

The moral element of the crime of Fault in the performance of the official jobs: Article (341) of the Iraqi Law

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ABSTRACT

Fault in the official jobs' performance is considered one of the major crimes that threaten public officials, a well-ordered public law and utility that cause damage to public property and public interests. This crime is one of the employees exceeding the limits of their jobs because it is committed by an employee who is doing an official job. This has been enshrined in the Iraqi punishment Law No. 111 of 1969 in article no. 341 and has been considered one of the financial and administrative corruption crimes stipulated in the integrity Commission Act no. 30 of 2011 for its serious and important danger and leave traces and impacts. The effects of this serious crime and its impact on the state and society's effects reflected on the state's legal, political, administrative, economic, and social systems. It is characterized as unintentional crimes which are done without criminal intent. Initiation nor participation cannot be fulfilled in this type of crime but considering all the doers are basic shareholders. This crime is similar to the crime of willful damage of the public property and interests in many aspects in addition to all other common conditions for any crime.

Keywords

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Introduction

The law in every time and place aims to achieve a goal of great importance represented by the idea of justice, and that the moral element is no less important than the material one (Faults) The Faults represents the second image of the moral element in unintentional crimes, and as such it is a description that deviates to the will, making it subject to (blaming the law) If the basis for crimes is to be intentional and their moral element is the criminal intent, then some crimes may be unintentional, and unintentional crimes have received special attention in modern society after the manifestations of modern life led to the adoption of many means that require careful use and consequent This is because unintentional crimes are more frequent than intentional crimes, and hence the legislator must explicitly intervene to define unintentional crimes and in our crime in question in Article (341) as one of the financial and administrative corruption crimes committed by the public servant or the person charged with a public

service, requires Legislator for the moral element availability of serious Fault.

We will deal with the Fault's definition, its image, and its types in the first topic of this research, and we will divide the second topic into two requirements. In the first requirement, we will address the standard by which the Fault is measured and the elements required in the Fault as well as the severity of the Fault in order to achieve the employee's responsibility for this crime, and we will examine the second requirement, the relationship of the Fault With some legal phenomena, and this is what we will discuss in turn.

Chapter 1:

Linguistic and idiomatic concept of Fault, its image and its types

The first requirement / the linguistic and idiomatic concept of Fault

The first branch: the linguistic concept of Fault

The Faults: turning away from the truth, And that branches: One of them is: that you want something

other than that of a good will, so you do it, and this is the complete Fault of which a person is known.

The Almighty said (Indeed, their killing is ever a great sin.1), and we certainly have been guilty of sin!2 The second: That he wants what he does well, but there is a contradiction to what he wants, so he is said: He made a Faults, he is wrong, and this has wronged his will and made a Faults.

This is the meaning of his saying, peace be upon him: (Faults and forgetfulness is lifted from my nation)1.

Second, the idiomatic concept of Fault

The Fault in general is the deviation from the due behavior, which in this sense includes the absolute deviation. Whether intended or not, however, the Fault in the criminal convention has a special concept. The texts of the law are usually performed on the use of (Fault) synonymous with (intentional), and among the jurists, however, whoever makes careful use of the word Fault and does not release it abstractly, pushing for confusion and a precaution against confusing it with deliberate Fault, however, the conventional concept of the erroneous term has settled in the language of the legislation to the extent that we can With him, we hope that we use this term abstractly, hoping for an unintentional Faults without us being concerned about the possibility of falling into confusion or confusion.2

A statement of the images of the Fault does not dispense with a statement of what it is, because the image is only a form and not an essence, because the Fault is an idea in itself, and this is what the Iraqi legislator followed. The crime is not intentional if the criminal consequence occurred due to the fault of the perpetrator, whether it was negligence, recklessness, lack of attention, lack of precaution, or non-observance of laws, regulations and orders).

It is inferred from the above text that the unintentional crime is the crime resulting from the Faults, provided that this Faults takes one of the forms that the legislator has mentioned in the text of the article .

Based on this, we will mention some definitions of Fault according to the opinions of some criminal law professors, where Fault was defined (as the direction of a person's will to commit dangerous behavior without taking the necessary measures and caution)3. He defines the Fault (it is every act or willful omission that results in results that were not intended by the perpetrator, but he could and should avoid them). He defines the Fault (it is every act or willful omission that results in results that were not intended by the perpetrator, but he could and should avoid them)4.

We see that the Fault can be defined (which is the direction of the actor's will to the behavior - whether it was an act or an abstinence - that resulted in a harmful consequence that he did not intend, and the perpetrator did not expect, and he was obligated to anticipate it or anticipate it, and only he can avoid it).

Second: The Fault Mages and Its Types

In this requirement, we will talk about the forms of Fault that came in Iraqi law in the first section, and in the second section about the types of Fault.

The first part: forms of Fault.

The text of Iraqi Law No. 111 of 1969, amended in Article 35 (a crime is unintentional if the criminal result occurs because of the perpetrator's Faults, whether this Faults was negligence, recklessness, lack of attention, lack of precaution, or failure to observe laws, regulations and orders).

First – Neglect

It is a Faults that occurs in a negative attitude by abandoning, abstaining, or neglecting to take precautions called for by caution, which will prevent the harmful outcome from occurring.5 Such as the negligence of the plant or factory owner in taking the necessary measures regarding fire protection.6

Second - Frivolity:

A word that refers to recklessness and lightness, and it is an inaccurate translation of its French origin

¹ Allama Al-Ragheb Al-Isfahani, Vocabulary of the Phrase of the Qur'an, Dar Al-Qalam, Damascus, fourth edition, 1425 AH, p. 287 0

² Muhammad, Awad, Penal Code, General Section, 1998, University Press, Alexandria, p. 255

³ The previous source, p. 255

⁴ Bakr, Special Section in the Penal Code, Crimes of Assault on Persons and Money, 1968, Dar Al-Nahda Al-Arabiya, Cairo, p. 134

⁵ Aley, Explanation of the Penal Code, General Section, p. 271

⁶ Tawfiq Ahmed, Abdul-Rahman, Lectures on the General Provisions of the Penal Code, Part One, First Edition, Amman, Wael Publishing and Distribution House, 2006, p. 215

(Maladresse), which means poor judgment, lack of skill, or ignorance of technical matters that should have been known, such as a misjudgment of the consequences of things such as a doctor who conducts a transplant without examining the patient's blood type or the doctor who is conducting A surgery without the help of an anesthesiologist or a doctor who performs a surgery without sterilizing the technical tools that he used in conducting the operation⁷.

Third - Lack of Attention:

It consists of an unexcused recklessness or lightness, meaning not doing what should be done to avoid harmful consequences, which is like negligence as negative behavior that results in a criminal result, and negligence and lack of attention is achieved by the employee's refusal to take the necessary care to avoid the occurrence of the unlawful result, Fault is achieved by abstaining and abandoning And it is distinguished from the image of lack of precaution as the latter assumes that the employee takes a positive attitude without taking precaution to ensure that the harmful effects of the act are avoided, such as guarding the railway passage if he does not initiate warning passers-by in a timely manner and alert them to the nearness of the train and lax in closing the passage from its background and the red lamp was not used in warning, which led to the accident.⁸

Fourth: Lack of precaution and caution

It is a picture of the Fault involved in a positive activity that is characterized by a lack of insight into the consequences, so the lack of precaution and precaution is achieved if the perpetrator does his act knowing that his risk may have harmful effects on him, and nevertheless he does not take precautions to ensure that risks are avoided, and most applications of this image are in Car accidents, for example, is the driver of the car who drives it at a speed that exceeds the limit required by traffic conditions, location and _____ time, even if the

⁷ Subhi Negm, Muhammad, Penal Code - General Section, The General Theory of Crime, Year 2000, with no place to be printed, p. 311

⁸ Fawzia Abdel Sattar, The General Theory of Unintentional Error, Dar Al-Nahda Al-Arabiya, 1977, p. 105

⁹ Mahmoud Naguib Hosni, Explanation of the Lebanese Penal Code - General Section, previous reference, p. 445

speed falls within the scope of what is permitted by the Traffic Law.

Fifth: Failure to observe laws, regulations, and orders

This image means that the perpetrator's behavior was not in conformity with the rules established by laws, regulations and regulations, which led to the outcome of the crime, and the expression (laws, regulations and orders) expanded to all the preemptory rules of behavior issued by the state, regardless of the authority that specialized in issuing them, especially the rules that prevent the consequences. The criminal acts carried out by (unintentional crimes) such as the regulations governing traffic and the possession of transportation means and the regulations for public health and various professions and industries. It also extends to some Penal Code provisions and administrative instructions, but merely not observing the regulations and orders is not sufficient in itself to establish responsibility for An unintentional crime. Rather, all the Fault elements must be fulfilled and a causal link exists between the act and the criminal outcome.⁹

Ray argues that Fault's pictures were mentioned exclusively and that a Faults cannot be punished unless it takes a copy of the Fault stipulated in the Penal Code.¹⁰

Contrary to this opinion, others argue that the first opinion is subject to criticism, as the law texts do not support it. Some mention one or two pictures of the Fault, and some of them mention many pictures of it. Nevertheless, it is not acceptable to say that the scope of the Fault differs narrowly and broadly according to the number of images mentioned by the law for it. The nature of unintentional crimes dictates that the scope of Fault converges in all of them, and this means that the pictures mentioned were for example¹¹

Another trend believes that the terms of the law were comprehensive and loose so that they absorbed all forms of Fault.¹²

¹⁰ Al-Saeed Mustafa Al-Saeed, General Provisions in the Penal Code, previous source, p. 423

¹¹ (13) Naguib Hosni Mahmoud, Explanation of the Lebanese Penal Code - General Section, previous source, p. 443.

¹² Moawad Abdel Tawab, Mediator explaining the murders and wrongful injury, previous reference, p. 28

The second branch: types of Fault

Criminal jurisprudence divides the unintentional Faults into several parts according to the following order:

First - a serious Faults and a slight Faults

According to what prevailed in Roman law, some go to divide the Fault according to the degree of its severity to the serious Fault, and it is available when everyone can expect the wrong result. A simple Fault achieved when the result's expectation. It is found in the result's expectation is possible only for an extraordinary person who exceeds the average person in terms of the extent of his caution, care, and attention.¹³

Those who say this distinction have given importance to it in the penal law, so they said that the law only recognizes gross Fault, as for simple Faults, it does not do anything but civil liability. However, this statement has been proven to be incorrect, as the principle of (the unity of criminal Fault and civil Fault prevailed) The most important defect of this distinction is its lack of a standard on which to base itself, but rather its existence destroys it. The Fault in the penal law has one criterion, which is the standard of (the usual person), which makes resorting to another criterion as a criterion (the very careful person) and establishing the distinction between serious Fault and simple Fault based on it A statement that does not agree with the basic idea of Fault¹⁴ The legislator stipulated in the Iraqi law that a grave Faults is considered a picture of the moral element and employee Fault's crime. The authority in which he worksetc.) and it follows that if the Faults is not serious, then the crime of the employee's fault will not be realized. The Iraqi has stipulated a serious Fault for the employee for the crime to be realized in Article (341).

Second - Technical Fault and material Fault

Technical Fault is meant by the Faults made by art men such as doctors, pharmacists, engineers and lawyers related to the work of their professions and

this Fault is determined by reference to the scientific and technical rules that determine the direct origins of these professions. My area of appreciation in it¹⁵.

The material Fault is a breach of the obligation imposed on all people dictated by the rules of the general human experience of the necessity to take the necessary care when performing a certain behavior to avoid the harmful consequences that it may lead to. The owner of the profession when practicing his profession without this Fault has anything to do with this profession's technical origins¹⁶.

Accordingly, the material Fault is due to the breach of the general prudence and caution duties that all people, including art men in the scope of their professions, abide by, as they abide by these general duties before they abide by the scientific or technical rules. Supporters of this distinction believe that artistic or professional Fault does not warrant criminal liability unless it is gross.¹⁷

In sum, the distinction between physical Fault and technical Fault has become obsolete, due to the unity of Fault's essence in every image and the lack of every basis for this distinction in terms of reality or law.¹⁸

Third: Criminal Fault and civil Fault

The consequences of achieving the Fault dictate the distinction between criminal Fault and civil Fault. Criminal Fault is achieved when the violation of a legal rule is an order or final coupled with a penal sanction, either the civil Fault is achieved when the individual violates the obligations that he has committed to or imposed on him by the rule of law or the nature of the thing being handled or The activity carried out by this breach results in harm to others without being criminalized.

Damage is an essential element in the establishment of civil liability and the elements that constitute criminal Fault, with the difference that criminal Fault entails punishment if the wrong act is legally criminal and punishable, while civil Fault entails only

¹³ Fawzia Abdul Sattar, The General Theory of Unintentional Error, previous reference, p. 110

¹⁴ Mahmoud Naguib Hosni, Explanation of the Lebanese Penal Code - General Section, previous reference, No. 446, p. 448

¹⁵ IbidNo. 445, p. 446

¹⁶ Maher Abd Shwish, The General Theory of Unintentional Error in Criminal Law, University of Baghdad PhD Thesis, 1981, p.208

¹⁷ Ibid- p. 447

¹⁸ Mustafa Al-Awji / General Criminal Law, Part Two, Criminal Responsibility, Second Edition Beirut, Year 1992, p. 44

compensation in the absence of a criminal text that turns it into a criminal Fault¹⁹.

The independence of the criminal Fault from the civil Fault in its content, concept and objectives makes the criminal judge more free to assess the availability of the Faults and decide on the punishment, and the principle of unity of the two Faults makes the judge often excluded from pronouncing the correct judgment, whether innocent or guilty, and thus the owners of this opinion see (double Faults) In civil and criminal law.²⁰

While other opinions went to the saying (by unity of Fault) in the meaning and degree in the two laws, which means that a slight Faults is made by criminal responsibility, just like civil responsibility. Supporters of these views denied saying that civil responsibility's social function differs from the social function of criminal responsibility. The Iraqi legislator has approved Fault's unit in the criminal and civil fields, as Article (227 / a) of the Criminal Procedures Law stipulates.

part two:

The moral element of the crime of an employee's Faults in performing the public office:

The legislature requires, for the moral element to be established for the crime of Fault in the performance of the public office, the existence of a serious Fault, so we divide this study into two requirements. In the first requirement we deal with the criterion by which the Fault is measured and the elements required in the Fault as well as the severity of the Fault in order to achieve the employee's responsibility for this crime, and we examine another party the relationship of the Fault With some legal phenomena, and this is what we will discuss in turn.

The first requirement:

Elements of Fault and magnitude of gravity required for the issue of the public servant:

Since the Faults is a person's breach of the duties of caution and caution imposed by the law when he acts,

whether this is taken as a portrayal of job negligence or a breach of job duties and abuse of authority, and not preventing him accordingly without his behavior leading to the criminal outcome, and we will divide this requirement into two sections that we address in The first section is the criterion of Fault, and in the second branch the elements of unintentional Fault.

First Part :

Unintentional Fault criterion

First: the personal theory (personal criterion):

It is a measure of the behavior that the perpetrator issued in certain circumstances on the basis of his usual behavior. If this behavior is less cautious and cautious than he is used to in such circumstances, a breach of his duties is attributed to him, but if his behavior matches the cautious reality that he is accustomed to adhering to, this breach is not attributed to him.²¹

According to this criterion, due diligence is determined according to the care that the perpetrator is accustomed to in such circumstances as the incident, and this means that we depend on the behavior of the accused and his previous positions as a criterion for judging his behavior.²²

The purely personal criterion is the criterion that is attributed in its estimation to the perpetrator himself according to his personal makeup and special circumstances such as his degree of intelligence, level of education and personal experience²³.

Second: Objective theory (objective criterion)

This theory is based on the fact that due and possible care is determined according to the standard of the usual, cautious man who carries out his activities with care, the careful head of the family, and that means avoiding the unlawful consequence is a duty in the abstract, that is, according to the general opinion prevailing at the time and place of the crime.²⁴

¹⁹ Ibid., P. 436

²⁰ Maher Abd Shwish, The General Theory of Unintentional Error in the Criminal Law, previous reference, p. 138

²¹ Fawzia Abdul Sattar, The General Theory of Unintentional Error, *ibid.*, P. 63

²² Mahmoud Naguib Hosni, Explanation of the Lebanese Penal Code, *ibid.*, P. 437

²³ Kamal Al-Saeed, Explanation of General Provisions in the Penal Code, without place of publication, 2002, p. 323

²⁴ Mahmoud Naguib Hosni, Explanation of the Lebanese Penal Code, General Section, *ibid.*, P. 438

Accordingly, the perpetrator's behavior (the employee) is measured by the behavior of a specific person, and the standard and the officer is the usual person or a person of average caution, care and caution. According to this officer, the employee's breach of the duties of caution and caution is subject to his stepping down from what the abstract person is bound by without regard to what (the employee) is usually committed to in his behavior.²⁵

Accordingly, the objective officer is the correct one and the precise criterion on which the issue of the employee or the person charged in a public service is based in the event of committing the crime of Fault in performing the public office, but it is not taken absolutely or abstractly from the external circumstances that surrounded the employee at the time of the occurrence of the crime, such as the circumstances of place and time.²⁶

Thus it must be assumed that the usual person was surrounded by the same circumstances that surrounded the perpetrator when the act occurred, and then we see whether the perpetrator in his circumstances adhered to the necessary degree of caution and caution that the usual person was committed to in these circumstances? If he was committed, he did not attribute that act to him, and the reason for that is (no obligation is impossible), then there is no place for you to ask people to adhere to the person's usual behavior unless the circumstances that accompany their behavior make that in their power.²⁷ And that the Iraqi judiciary has taken the objective criterion.

The second Part: the elements of unintentional Fault

The Fault is based on two elements, namely the breach of the duties of prudence and caution imposed by the law, and the other element is the presence of a psychological relationship that connects between the will of the perpetrator and the criminal outcome that occurred, and this is what we will deal with in this section as follows:

First: Breaching the duties of prudence and caution

It is necessary for us to determine the source of the duties of prudence and caution and how to breach them, and that determining the source of the duties of caution and caution does not raise a difficulty, as the rules of law are the first source that impose these duties if there is no doubt about their adherence to them. The behavior issued by the state, whatever the authority it decided, will expand - along with the legal rules in their usual meaning - when the regulations, orders, regulations, and administrative instructions are decided in all their forms - all the known legal sources are the same - but the law is not the only source of the duties of caution and caution. In itself, due to the benefits it may achieve in society, such as performing surgeries and driving cars, and despite his permission for them, taking them may involve a breach of prudential duties.²⁸

Either the second source of the duties of prudence and caution is (human experience), whether general or technical, that must be taken into account. Thus, the general source of the duties of caution and caution is the general human experience as this experience decides a set of rules defining the correct approach according to which a certain type of behavior must be undertaken. Science, the arts, and considerations of convenience contribute to this expertise²⁹.

Second: The psychological relationship between the will and the criminal outcome

The Faults is not based on merely breaching the duties of caution and caution, as the law is not puniitd for conduct in itself, but rather for the behavior if it leads to a specific criminal result. Then it is necessary that a link exists between the will and the result in such a way that the will for this result is subject to the blame of the law, so it is justified Thus, if it is described as a criminal will. Without this connection, it is not possible for the person to ask about the occurrence of

²⁵ Revocation of January 27, 1959, Cassation Verdicts Collection Q10 No. 23, p.91, referred to by Fawzia Abd al-Sattar, *The General Theory of Unintentional Error*, ibid.

²⁶ Abdul Muhaimin Bakr, *Special Section in the Penal Code*, ibid., P. 134

²⁷ Mahmoud Naguib Hosni, *Explanation of the Lebanese Penal Code*, General Section, previous reference, No. 439, p. 439 in the same sense, Moawad Abdel Tawab,

Mediator in *Explanation of Murder and Wrongful Injury*, previous reference, p. 27

²⁸ Mamoun Muhammad Salama, *Penal Code (General Section)*, third edition, Arab Thought House Cairo, 1990, p. 350

²⁹ Mahmoud Naguib Hosni, *The General Theory of Criminal Intent*, previous reference, p. 12

the result 30 and for this, the psychological relationship between the will and the result has two forms, namely:

A: Image of unpredictability of the criminal outcome (unconscious Fault)

It can be determined that the Fault is without expectation requires the fulfillment of three conditions, namely: -

- 1- The result is expected: that is, the result is possible in and of itself due to the nature of the Fault that occurred, as its occurrence remains a reasonable and familiar thing, not an anomaly or an unusual one.
- 2- That the perpetrator did not anticipate this result: here, the perpetrator's will must be limited to performing or not performing the wrong act only because of his incorrect belief or his unlawful behavior within the circumstances of the incident in which he was found.
- 3- That it is the duty of the perpetrator or his ability to anticipate the result.

B: Picture predicting the outcome (conscious Fault)

This situation is achieved when the will of the perpetrator (the employee) is directed towards the criminal behavior while expecting the criminal outcome's occurrence as a possible effect of his behavior without his will directing to this result or to its acceptance. The Fault can be visualized in two cases: The first case is the expectation of the criminal outcome and the failure to take adequate precautions without its occurrence on Although the culprit could have taken adequate precautions. The second case is the anticipation of the criminal outcome and the perpetrator's indifference to it, that is, failure to take precautions that prevent it from taking place.³¹

The essence of the conscious Fault is the availability of the perpetrator's knowledge of the possibility of the criminal outcome resulting from his activity, but his neglect of the necessary precautions to prevent its occurrence, which was his duty and he was able to take. Objective and personal, then this Fault will be

realized if it is proven that the ordinary, rational and rational man, if he had the expectation that circulated in the mind of the accused, will not continue his behavior in the way that the latter did³².

The second requirement

The relationship of the crime of employee Fault in performing the public office is one of some legal phenomena

There are some legal problems around which the disagreement took place between the jurists regarding unintentional crimes in general, regarding the relationship of these crimes to some legal phenomena, and is there a difference between intentional crimes and unintentional crimes in terms of the impact of these phenomena on them, so we divided this section into the following:

The first part: the extent to which the attempted crime of Fault in performing a public office can be realized

Ray goes to the possibility of conceiving the initiation of wrongful crimes. The argument for this opinion is that looking at the material act itself and looking at the result that can be performed, it can be said with him that the initiation of Fault crimes is available, where the negligent act itself is taken into account in material terms to verify the results That can lead to it. The default is based on this result and then the act is described as an attempt in the crime if the execution of the crime is stopped or the effect that is considered a natural consequence of the act committed by the perpetrator for reasons outside of his will, and this opinion concludes by saying that the punishment is for the initiation of the crime. Crimes of Fault are a matter required by justice, but this opinion, although it is acceptable in theory, but it encounters an impossibility in practical application, because in the crimes of Fault that the intention of the perpetrator does not go to commit a specific crime, if the harmful result is not achieved, it is difficult to infer this on the one hand and from On the other hand, the problem becomes more complicated if we know that most of the crimes of Fault occur negatively and that their only positive manifestation is the harm

³⁰ Maher Abd Shwish, The General Theory of Error in the Criminal Law, *ibid.*, P. 183

³¹ Mustafa Muhammad Abdel Mohsen, Unintentional Error of Criminal Responsibility and Cassation Control, *ibid.*, p.49

³² Raouf Obaid, Crimes of Assault of Persons and Money, *ibid.*, Pg. 172

resulting from them, as well as that punishment for attempting wrong crimes is considered a threat that constantly threatens people's freedoms. For criminal liability.³³

While another opinion goes to the absence of initiation in wrongful crimes because the initiation requires the availability of the intent to complete the crime in all its elements, not just the will to act or leave, and since the intent is negated in unintentional crimes, even if they are complete, then it is a matter of the first to be excluded in the initiation of Fault if it was serious and issued from An employee who was arrested or disappointed in causing serious harm for reasons that have no bearing on the will of the perpetrator. However, it cannot be considered as an attempt to do this serious harm, provided that the Faults that cannot be described as an attempt in an unintentional crime may be an independent crime, intentional or unintentional, such as practicing a profession Medical without a license or in violation of traffic regulations and instructions³⁴.

The Iraqi law stipulates in Article (30) that the initiation (is the initiation of the execution of an act with the intent to commit a felony or misdemeanor if it ceases or fails in its effect for reasons that have nothing to do with the will of the perpetrator) and from this text it becomes clear that the criminal intent is the whims of the pillars of the initiation and since the criminal intent is impossible His perception of Fault crimes.

The second branch: the extent of the possibility of participation in the crime of Fault in performing the public office

My opinion in criminal jurisprudence goes to the possibility of conceiving participation in Fault's crimes, and the argument for this opinion is that the provisions of the law relating to ancillary contribution have been formulated to accommodate all crimes, whether intentional or unintentional. That the person of the partner has the moral elements that are required for the occurrence of the crime, so if the material elements of the ancillary contribution are present next to it, then there is no evidence to justify his lack of

responsibility for it, and the moral elements of the crime are available if there is a Faults, then saying that the criminal intent is one of the elements of this ancillary contribution cannot be imagined in the crimes of Fault. And their argument in response to this saying that the law requires knowledge of machines, weapons and means that the shareholder gives to the perpetrator, and seeking knowledge does not mean requiring criminal intent, because the latter does not carry out knowledge alone, rather the will is required on his side.³⁵

It is sufficient for the availability of the moral element to participate in unintentional crimes that the partner informs of the original act of the perpetrator characterized by negligence or lack of precaution and that the will of the contributor to this act is available for him without proceeding to the events of the result that occurred. The same harmful effects because this is not necessary - obviously - except for participation in intentional crimes, and in the crime of Fault in performing the job, it is sufficient for the partner to know the perpetrator's actions and expect the resultant result from them. However, he does not take precautions nor exert any care that prevents this result from occurring. Or, if his will had failed, and it did not expect what he could have expected, as it did not use her perceptual property properly, it did not expect this harmful outcome, even though that is as much as it could³⁶.

While another opinion goes that participation in any crime requires the intention to assist the original perpetrator in completing the crime. Suppose this intention is absent in the act of the original perpetrator in the unintentional crime. In that case, it is not a matter of priority in the act of the partner from whom he borrows his criminal character and then the contribution to any A wrong act or omission is capable of making its owner a genuine actor if it results in the result that is punishable by law, even though the wrongful act or omission may take the appearance of incitement, agreement, or assistance in a Faults made by another person, and accordingly, both the partner and the original perpetrator are

³³ Abu Al-Yazid Ali Al-Matit, Crimes of Negligence, previous reference, p. 184

³⁴ (36) Maher Abd Shwish, The General Theory of Faults in the Criminal Law, previous reference, p. 182

³⁵ (37) Yusef Elias Hassou, Criminal Responsibility for Unintentional Error, Master Thesis, Baghdad, 1971, pp. 86-87

³⁶ Egyptian cassation, May 1, 1930, Group of Legal Rules, Part 2, No. 38, p. 31, and November 17, 1953, provisions of cassation, Q5, N29, p. 86, referred to by Ali Hussein Al-Khalaf, Sultan Abdul-Qadir Al-Shawi, General Principles in the Penal Code, ibid.

considered original actors In the case of unintentional crime, there is no comparison between Faults or comparison between their degrees.³⁷

In fact, the crimes of Fault have a special nature and no one can confirm the validity of the participation in them. Suppose the intentional crime requires the presence of the criminal intent of the perpetrator. In that case, the crimes of Fault necessitate the presence of the Fault because the conviction in them is not about the direction of the intention to an unlawful act but rather about the Fault that occurred by the perpetrator And that everyone who contributes to the occurrence of harm is considered an actor of the crime, whether he is a material actor or a moral actor. The owners of this opinion differed in determining the legal adaptation of those who contribute to these crimes. Ray went that the Fault contributor, if he plays a secondary role, is not questioned. While a second opinion regarded everyone who contributes to the Fault as an actor in an independent crime, a third opinion regarded the perpetrators as original contributors to one unintentional crime. As for the position of the Iraqi legislator, participation in unintentional crimes cannot be realized.

Conclusion

Through the research, we reached several findings and recommendations, as follows:

We concluded that the Iraqi legislator did not include a specific definition of Fault in the Penal Code provisions, as it is the moral element of the crime of Fault in performing a public office, and it is one of the unintentional crimes.

We concluded through research that there is no need to enumerate the images of unintentional Fault because they are intertwined synonyms with each other and are not exhaustive, but rather an example.

We concluded that the Iraqi legislature recognized the unity of Fault in the criminal and civil spheres.

We concluded that the legislator relied on the objective criterion (objective theory) to measure the perpetrator's behavior (the employee) with the behavior of a specific person and the standard and the officer is the usual person or the person of average care and caution.

We have concluded that the crime of an employee's Faults in performing a public office is realized in light of the Iraqi Penal Code, according to Article (341). The Fault must be serious and result in serious damage.

We concluded that what distinguishes probabilistic intent from conscious or expected Fault, as prevalent in modern criminal legislation, is accepting the expected result.

We concluded that it is impossible to imagine an attempted crime of Fault in performing the public office.

We have concluded that participation cannot take place as a co-contributor to Fault's crime in performing the public office. Rather, each of the contributors is asked as they are the original perpetrators of the crime.

Alhamdulillah

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