chemical precursors with the intention of trading them in other than the cases permitted by law .Second: Produced or manufactured narcotic substances or psychotropic substances with the intention of trading them in other than the cases permitted by law. Third: Planting a plant that produces narcotic substances or psychotropic substances, or importing, bringing or exporting a plant of these plants at any stage of their growth with the intention of trading them or trading their seeds in other than the conditions permitted by law) the penalty of (death), which is the hanging of the convict to death(The text of Article (86) of the amended Iraqi Penal Code in force shall be considered), knowing that the death penalty has been suspended under the order of the Coalition Authority No. (7) issued on (10/6/2003) and then it was celebrated by virtue of the Council of Ministers Order No. (3) issued on (8/8/2004). The penalty of life imprisonment is one of the penalties for depriving adults of liberty by placing the convict in one of the penal institutions legally designated for this purpose for a period of (20) years [15].

Section Two

Judicial policy in drug crimes

In the past year (2023), the Ministry of Interior, represented by the Directorate of Combating Narcotic Drugs and Psychotropic Substances, arrested (17,249) accused of (121) foreigners in the trade of narcotic substances, according to a fundamentalist arrest warrant issued by the Iraqi judiciary, and the statistics of the Ministry of Interior, being the executive body concerned with combating drugs, showed a decrease in the rates of crimes of narcotic drugs and psychotropic substances, especially after intensifying efforts to combat them, as they have become a serious scourge that kills society [54].

The number of cases received by the courts in particular reached (10,263) cases, which were decided by the Najaf Court of Appeal with (764) cases of abuse and(1056) cases of trafficking, and the Kirkuk Court of Appeal was the least with (194) cases of abuse and(39) trafficking according to the website of the Supreme Judicial Council and as detailed below (Figure 1):

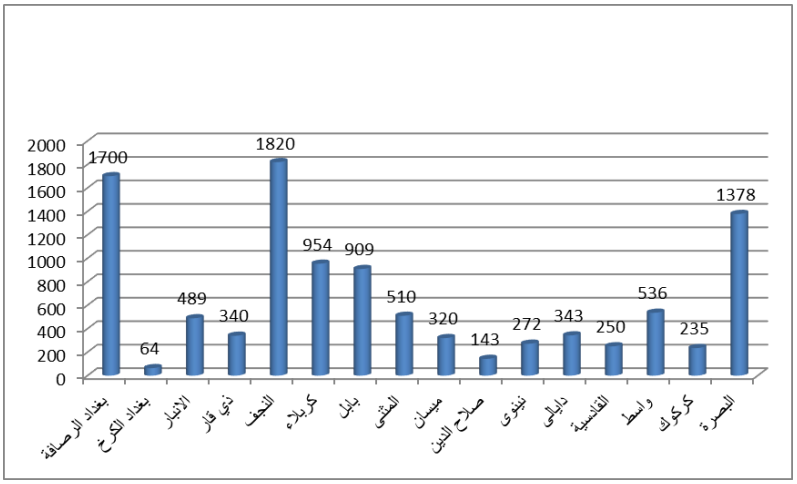


Figure 1. Number of cases according to the statistics of the Supreme Judicial Council

It is worth mentioning that the Supreme Judicial Council has formed drug investigation courts in Baghdad and the governorates and made the link of the drug investigation courts in Baghdad (Karkh and Rusafa) to the Central Court and give them privacy to deal.

Whereas, the Iraqi judiciary deals with all severity and strictness with drug cases, whether they are trade or abuse, and this is noted in the decisions issued by the competent court and the Federal Court of Cassation, where the Anbar Criminal Court issued its decision to criminalize the defendant (AAA) for the crime of transporting narcotic pills from the State of Syria to Iraq, with the intention of trading and sentenced him to life imprisonment with the calculation of his arrests and confiscation of his vehicle, and after presenting the matter to the Federal Court of Cassation, it issued its decision that all the decisions issued by the Anbar Criminal Court have taken into account the correct application of the provisions of the law, with the exception of the decision to impose the penalty of life imprisonment in accordance with the provisions of Article (27/ First) of the Drug Law, it was found to be light and not commensurate with the circumstances of the crime and circumstances of its punishment, and the poverty of reop position of the case to consider the punishment in order to report it to the limit, and this indicates that the issuance of the Iraqi judiciary in special cases [48].

Regarding the decisions issued before the issuance of the Narcotic Drugs and Psychotropic Substances Law (No. 50 of 2017), the Nineveh Criminal Court previously decided to convict the offender (A.T.H) in accordance with the provisions of Article (14/ First/B/ 2) of the Narcotic Drugs Law No. (68 of 1965) for the crime of possession of narcotic substances for the purpose of trafficking, and sentenced him to imprisonment for a period of (five years and a month). After presenting the matter to the Federal Court of Cassation, it issued its decision containing that the decision to impose the penalty is not commensurate with the facts of the crime and the circumstances of its commission, so it decided to return the case to its court to consider the penalty for aggravation [39].

The Karkh Criminal Court issued its decision including the sentence of the criminal (MSC) in accordance with the provisions of Article (28 / First) of the Narcotic Drugs and Psychotropic Substances Law No. (50 of 2017) and sentenced him to temporary imprisonment for a period of (ten years). After presenting the matter before the Federal Court of Cassation, it issued its decision including the ratification of all decisions except for the decision of the sentence imposed on the criminal, as it is light and does not suit the facts of the crime and the circumstances of its commission, so it was decided to return the case to its court to consider the sentence in order to increase it, and following the discriminatory decision, the court issued its judgment on the criminal for a period of (fifteen years) [45].

The Anbar Criminal Court also issued its decision on (30/10/2022) to criminalize the accused (AAS) in accordance with the provisions of Article (27/First) of the Law on Narcotic Drugs and Psychotropic Substances No. (50 of 2017) for the crime of trafficking in narcotic substances and sentenced him to life imprisonment with the calculation of his detention, and after presenting the matter to the Federal Court of Cassation, the court issued its decision ratifying the judgment issued against the accused for his approval of the law [46].

As well as the decision of the same court to sentence the accused (HQ) in accordance with the provisions of Article (28/First) of the Narcotic Drugs and Psychotropic Substances Law to imprisonment (fifteen years and a fine of ten million dinars) and after presenting the matter to the Court of Cassation, it issued its decision that the sentence is light and does not correspond to the facts of the crime and the circumstances of its commission, where it decided to overturn the decision to return the case to its court to consider the sentence in order to tighten it and inform it of the appropriate limit [48].

The Court of Appeal of Najaf Al-Ashraf, in its discriminatory capacity, has previously overturned the decision of the Najaf Misdemeanor Court by saying that it is proven from the report of the Department of Forensic Medicine that the substance seized by the accused is (methyl amphetamine), and since the substance is within the first table of the drug tables in sequence (110) of the aforementioned table, its possession is considered a felony punishable by life and temporary imprisonment and a fine based on the provisions of Article (28/First) of the Narcotic Drugs and Psychotropic Substances Law No. (50 2017), and therefore the Criminal Court is the competent court, not the misdemeanor court [41].

It is worth mentioning that psychotropic substances were banned under the Convention on Psychotropic Substances of 1971. Under this Convention, many international legislations imposed their control over these substances, as there are many countries that have attended in their legislation psychotropic substances such as Lebanese, Emirati and Libyan law. However, the repealed Iraqi Drug Control Law No. 68 of 1965 did not address these substances until after the issuance of Resolution No. 39 of 1994, amended by Resolution

(135 of 1996), which attended the illegal trafficking of these substances. The unintentional use or possession of these substances does not constitute a crime, and this is what we note from the decision of the Federal Court of Cassation No. (655 on the Second Penal Commission/2009 on 20/8/2009), where the Court of Cassation approved this interpretation in many of its rulers. In this decision, it stated that the quantity of medicines seized by the accused (X) is two strips of sedative pills and the accused has denied possessing

these substances with the intention of trading, and that the possession was due to being sick, and since the possession of these pills without a prescription is borne by the pharmacy owner, who sells medicines, so the evidence available against the accused is insufficient for conviction, as it decided to overturn all decisions issued in the case, and to cancel the charges against the accused.

In another decision, the Court of Cassation ratified the decision of the Anbar Criminal Court, which included the release of the accused for possessing a bar of pills of the type of Valium without a medical prescription, as it stated in it (that the Narcotics Law does not apply to the accused's act according to what is established in the book of the Institute of Forensic Medicine in addition to the fact that Decision No. (39 of 1994) does not apply to this incident, since the decision prohibits the trade in medicines and medical supplies of unknown origin [37].

CONCLUSION

After we have completed our research on the role of the courts in the application of criminal policy to reduce drug crimes, we must review the most important conclusions and proposals reached

First: Conclusions

1. Drug crimes have been spreading in Iraq for a long time, and the government and its three authorities (legislative, executive and judicial) have worked to combat these crimes.
2. The crime of using narcotic drugs and psychotropic substances isa serious scourge that has invaded the body of Iraqi society, targeting all age groups of society, especially young people, and has spread in an unprecedented manner.
3. The Iraqi law on narcotic drugs and psychotropic substances in force is considered to be in line with the latest international agreements on drugs and ways to combat them.
4. The Iraqi legislator in the law of narcotic drugs and psychotropic substances has adopted a severe punitive policy against anyone who deals illegally with these poisons, as well as for the Iraqi judiciary, it has adopted a policy to emphasize the perpetrators of these crimes and not to tolerate them.

Second: Proposals

1. Addressing unemployment, by investing in youth energies and providing suitable job opportunities in the public and private sectors.
2. Activating the experience of youth centers and forums through the Ministry of Youth and Sports and the provincial councils and supporting the sports sector and sports activities and events.
3. Education in schools from kindergarten, elementary, middle and middle schools, colleges and intensively as the group most vulnerable to this type of crime.
4. Producing awareness programs in Iraqi channels and radio stations, to raise awareness about the dangers of these crimes as well as the use of social networking sites in this regard, as it is the closest to the youth group.

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