

The crime of drug abuse according to the provisions of Iraqi law

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Abstract

The current research aims to identify the crime of drug abuse in accordance with the provisions of Iraqi law, where the importance of research lies in the crime of drug abuse and noting its increase in recent years and because it is one of the crimes of private legislation that did not receive the same as it did, the crimes from the side of jurisprudence remained of attention and care, while the problematic arises Research into that the problem of drug abuse is one of the most important obstacles faced by the society at the hands of a few of its children, and then it spreads in the community as firewood, and the danger in these substances is that the use of these substances for a short period leads to a complete dependence on them, and in this dependence lies the health damage on The human body and mind and the political, economic and social damage to the entity of the state in which the phenomenon of drug dependence is spreading among its members.

The researcher reached a set of the following conclusions and recommendations

1. The reasons for the spread of drugs are many and varied, some of which are psychological and social, and others are economic.
2. Drugs are a dangerous scourge to society and have multiple types that differ in their characteristics and effects. Several definitions of narcotic substances have been provided in jurisprudence, but most criminal legislation has taken the path of listing narcotic substances with tables attached to the law.
3. Establishment of hospitals specialized in treating cases of addiction and abuse, and not just sections in psychiatric and mental hospitals.
4. Increasing government support for the Anti-Narcotics Directorate and increasing cooperation between it and other regulatory authorities.
5. The media should highlight the dangers of drugs and prepare programs to educate young people about their harmful effects.

Keywords: crime, abuse, drugs, Iraqi law.

Introduction

Drugs are a global problem, but countries did not pay attention to them until the beginning of the twentieth century, where scientists began to warn of the dangers of this social scourge after the increase in cases of abuse, but in the second half of that century became the focus of attention of

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people of all categories to the extent that it became something that scares the whole world in rich and poor countries, developed and underdeveloped and clearly faced by the biggest security, health and social challenges in the world, which requires coordination of national and international efforts. In order to combat them, the volume of global production of drugs of various kinds has reached great rates and threatens Arab and international societies because of their devastating effects and damage to society and the family.

As for Iraq, drugs have become a national problem that has cast a shadow over Iraqi society, especially recently after it was formerly one of the corridors for the promotion of drugs among the countries of the world, now the drug industry is being manufactured and promoted in it, and this serious problem has caused panic and anxiety in every Iraqi family and house after all the continuous attempts of drug traffickers to flood the country with various kinds of drugs aimed at threatening the security and safety of society and the events of rupture and backwardness in order to achieve huge money, and becoming Confronting these destructive waves is a necessity to preserve the values, energies and capabilities of society from the most dangerous forms of human destruction.

First: - The importance of research

Given the importance of the crime of drug use and the observation of its increase in recent years and the fact that it is a special legislation crime that has not received the likes of the rest of the crimes by jurisprudence of attention and care, I decided to put this research under consideration for its seriousness, which is not known to anyone and on the other hand, the importance of research seems through the efforts of the Iraqi legislator to develop a strategy to combat drug trafficking and psychotropic substances and the increase in their use and spread, so it enacted law No. 50 for 2017 Aiming to protect the individual and society.

Second: - The problem of searching

The problem of drug use is one of the most important obstacles that society is dealing with at the hands of a few of its children and then applies in society as the fire in firewood, and the seriousness of these substances that its use for a short time causes a fondness for it leads to total dependence on it and in this reliance lies the health damage on the body and mind of the human being and the political, economic and social damage to the entity of the state, which is spreading the phenomenon of dependence on drugs among its members, for this crime of the legislator drug use and due to the modernity of the law of the issuance of a law Drugs and psychotropic substances No. 50 for 2017, which requires him to study this crime to identify the staff of its constituents and review the practical provisions established by the judiciary in which the legal description of the judicial opinion blends with the identification of ways to address this phenomenon under the law itself.

Third: - Research methodology

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The research is a method of descriptive research, which is defined as the study of the phenomenon as it actually exists and describes it accurately in order to reach conclusions that contribute to understanding and developing this reality by knowing the relationships and associations between the phenomenon and the subject of research in the light of judicial applications and decisions of the Federal Court of Cassation.

Fourth: - Search plan

The identification of the crime of drug use, its effects, its punishment and its seriousness on the community and its contribution to raising awareness of its dangers and in support of its control has been adopted in dividing this research into two researches that dealt with the first research the pillars of the crime of drug use and three demands, the first allocated to the physical corner and the second demand for the supposed corner (the place of crime) and the third requirement moral pillar, while the second research was devoted to the punishment of the crime of drug use and three demands also the first requirement dealt with the original penalties and in the second requirement supplementary penalties and precautionary measures and measures of precautionary measures. In the third requirement, the penalty is commuted and increased and measures are taken to treat users.

- Finally, I concluded the research with a statement of the most important conclusions I have reached and some of the proposed visions in this regard, I hope to be successful in putting them forward.

First research

The pillars of drug abuse crime

The crime of drug use, like any crime, generally has two main pillars: the physical and moral pillar, and since it is one of the crimes of special punishment, it has another corner required by its nature, which is the corner of the shop, i.e. the narcotic substance, and therefore the search in the pillars of the crime of abuse requires that we divide this research into three demands:

The first requirement

The physical corner

The physical pillar is the external appearance of the crime, which is the external criminal conduct that is punishable by law, whether it is an act or a omission, and the law does not know the crimes without the physical corner, it is all that enters into its being and has a material nature sought by the senses, so there is no crime without it, because the law does not punish mere intentions, desires and desires. ()

The Iraqi Penal Code No. 111 of 1969, amended in Article 28, was defined

The physical pillar ((criminal conduct by committing an act criminalized by law or refraining from doing an act ordered by law)).

Drug offences are not crimes of conduct and consequence, but they are crimes of dangerous conduct, the crime is achieved as soon as the material act is committed as a crime of danger, and the physical corner has three elements:

- First; The act or criminal behavior.
- Second- The criminal result.
- Third; The causal relationship between the act and the result.²

First; Criminal behavior.

Any act of guilt committed by the law is positive or negative, such as leaving and abstaining unless the law stipulates otherwise, so everything that goes on in the mind of the offender about the use of the substance is not punishable.

The criminal act is based on its definition of a positive or negative image, which is what the Baghdad Court of Appeal ruled in its discriminatory capacity ((the decision is correct and in accordance with the law for the reasons on which the decision was based and the adequacy of the evidence obtained to criminalize the accused, namely, his explicit confession, the seizure of narcotics, the statements of the holding detachment, the report of the record of the seized substances and the proof of the process of dealing with evidence and evidence considered to him decided to ratify the distinguished decision)), and in another decision of a court of law. Wasit's appeal to the Federation in its discriminatory capacity ((the decision is incorrect and contrary to the law, as the defendant's admission before the court of inquiry of his use of narcotics for intermittent periods cannot be assured to build a proper legal judgment as required by the text of article 213/c fundamentalism, especially since the accused has retracted it and no material has been seized with him and the witness's testimony was heard and did not mention the explicit name of the accused, which makes the evidence obtained suspicious, so he decided to overturn the privileged decision)) Criminal conduct in the crime of drug use consists of positive action, possession or precaution, and we will address it by explaining:³

1- Positive action

It is an activity or behavior contrary to what the legislator forbids and that the most crimes are the result of a positive act emanating from the will of the offender, i.e. it is a mental activity of will that takes him an apparent place that others are aware of and feels,) and the positive act in the crime of drug use is the human taking of any substance that causes addiction for non-medical or

² () Dr. Hassan Sadiq Al-Masfawy - Explanation of the Penal Code - Special Section - Knowledge Facility - Alexandria - 1978 - p. 803

() D- Ghaleb Al-Daoudi - Explanation of the Iraqi Penal Code - General Section - First Edition - Modern Printing House - Basra - 1968 - p. 187

³ () Dr. Ali Hussein Al-Khalaf and Dr. Sultan Abdul Qadir Al-Shawi - General Principles in the Penal Code - Legal Library - Baghdad - 2006 - p. 139

() Ahmed Mahmoud Khalil - Drug Crimes - University Publishing House - Alexandria - First Edition - 1984, p. 34.
Amal Abdel Rahim - The Phenomenon of Drug Use - Cairo University - 1974, p. 48.

therapeutic purpose, and that addiction is a condition of adaptation to a drug, which leads to the emergence of symptoms when stopping the use of the drug

Modern criminal legislation has been concerned with the fight against drugs, especially abuse through criminalization of legal texts, and since the use is the introduction of the narcotic substance of the human body in any way, it is considered a consumer, but consumption requires the act of possession and that the offender in possession of the substance may be to achieve two crimes, the crime of abuse and another crime of drug offences such as trafficking in it, as ruled by the Court of Appeal of Baghdad - Federal Resaf (after the examination of the evidence and the course of investigation has been shown that the legal adaptation of the act of the accused is the article 28/First of the Drug and Psychotropic Substances Act No. 50 of 2017 is the correct adaptation and conformity to the facts of the case because the confession of the accused before the investigating judge to trade the substance crystal, which constitutes a felony, and that the basis of the medical report is incorrect because the accused stated in his admission that the seized pills were purchased for the purpose of abuse, which is not the crystal pills that he trades, which was proven through the investigation and evidence available in the field of indictment. For the accused in the referral decision ...))

2- Possession and precaution

Civil Law No. 40 of 1950 defined possession in article 1145/1 as (a material situation in which the person controls himself or by means of effective control over something that may be dealt with or actually used as a right)) and based on this definition, the possession has three forms:

- A. **Full possession:** it is the physical control of the object and the conduct of its disposal in all kinds of conduct and the directness of the owner's powers over it, with the intention of retaining it as the owner.
- B. **Incomplete possession:** When the object is in the possession of the person without being the owner of it, i.e. the material element is available, such as use without the moral element, because it holds the object for the account of others and is obliged to return it to the owner. ()
- C. **Casual possession:** The object is in the hands of the person without any right to be taken on him, neither for his account nor for anyone else's account, which is not available in it. ⁴ The elements of material and moral possession. ()

Possession of drugs, like possession in civil law, is based on the availability of its material and moral elements, but its concept of drugs differs from the concept of possession in the civil law, where it is known that what may not be dealt with may not be acquired, it aims to protect possession as a source of obligation, but in the Criminal Code, which aims to protect society, when a person recognizes ownership of narcotic substances, considering that those who possess something as a

⁴ () Dr. Abdul Sattar Al-Bazarkan - Penal Code General Section between Legislation, Jurisprudence and The Judiciary - Publications of the Legal Library - Baghdad - 2003 - p. 53
Anwar Ghali Al-Dhahabi - Drug Crimes in Libyan Legislation - National Library - First Edition - 1973, p. 85.
() Dr. Fawzia Abdel Sattar - Explaining the Drug Law - Arab Renaissance House - Cairo - 1990 - p. 33

matter of jurisdiction are their owners. A material fact that is punishable, and therefore possession of drugs is the possession of the drug as a matter of the king and jurisdiction, and this is what the Federal Court of Appeal was ruled in its discriminatory capacity ((a valid and law-abiding decision as the evidence obtained in the case is the testimony of witnesses and the record of the seizure of narcotic pills seized when the motorcycle belonging to the accused was searched and as a result of its examination, which is consistent and convincing evidence to convict the accused according to the article of the charge, Therefore, he decided to ratify the special decision) () and the Federal Court of Cassation also ruled ((that the decision is not correct and contrary to the rules of law, because the accused denied the charge for investigation and trial and that the narcotic substance was not seized by possession as stated by the witnesses, which is evidence not sufficient for criminalization and sentencing, so he decided to overturn the special decision).) ()

It is clear from the above that there is a difference between the material and legal significance because the material meaning leaves a tangible impact in the outside world, which protects the right to which the result has been achieved, while the legal meaning is the legal adaptation to ascertain whether the legislator has protected the right or interest to which the result has been achieved, and therefore there is no crime without a legal result.

Third; Causal relationship

The causal relationship is the link between the criminal act and the result, which is an essential and essential element in the physical corner and the requirement of liability, which requires the court to make its statement in its ruling, and that the assessment of its availability is one of the objective matters of the trial court without supervision by the Court of Cassation, and this is what the Federal Court of Appeal of Karbala ruled ((the Misdemeanours Court took into account when issuing the decision the proper application of the provisions of the law after adopting sufficient evidence shown by the proceedings of the investigation of the proceedings) His trial, which consisted of the confession of the accused before the court of inquiry and the statements of the accused whose cases are broken as witnesses and the statements of the members of the holding detachment on him decided to ratify the special decision)) (), as well as the ruling of the Court of Appeal of Baghdad - The Federal Court of Justice ((the special decision is true and in accordance with the law because the evidence obtained in the case was the confession of the accused explicitly enhanced by the seizure of narcotic substances and the statements of the holding detachment and the report of the judicial medicine, which is sufficient evidence to convict the accused according to the article of the charge, so he decided to believe the distinguished decision)) Ruled by the Federal Court of Cassation (The special decision is correct and consistent with the law because the evidence obtained in the case was the confession of the accused explicitly enhanced by the seizure of narcotic substances and the statements of the holding detachment and the report of the forensic medicine, which is sufficient evidence to convict the accused according to the article of the charge, so he decided to ratify the special decision)) () As well as the ruling of the Federal Court of Cassation ((it was found that all the decisions issued by the court involving the criminalization of the accused were incorrect and contrary to the law because they were based on an error in the assessment of evidence, the accused denied the charges against him at all stages of the investigation and trial and refuted his denial only the statements of the witness and that the seized drugs were

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found in the witness's house and the brother of the accused whose claim and the statements of the witnesses separated holding the incident of drug seizure without having a certificate against the accused, which Makes the evidence available in the case as explained insufficient to criminalize the accused according to the charge against him, so he decided to overturn the decisions issued, cancel the charge and release the accused for lack of evidence. ()⁵

The second requirement

The supposed corner (crime scene)

Drug crimes are of a special nature that are distinct from other crimes in terms of their composition, they share with other crimes in the physical and moral pillars and are characterized by their third form, which is the narcotic substance, and without it we are not facing a crime, and the drug was considered a supposed corner because its existence is pre-existing crime and therefore the criminal behavior is focused, because it is pre-existing on the act of the perpetrator, The court must indicate the type of narcotic substance in its ruling to completely investigate this pillar, and the Iraqi legislator has specified the narcotic substances in the tables attached to Law 50 of 2017, without the conviction of the type of narcotic substance or if it appears that it is not a narcotic substance, the conviction is flawed and requires a verdict of innocence, and the examination of the substances must be from a competent official technical body and this is what the Federal Court of Appeal of Basra ruled To be from an official technical competent body and this is what the Federal Court of Appeal of Basra ruled () that the decisions issued by the Misdemeanour Court found that they were based on an error in the assessment of evidence, because the admission of the accused to use crystal material is stripped of the technical evidence that supports him, since he was not seized in possession of any narcotic substance in order to be examined technically, the accused is not a technical body and does not count the description of the type of material he used, as it is necessary to examine The article is from an official body with jurisdiction to determine the type of article and the number of the table attached to the drug law in which it is contained, so the evidence is insufficient to criminalize the accused for the crime of drug use on him decided to overturn the decision of criminalization and punishment and cancel the charge and release the accused)) () As well as the ruling of the Federal Court of Appeal of Wasit ((the privileged decision is incorrect and contrary to the law, because the evidence obtained against the accused did not prove his use of the substance as required by the text of article 32 of the Drug and Psychotropic Substances Act No. 50 of 2017, as his confession before the investigating judge to take half of the narcotic pill received from the accused whose papers were not included under the provisions of the above article, which was not strengthened by any other evidence, in addition to the fact that the accused denied The charge before the trial court and that the statements of the accused written as a witness were written as a reason because he was not 15 years old and when he came forward and because of the insufficient evidence obtained against the accused decided to cancel the charge against him in accordance with the provisions of article 32 of the Drug and Psychotropic

⁵ Saeed bin Faleh Al-Seriha - Community Guide to Confronting the Drug Phenomenon - Riyadh - 2011, p. 95.
Samir Mohammed Abdel Ghani - Principles of Anti-Drug - House of Legal Books - Egypt - First Edition - 2009, p. 15.
(Mr. Abu Attieh - The Phenomenon of Drugs in the Islamic World - Dar al-Nahda al-Arabiya - Cairo - 1992, p. 52.

Substances Act and release him The decision of the Baghdad Court of Appeal to the Federal Court of Appeal in its discriminatory capacity (when looking at the privileged decision was found to be incorrect and contrary to the rule of law because the court did not send the accused to the examination in the medical examiner to see if he had addiction to taking the substance (Belmosimo), which the medical report on the examination of that substance indicated that it is not a narcotic substance if used in specific doses by the doctor and that exceeding those doses by a specified period of time leads to addiction and then considers The court's conclusion of the state of addiction from the defendant's confession is unsubstantiated by law, as the question of measuring the presence of narcotic substances and other prohibited substances in the blood is a technical matter that can only be proven by medical expertise, so he decided to overturn the privileged decision.

Drugs and psychotropic substances are not one type, but many types that the Iraqi legislator did not deal with criminalization all of them, but limited them to some of them according to their seriousness and were determined by the schedules attached to the law, but he gave the Minister of Health the power to amend them either in addition to or delete, as stipulated in article 49 / II of the Drug Act and Psychotropic Substances No. 50 of 2017, where it stipulated ((for the Minister of Health to issue a statement containing the amendment of the tables attached to this law except the schedule for fees to delete, add or change the ratios contained in it in accordance with the amendment of the tables attached to the only convention of 1961 Or in accordance with the results of studies carried out by the Ministry of Health or based on narcotic substances or psychotropic substances, the statement should be published in the Official Gazette.⁶

Tramadol was included in Table VIII based on the 2018 319th statement issued by the Minister of Health, which was published in the Official Gazette on 16 November 2018.

As for the amount of narcotic substances seized, the Drug Act as a general rule did not set a minimum amount of seizure, the crime is available even if the narcotic substance is low, and if the quantity is not considered a pillar of the crime, the legislator sometimes considers it an element of conviction in some cases specified exclusively, and this limitation means that the substance is not considered narcotic unless it is available in relation to the quantity provided for by law. If the ratio is lower than the specified limit, the crime has expired, and this is what article 19 / First of the Drug and Psychotropic Substances Act No. 50 of 2017 stipulates ((The pharmacist may dispense narcotic substances or mental effects only under a prescription from a doctor or under a license card issued by the Ministry of Health specifying the drugs and psychotropic substances and their amount).)

The law also did not require the seizure of narcotic substances until the elements of the crime are achieved and the validity of the sentence is required, but it is sufficient to consider the accused as a guardian that his authority is happy with the drug and the drug was not in his material possession, but the evidence must be conclusive as a matter of certainty and certainty that the accused committed the crime in order to be eligible for punishment and this is achieved by any evidence

⁶ () Fawzia Abdel Sattar - Explanation of the Drug Law - Arab Renaissance House - Egypt - 1990, p. 65.
Ghassan Rabah, Brief on Drug and Psychotropic Substances Issues, Al-Halabi Publications, Beirut, First Edition, 2008, p. 96.

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that would prove it, if it is established that the person who seized the drug with him is used When the accused distributes the drug to his account, it is sufficient to prove that the accused possessed the drug, and the accused planted the drug to a person, which indicates that the accused has obtained the drug before placing it in the place where he was seized with the person and there is a supposed corner against him in this case. ()

The control of material acts in drug offences is subject to procedural rules, as are other crimes, whether related to the arrest of the accused in the event of dress or arrest in a non-state of dress,) and all of the above is subject to the authority of the court of subject matter in the weight of the evidence and its appreciation of the strong appreciation accepted by reason and logic, and this is what the Federal Court of Appeal of Anbar ruled ((when checking and deliberation found that the distinguished decision is incorrect and contrary to the rule of law, This is because of the confession of the accused before the investigating judge and the investigating judge in the presence of the prosecutor and the lawyer assigned, and this recognition was reinforced by the statements of the accused who seized the narcotic pills in his possession as well as supported the statements of witnesses, in addition to the fact that the accused has already been referred to the Criminal Court in Anbar for the crime of trafficking narcotic pills, which is a presumption on the validity of his confession, so he decided to overturn the special decision)) () The Federal Court of Cassation ((the decision of the Criminal Court to annul the charge and release the accused was found to be valid and lawful in order to deny the accused the charge against him for investigation and trial, and not to seize any narcotic substances in his possession at the time of his arrest and the evidence in the case against him was limited to the statements of the secret informant who brought the seized narcotics and therefore the evidence according to the advanced description is insufficient and convincing to criminalize and sentence him according to the article of the indictment, so he decided to believe it).

The court also does not rule on the confiscation of the seized narcotic substance if it is consumed when conducting laboratory tests on it, but if it has not been consumed, it decides to confiscate it and deposit it with the competent authorities to preserve it after the decision has acquired the absolute degree.

Requirement Three

Moral Corner

The crime is not only a physical entity but also a psychological moral entity, just as the crime has its material elements, as well as its psychological elements represented by the moral pillar and is necessary for the establishment of the crime so that there is a psychological link between the criminal activity and the perpetrator who issued this activity because there is no crime without a moral corner, because the abstract material act does not count the law unless a human will stands behind it and wants the material act that constitutes the crime knowing its truth and its

consequences, The moral pillar is the means of the legislator in determining who is responsible for the crime and determining the scope of his responsibility, justice requires that the offender, who is psychologically related to the crime, be punished if imposed on a non-offender who fails to achieve its objectives of public and private deterrence. ()

Crimes in general are either intentional and their moral corner as the Iraqi legislator calls them (criminal intent), or they are wrong crimes and their moral corner is wrong and the crime is unintentional, and intentional crimes are the origin, because they involve the meaning of attacking rights and values, while mistakes are only an exception because they are merely harmful acts. ()

Drug offences are the case with other crimes in which the moral pillar takes the form of criminal intent and that the legislator is content with some crimes with general intent while in other crimes requires special purpose besides the general intent and we will address with explanation the general intent and the special intent:⁷

General intent

The Iraqi legislator in the Penal Code no. 111 of 1969 defined the criminal intent in article (33) paragraph (1) of it () is to direct the perpetrator to commit the act of the component of the crime aimed at the crime that occurred or any other criminal result)) and therefore the criminal intent in the crimes of drug use is achieved by the offender by providing knowledge of the physical corner of the crime and informing the consequences of it, as well as knowing that the substance of the drug and the departure of his will to commit criminal activity. We will show what science and will mean:

1- Science

The knowledge that the law requires proof of the criminal intent in the crime of drug use is the knowledge of the offender of the nature of the narcotics, if he is unaware of its nature, there is no moral pillar against him and therefore his lack of responsibility is raised, since the criminal intent is not available merely the physical possession of the drug, but must be based on the evidence that the offender is aware that what he is achieving is narcotic substances. As for the assumption of knowledge of the drug from possession only, it is the establishment of a presumption that cannot be taken, but it must be actually proven not by default, and the court infers this science from the circumstances of the case and its circumstances, especially if in those circumstances what leads to the possibility of the absence of knowledge, and what is guaranteed by the ruling is in accordance with reason and logic and this is what the Federal Court of Appeal ruled ((The special decision is incorrect and contrary to the law, as it is established from the facts of the case that the accused was arrested and found inside his wheel which he was driving on two tablets of brown color, which turned out to be narcotics according to the report of the Department of Forensic Medicine, and

⁷ (Kamel Farid Al-Salk - Penal Drug Laws - Al-Halabi Publications - Beirut - 2006, p. 37.

() Dr. Sabah Karam Shaaban - Driving under the influence of alcohol and drugs - First Edition - House of Cultural Affairs - Baghdad - 1987 - p. 136

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since the accused denied the charge against him and stated that he did not use any narcotic substances before the trial court and that the discs seized were handed over to him by one of the persons with whom he was riding in the vehicle as a treatment for his health condition He did not know that it was a narcotic substance, as the examination report of samples taken from the accused showed that there was no evidence of narcotic substances, and no evidence or evidence was established to refute the defendant's denial and therefore the evidence was insufficient and convincing to criminalize the accused, so he decided to dismiss the charge against the accused and release him. ()

2- Will

It is an inherent force in the soul consisting of perception and freedom of choice that directs the organs of the body towards the achievement of an illegal purpose, which is an element of criminal intent because science alone is not sufficient to achieve criminal intent, but requires, besides, the will of the perpetrator, which is the crime of drug use towards the possession of narcotic substances, and a tendency to achieve the result of the use of drugs for the purpose of abuse, but it requires that the will of the offender be Considering a law, i.e. a distinct will chose, whoever is forced to commit a crime is not responsible for depriving him of the freedom of choice because of the pressure of coercion, and does not consider young age or submission to obedience to the husband or father as coercion. . This is what the Federal Court of Cassation ruled ((the decisions issued by the Criminal Court to criminalize the accused in accordance with the provisions of article 32 of the Drug and Psychotropic Substances Act No. 50 of 2017 were incorrect and contrary to the law. For drugs and psychotropic substances, which makes the available evidence insufficient to criminalize him, so he decided to overturn all decisions issued and cancel the charge and release the accused,) as well as what was ruled by the Federal Court of Appeal of Al-Qadissiya ((Upon examination and deliberation he found that all the decisions issued in the case were incorrect and contrary to the law because the witness Dr. confirmed in his testimony that the accused in the case has a personality disorder and that he has reviewed it more than once and was prescribed appropriate treatment for him, so the court had to refer the accused to the Permanent Mental and Psychological Medical Committee to ensure the safety of his mental strength and whether he appreciates the responsibility of his actions or not and whether he can defend himself based on the provisions of article (60) of the Penal Code He decided to overturn all the decisions in the case and return them to her court for a retrial. ()

Second; Private intent

There is a range of crimes that the law requires for the availability of special intent besides the general intent, it is not enough the general intention to achieve these crimes, but it needs to be added to it with a special purpose, which means that the knowledge of the perpetrator and his will go to another incident that is not one of the pillars of the crime and is represented by the mental state of the offender accompanying this incident and expressed indeed (private mayors). ()

Crimes whose moral corner is achieved with the availability of general intent are called formal crimes, but crimes whose moral it, in addition to the general intent, require the availability of special intent, are called material crimes, i.e. with specific consequences, if the perpetrator does not expect this result, then the perpetrator will not achieve such crimes and if they lead to other crimes that require the availability of special intent.⁸

Drug offences are formal offences such as the crime of possession of narcotic substance, and material crimes of a specific result determined by the legislator such as the crime of drug use, i.e. the offender looks forward to the use of the drug in what has been achieved, which is the result of the crime criminalized by law, and therefore we must not confuse the motive for the commission of the crime with the special intent, since the special intent is one of the pillars of the crime and cannot differ for one type of crime, while the motive It varies with regard to the same type of crime depending on the circumstances of each incident, in the crime of drug use, the motive for the crime may be addiction, while the intent of the crime is to use, the offender does not have an impact on the intentional crime as a rule, while the intention is decisive in this regard, and the court must indicate the intention of dealing in its judgement or it is defective. () It may base this on sufficient and reasonable reasons that the accused is making the drug for his use and the court often reaches the intention of dealing with the amount seized, as ruled by the Federal Court of Cassation ((the court erred in the legal adaptation of the crime and described it in accordance with the provisions of article 28/1 of the Drug and Psychotropic Substances Act No. 50 of 2017) because It is established from the facts of the case derived from its evidence that the act of the accused constitutes a crime in accordance with the provisions of article 32 of the drug law mentioned above because the accused expressly admitted his statements written before the competent investigating judge and before the criminal court for the use of the narcotic substance kind Crystal and denied trading in it and that the accused whose case was broken retracted from his testimony against the accused by saying in court and stated that the accused referred to him using narcotic substances, Therefore, based on the provision of article (260) of the Code of Criminal Procedure, he decided to change the legal description of the crime to article (32) of the Drug Act and criminalize the accused under it, and since the punishment imposed on the accused became severe and not commensurate with the new legal description of the crime decided to reduce it to severe imprisonment for three years), and in another decision (it was found that the Criminal Court erred in the legal adaptation of the crime in accordance with the provisions of article 28 / first of the Drug and Psychoactive Substances Act No. 50 for 2017 because the fact of the proceedings derived from her evidence is that the act of the accused constitutes an offence in accordance with the provisions of article 32 of the Drug and Psychotropic Substances Act, and based on the provisions of article 260 of the Code of Criminal Trials, he decided to change the legal description of the crime to article 32 of the above-mentioned drug law, criminalize the accused and reduce the

^{8 8} (Mohammed Merhi Saab - Drug Crimes - Zain Human Rights Publications - Beirut - 2007, p. 54.

(Mahmoud Zaki Shams - Anti-Drug Methods in the Arab World - Part II - Egypt - 1995, p. 89.

(Consultant Ihab AbdulMutallab - Encyclopedia of Drugs - National Center for Legal Issues - Cairo - 2011, p. 34.

() Salaheddine Ali Al-Muwali - Moral Pillar of Drug Crimes in Libyan Law - Dar al-Kutb Legal - Egypt - 2011 - p. 623

sentence to severe imprisonment for two years because the penalty imposed has become inappropriate and to maintain the penalty of the fine imposed). ()⁹

Second research

Punishment for drug use

The state has the right to punish the perpetrator, which is a general right for it to exercise in the name of society, and punishment is to meet evil like him, and in the past the prison sentence was his only form, but in modern legislation, the punishment includes all that the state expects of the perpetrator of prohibited conduct, whether it is a punishment or a measure that lowers its status. ()

The Iraqi legislator punished the perpetrator of the crime of drug use in article 32 of the Drug and Psychotropic Substances Act No. 50 of 2017 and provided for supplementary sanctions and precautionary measures as well as mitigating circumstances and measures to treat users, which will be addressed in three demands:¹⁰

The first requirement

The original punishment.

Punishments are considered one of the most important means of social control as it is the punishment decided by the law and signed by the court on those who prove their responsibility for the crime and fit with it,) and the success of the legal rule in achieving its intended goal depends on considerations that may be some of them conflicting, and this is what we see clearly with regard to the intervention of the law to face the problem of drugs, if the harm of drugs on the users has been proven in a way that has now exceeded all controversy, but some of them are necessary for medical or scientific purposes, and therefore become Their cultivation and production are necessary, but the release of their production undoubtedly leads to a surplus that exceeds what is necessary for these legitimate purposes and therefore misuses them.

The laws differed in the punishment of drug and psychotropic crimes with the intention of dealing with personal use because of the different view of the legislator to the user, some laws view him as a sin against himself and against society and therefore deserve punishment and that whenever the legislator emphasizes punishment for these crimes, the positive result is to stop committing

Zuhair Abdul Sahib Hussein - Drug crimes in society, science, sharia and positive law - comparative study - first edition - Legal Library - Baghdad - 2002 - p. 24

(Lt. Col. Ahmed Fakhri - Drug Terrorism - Ministry of Interior - Directorate of Training and Rehabilitation - Baghdad - 2012, p. 26.

() Dr. Fakhri Abdul Razzaq Al-Hadithi - Explanation of the Penal Code - General Section - Second Edition - Cairo - p. 360

Egyptian Drug Law No. 180 of 1960 amended by Law 122 of 1989

(Muwaffaq Hammad Abd - Drug and Psychotropic Crimes - Dar Al-Sanhouri - Beirut - 2018, p. 78.

crimes and this is the approach of most Arab drug laws, but there is another legislative trend that views the user as sick. It should be treated and some have argued that stress with the user and even with the addict is an unjust tightening where he should be seen only as a mental patient who requires treatment and not punishment, the user is sick and the victim of environmental pressures is stronger than his will and should be treated for his illness.) In addition to the futility of putting an addict or drug or psychotropic substances in prison because it will not contribute to his recovery but may make him addicted after his release from prison, French law differentiates between two categories of drug offenders where the public health law applies to the user while the Penal Code applies to promoters and drug traffickers.

There is a third trend that distinguishes between the user and the addict, because the addict deserves better treatment than the user on the basis that the abuser is the beginning of addiction and the user must be taken seriously, While the development of abuse to addiction is considered a disease that must be taken care of by the holder of the placement in sanatoriums, which was taken by the Egyptian legislator in article 37 of the Drug Act after he was punished for a series of acts if it was for the purpose of dealing or personal use in non-legally authorized conditions with temporary hard labor and a fine of not less than ten thousand and not more than fifty thousand pounds, it was permissible in the second part of the article above to the court when sentencing the sentence to order a deposit from He is found guilty in a sanatorium for medical, psychological and social treatment, and the duration of the sentence in the sanatorium may not be less than six months and not more than three years, or the length of the sentence served or whichever is less. () With the promoration of the Drug and Psychotropic Substances Act No. 50 of 2017, the Iraqi legislator has kept pace with the development of modern drug and psychotropic substance legislation in looking at the user and addict, where he was sentenced to the crime of dealing from felony to misdemeanour, as stipulated in article 32 of it (punishable by imprisonment for at least one year and not more than three years and a fine of not less than five million dinars and not more than ten million dinars each imported, produced or made Or acquired, obtained, acquired or purchased narcotic substances, mental effects and chemical precursors, or planted a plant that results in narcotic substances or mental effects or purchased for the purpose of use or personal use), the penalty for dealing in the old law was up to temporary imprisonment, but in the law in force the penalty of imprisonment does not exceed three years, and this crime is based on the activities in article 32 with the intention of dealing, and this is what it ruled Baghdad Federal Court of Appeal ((When checking, deliberating and kindness in view of the decision issued by the Court of Misdemeanours of Al-Rusafa to imprison the accused for one year and a fine of five million dinars in accordance with the provisions of article 32 of the Drug and Psychotropic Substances Act No. 50 of 2017 is correct and law-abiding, because of the adequacy of the evidence obtained against the accused according to the facts of the case investigation and trial, so he decided to ratify the special decision)), () As well as the ruling of the Federal Court of Appeal of Qadisiyah ((in the examination and deliberation) found that the decision of the Shamia Misdemeanours Court to imprison the accused for three years and a fine of five million dinars in accordance with the provisions of article 32 of the Drug and Psychotropic Substances Act is correct and approved of the law for the reasons on which it was based because of the confession of the accused in all the roles of investigation and trial for possession of narcotic pills, and this was reinforced by his recognition of the seizure record as well as the testimony of the two witnesses in which they

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confirmed his purchase of narcotic pills. Therefore, the evidence obtained was sufficient to criminalize him in accordance with the article of the charge, and the punishment was proportionate to the same act against him, and he decided to ratify the special decision.

The penalty of fine in the Iraqi drug and psychotropic substances law is an original punishment that may not exceed or decrease the limit set by the legislator for it, as the rules of reduction or tightening of the penalty for the fine may not be used, and the fine may not be imposed by the executives if it is not included in the original provision, if the court does not rule on it in addition to the negative punishment of freedom, the decision is flawed and subject to rebuttal, and this is what the Court of Appeal of Baghdad al-Rasafa ruled - as a Discrimination ((when checking and deliberation found that the conviction decision issued by the Court of Misdemeanours of Al-Rusafa is correct and in accordance with the law on the basis of the reasons on which it decided to ratify it, but regarding the decision to sentence the sentence was found to be incorrect and contrary to the rule of law because the court imposed the negative punishment of freedom against the accused and omitted the financial penalty of fine and not imposed it as an original punishment as well and without any basis in the law and when it submitted decided to overturn the decision of the sentence of punishment and return the sentence to its court to follow The above.

The drug and psychotropic substances law in force is also stipulated in article 40/I ((the criminal case shall not be brought against those who apply for substances or psychotropic substances on their own for treatment in the hospital specialized in the treatment of addicts)) where the text of the article above developed an integrated regulation for the treatment of users in order to urge them to get rid of abuse through a scientific look looking for the causes of the problem in order to treat it in order to encourage them and their families to apply on their own for treatment in hospitals specialized in the treatment of addicts.

The second requirement

Supplementary sanctions and precautionary measures

We will explain in this requirement the subject of supplementary sanctions and precautionary measures:

First; Supplementary sanctions

These penalties, which are not applied to the convict unless provided for by the original sentence, are complementary to the original punishment and are punishable accordingly and must be expressly provided for in the sentence, and the supplementary penalties in the Drug and Psychotropic Substances Act No. 50 of 2017 are either obligatory or passported, the first is that the court must rule on it in addition to the original penalties. And subjecting it to cassation, and it is not permissible to carry out this punishment if it is not included in the sentence because this execution is a correction of the sentence that is not owned by a authority other than the judiciary.) but the supplementary passport penalties are the ones in which the ruling is permissible for the

court where it has to rule it or issue the judgment without it and in both cases its ruling is correct, and these penalties are:-¹¹

1- Confiscation

Is the seizure of the convict's money and the transfer of his property to the state without any compensation, and the Egyptian Court of Cassation defined him as a procedure intended to own the state controlled matters related to the crime without the consent of the owner and free of charge, and that the penalty of confiscation may be general and means stripping the convicted of all his money, which is the harshest form of financial punishment and meets the death penalty for corporal punishments, () Private confiscation is limited to money and things related to or related to the crime and we will address it with my agencies' explanation:

- A. **(Public confiscation** - The text of the legislator in article 34 /II/B of the Drug and Psychotropic Substances Act in force ((the court rules on the confiscation of the money of the accused, his wife, children or others if it is found to be the result of the commission of one of the crimes stipulated in articles 27 and 28 of the Act), and therefore the court must rule on the sources of funds of the accused, his wife and children provided that they are the result of the commission of one of the crimes stipulated in articles 27 and 28 of the Act, whether inside Iraq or outside Iraq. In paragraph (a) of article 34/II, the legislator obliged the court to verify the real sources of funds before issuing its decision, which was ruled by the Baghdad Court of Appeal of the Federal Court of Resafa ((upon scrutiny and deliberation found that the court decided in paragraph (2) to confiscate the money transferred and immovable, contrary to the text of article 34/II/a of the Drug and Psychotropic Substances Act, which required the court to verify the sources of the seized funds and whether they were the result of the crime where they were the result of the crime. It issued its decision without verification and when it progressed it decided to overturn the decision. ()
- B. **Special confiscation** - Article 35 / First of the Drug and Psychotropic Substances Act ((in all cases governs the confiscation of narcotic substances, psychotropic substances, chemical precursors or plants that produce narcotic substances or mental effects, tools, devices, machines, used vessels and seized means of transport used to commit crimes). Without violating the rights of others of good faith, the confiscation of seized drugs is a supplementary and obligatory punishment, as the original sentence must include the confiscation of all seized drugs, whether powdered, planted or seeds, whether the conviction, release, acquittal, fall of criminal proceedings in the death of the accused or for any other reason. This is because possession of drugs is prohibited by law unless there is a provision otherwise, since the confiscation of narcotic substances may not be ruled out if possession is legal under the law, and the possession of narcotic substances may not be confiscated if possession is a crime of

¹¹ (Saeed Kazem Jassim - Trends in Contemporary Criminal Policy in the Fight against Drug Crimes - Mustansiriyah University - Faculty of Law - M.A. Letter - 2014, p. 132.

() Dr. Dhari Khalil Mahmoud - Al-Simple in explaining the Penal Code - General Section - Al-Qadisiyah Printing House - Baghdad - 2002 - p. 144

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those seized with it only, but it is permissible for the holder, as if a person stole narcotic substances from a doctor or pharmacist licensed to possess them. This is what the Federal Court of Appeal ruled ((when checking and deliberating) found that the decision to rule on the punishment is incorrect and contrary to the law, because the misdemeanour court did not take into account the provisions of article 35 / First and second of the Drug and Psychotropic Substances Act, which had to be ruled on the confiscation of narcotic substances and sent to the competent authorities to preserve them, namely the Department of Forensic Medicine, so he decided to overturn the decision.) () ¹²

The law also required the confiscation of tools and means of transport used to commit the crime, although their possession was originally legitimate but for use in the commission of drug offences, which include all weapons used in the smuggling, production or cultivation of narcotic substances and tools, as well as means of transport unless they relate to the rights of non-bona fide persons, which may not be confiscated in this case, as ruled by an appeals court. In the audit and deliberation, he found that the appeal was based on an administrative decision that did not accept the appeal, which decided to respond in form, noting to the court that it had to apply the provisions of article 35 / first of the Drug and Psychotropic Substances Act when it issued its decision to resolve the case, especially since the convict acknowledged the proceeds of the wheel type jeep Cherokee seized in question by the statements of the code before the investigating judge). ()

We would like to point out in this regard that there is an opinion that goes to the confiscation of tools and means of transport when used in the commission of the crime even if the punishment of the accused for any reason is refrained, and another opinion is that if a decision is issued to exonerate the accused for the failure of a corner of the crime or impunity to achieve a barrier from positions of responsibility such as coercion or necessity, it is not permissible to confiscate the tools and means of transport belonging to him because the confiscation in this case is a supplementary punishment any supplement to the original punishment and does not envisage impose it on its own. ()

2. Publication of the judgment

It is a supplementary penalty intended to limit the amount and consideration of the convicted person through the publication of the sentence for drug and psychotropic offences in order to be an example to others, and the Iraqi legislator authorized the publication of the summary of the prison sentence or imprisonment in one of the crimes stipulated in the Drug and Psychotropic Substances Act at the expense of the convicted person in a daily newspaper, as stipulated in article 35/V (the court decides to publish the summary of the sentence of imprisonment or imprisonment in one of the crimes stipulated in this law at the expense of the convicted person in a daily newspaper).¹³

¹² () Dr. Mohsen Naji - General Sections of the Penal Code - Baghdad - 1974 - p. 439

() Dr. Ali Hussein Khalaf- Dr. Sultan Abdul Qadir Al-Shawi - Former Source - p. 439

() Mason Khalaf Hamad - Drug and Psychotropic Crimes - University of The Two Rivers - Faculty of Law - Doctoral Thesis - 2007, p. 164.

¹³ (Ali Abdullah Al-Hammada - Drugs - Research submitted to Aleppo University - Faculty of Law - 2007, p. 94.

3- Denial of certain rights and benefits

Article 100 paragraph (a) of the Iraqi Penal Code No. 111 of 1969 ((when sentencing the court to life imprisonment, temporary or imprisonment for more than one year) stipulates that the convict shall be deprived of one or more of the rights described below for a period of not more than two years from the date of the end of the sentence or its expiry for any reason:

- 1- To assume some public functions and services, to determine what is forbidden by the decision of the ruling and to have the decision as a sufficient reason.
- 2- Carrying national or foreign medals.
- 3- Carrying weapons.
- 4- The rights and benefits contained in paragraph (II) of this resolution, both and for each other.

To apply this provision, a sentence of a deprivation of liberty shall be imposed on life imprisonment, temporary or imprisonment for more than one year, and that the denial of rights and benefits for a period of not more than two years begins after the end of the execution of the original sentence or its expiry for any reason and the Criminal Court may at the request of the convict or the public prosecution after at least six months after the date of his release from prison to reduce or abolish the rest From the period of deprivation and this is stipulated in article (100) paragraph (2) of the Penal Code ((the prosecution or convicted shall be at least six months after the date of his release from prison) to submit to the Criminal Court, which falls within its area of residence, a request to reduce or cancel the remainder of the period of deprivation stipulated in the decision of the sentence, and the Criminal Court after conducting the necessary investigations to issue its decision to be caused Its decision shall be definitive ...)) .

The penalty of deprivation of rights and benefits from supplementary passport penalties, if not ruled by the court, indicates that the court did not want its rhythm and its ruling is correct.¹⁴

Second; Precautionary measures

It is a set of measures stipulated in the Penal Code in articles (105-123) and its signature is carried out only in the circumstances stipulated in article (103/1) of the Penal Code (((a precautionary measure provided for by law may not be signed against a person without having been found to have actually been committed, considered a crime by law and his condition is considered dangerous to The safety of the community, and the situation of the criminal is considered dangerous to the safety of the society if it is found from the circumstances, past and behavior and

(Sabah Karam Shaaban - Driving under the influence of alcohol and drugs - Dar al-Cultural Affairs - Baghdad - First Edition - 1987, p. 23.

(Sabah Karam Shaaban - Drug Crimes - Comparative Study - Baghdad - First Edition - 1984, p. 69.

¹⁴ Article (100) was repealed and replaced by the text above under resolution 997 of 30/7/1978.

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circumstances of the crime and its motives that there is a serious possibility that he commits another crime(), and precautionary measures are either negative to freedom or restricted to it or negative of rights or material,) and the most important precautionary measures stipulated in the Drug and Psychotropic Substances Act:

1. Denial of work

Denial of the practice of the work of the Penal Code in article (113) as the denial of the right to engage in a profession, profession, industrial, commercial or technical activity depends on the authorization of a competent authority, and in the Drug and Psychotropic Substances Act, this measure is a negative measure of rights that would deprive the convicted person of his work related to drugs and psychotropic substances, as stipulated in article 355. Fourthly, from the Drug and Psychotropic Substances Act () the court must rule in addition to the penalties stipulated in this law to deprive the convicted person of working for a period of more than one year. If he returns to the same crime within the five years following the final ruling of the prohibition, the court may order the prohibition for a period of more than three years and the prohibition shall take effect from the date of execution or expiry of the sentence for any reason)) and require the application of the text:

- 1- The practice of work to be deprived of the convict shall depend on the issuance of leave from a legally competent authority to issue it, there are activities related to import, storage, sale and purchase of drugs and psychotropic substances in order to practice work in order to obtain leave from the legally competent authorities As owners of the snort, pharmacies and doctors in some pictures the Drug and Psychotropic Substances Act has provided for the articles (8, 9, 10, 11, 12, 13, 14, 15) on controls Practice legitimate work in the field of drugs and psychotropic substances.
- 2- The person shall commit an offence under the Drug and Psychotropic Substances Act and be sentenced to one of the penalties stipulated in it.
- 3- The period of deprivation of work does not exceed one year, and may be less than that and this is up to the court in accordance with the circumstances of each case alone.

2- Closing the shop

The penalty for closing the shop as a physical precautionary measure in the drug and psychotropic substances law is mentioned in article 38/ III, which stipulates ((the closure of each store authorized to import, export or transport narcotic substances, psychotropic substances or precursor chemicals or possession based on the provisions of article 8) () of this law for a period of not less than one month or no More than one year and the closure follows the prohibition of starting work, trading or the industry itself in the same shop, whether by the convicted person, a family member or any other person who has been convicted of renting the shop or waiving it after the crime, and the prohibition does not include the owner of the shop or any person who has a right in kind to it if it has no connection to the crime.)¹⁵

¹⁵ Article 104 of the Penal Code No. 111 of 1969 amended

Article 8(first) stipulates that the import, export and transport of narcotic substances, psychotropic substances and precursor chemicals shall be carried with leave or with the approval of the Minister of Health.)

The opinion was that the punishment for closing the shop through which the crime took place does not require that it be owned by those who must be punished for the act committed in it and does not object to this that the punishment is personal because closing is one of the measures that does not prevent its signature from being signed to be transgressive to others,) but the Iraqi legislator went to close the shop does not include the owner of the shop or anyone who has a right in kind to it if it has nothing to do with the crime.

The third requirement

Mitigating and aggravating the penalty and measures to treat drug users.

The legislator, when setting the penalty for the crime, takes into account the usual circumstances in which it occurred and sets two upper and lower limits for it. In some cases, the legislator left the court the power to choose between two or more penalties, and sometimes the circumstances of the crime and the criminal require mitigating Punishment, or on the contrary, making the ordinary punishment less for the offender, which calls for its tightening, and the legislator has put in place measures to treat drug abusers, and this is what we will discuss with an explanation:

First - mitigating the penalty.

The crime of drug abuse, like other crimes, may have circumstances that require clemency. For a reason stipulated by the law, it is considered a legal mitigation, but if the law leaves its discretion to the court or the judge, it is called a judicial mitigation.

1- Legal mitigation

Which is called mitigating excuses, including those that are general and apply to all crimes and stipulated in the Penal Code No. 111 of 1969, or they are specific to a crime or a specific group of crimes and stipulated in the Narcotics and Psychotropic Substances Law, which are three cases:

A- News about the crime

The news about the crime by the accused to the competent authorities during the investigation or the trial, and this news led to the arrest of the perpetrators or the disclosure of persons who participated in the crime and are related to local or international criminal gangs, is an excuse that mitigates the penalty, and this is what is stipulated in Article 37/Second of the Narcotics and Psychotropic Substances Law No. 50 for the year 2017.

b- young age

It is what the Iraqi legislator calls the “juvenile” in the amended Juvenile Welfare Law No. 76 of 1983, where Article (3), Paragraph (Second) of it states: “A juvenile is considered a juvenile who has completed nine years of age but not eighteen.” Juveniles are a drug crime, so they are judged

according to the measures stipulated in the Juvenile Welfare Law, which are by their nature less severe than the penalties stipulated in the Iraqi Penal Code, () because the goal of the Juvenile Welfare Law is to reduce the phenomenon of juvenile delinquency and care and protect the juvenile, not the punishment itself. () Also, the Iraqi legislator replaced the death penalty with life imprisonment for the convict who at the time of committing the crime had completed eighteen years of age and had not yet completed twenty, and this is what Article 79 of the Iraqi Penal Code stipulates. ¹⁶

C. impaired perception and will

The legislator in Article 60 of the Iraqi Penal Code to cognitive impairment and is considered a legitimate excuse diluted, which is what provided ((I don't ask for a criminal who was at the time of committing the crime unconscious cognitive and madness, or disability in the contract or due to being drunk or drugged resulted from intoxicating substances or drugs gave him forcibly, or not aware of it If , for the purpose of applying the provisions of this provision, the impairment of consciousness or will is caused by a mental impairment or intoxicating or narcotic substances given to the offender forcibly or unknowingly, then a mitigating legal excuse may be used .()

2. judicial mitigation

The so-called mitigating circumstances are up to the judge or the court because their application is permissible when available. the law does not require mitigation when mitigating judicial circumstances exist. thus, mitigating judicial circumstances represent an effective means of judicial individualization of the penalty, which the judge can use in his discretion of the circumstances of the crime before him to choose the penalty and adapt it in a meaningful manner. ()

It is left to the discretion of the judge or the court to take them according to what is positive for clemency, because clemency is a mystical feeling provoked by various ills that are inconceivable to limit and specify, () in all cases the judge or the court must indicate in the judgment, otherwise it was subject to Cassation, and this was ruled by the Federal Court of Article 132 and Article 134 of the covenant The Penal Code therefore decided to return the sentence to its court in order to impose a penalty according to the provisions of the law)) ¹⁷.

The Iraqi legislature provided for mitigating circumstances in articles 132 and 133 of the Penal Code, where Article 132 ((if the court finds in a crime that the circumstances of the crime or the Offender Warrant clemency) may substitute the prescribed penalty for the crime as follows: -

¹⁶ () Yousef Al-Buraik - International Social Change for Drugs - Naif University for Security Sciences - Riyadh - 2007, p. 52.

¹⁷ Ghassan Rabah, the brief on Narcotic Drugs and Psychotropic Substances, Halabi publications, Beirut, first edition, 2008, P. 53.

Articles 72-86 of the Juvenile Welfare Act No. 76 of 1983 as amended

Sections (1-2) of the amended Juvenile Welfare Act

Major General Dr. Sayed Mohammadin, economic and social dimensions of the problem of drug abuse by young people, legal books House, Alexandria, 2007, p. 74.

Amal Abdel Rahim-the phenomenon of drug use, Cairo University, 1974, P. 86.

Hussein Mohammed Jamjoum, Encyclopedia of criminal justice, Part II, 2003, p. 50

- 1 - the death penalty by life imprisonment or temporary period of not less than fifteen years
2. the penalty of life imprisonment is the penalty of temporary imprisonment.
3. the penalty of temporary imprisonment shall be imprisonment for a period of not less than six months.

As stipulated in Article 133 ((if a misdemeanor has a mitigating circumstance in which the court considers that it calls for clemency, it may apply the provisions of Article 131)), and thus the application of mitigating circumstances is in crimes of crimes and misdemeanors only and their effect is limited to the original penalties prescribed for the crimes and does not apply for the mitigating jurisdiction provided for in Article 132 of the Penal Code shall be The court decided to reverse the court's decision to impose the penalty and return the sentence to its court to impose a penalty in accordance with the provisions of the law . ()

Second; aggravation of punishment

The principle of tightening the sentence is related to the special circumstances and reasons for each act related to the drug substance, which are behind the factors, most notably the nature of the social system, or circumstances related to the offender, which was ruled by the Baghdad Federal Court of Appeal() in the audit and deliberation found that the sentence was light, especially since the revocation of the sentence and remission of the sentence to her court For the purpose of tightening and informing the appropriate limit)) . ()

In drugs and Psychotropic Substances Act No. 50 of 2017 the text of Article 29 of ((an aggravating circumstance penalties provided for in articles 28 and 29 of this law, check one of the following cases: -

- First-the oud shall take into account in proving the Oud all national and foreign judicial rulings issued by conviction for crimes provided for in this law.
- Secund, if the perpetrator is an official or public service official responsible for combating the illicit traffic or use of narcotic drugs and psychotropic substances or controlling their circulation or possession.
- Third - if the actor participates in an international gang or his act is concomitant with a crime against the internal and external security of the state.
- Forth if the offender uses violence or a weapon in the commission of the crime.
- Fifth. If the crime was committed in a house of worship or in an educational institution, military or civilian, or in prison, or a site or a book or house repair events or home to shelter the homeless, beggars, or for the care of orphans or sports club, or institution of a civil society))

By extrapolating this provision and all the provisions of the Narcotic Drugs and Psychotropic Substances Act, we have found that the penalty for drug trafficking offences has been increased but not for the crime of drug abuse .in this regard, the general principles of the Penal Code must be used to increase the penalty for the offender of drug abuse when one of the circumstances provided for in articles 135-140 of the Iraqi Penal Code is available. this is a legislative deficiency

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that the legislator must avoid, since drug abuse is a serious crime that threatens the family and society.¹⁸

Third. Measures to treat users

Measures are those therapeutic means used to treat the user after taking drugs or to treat the drug addict , They are the means that work after the acquisition of abuse or addiction, and the most important of these means is medical treatment, whether physical, psychological or mental treatment, and the physical therapy is not to prevent him immediately from the drug that he is addicted to because that may lead to his death and therefore the treatment requires to prevent him from the drug gradually because not returning to Addiction again . ()

Most Arab countries, including Iraq, have not established sanatoriums for the treatment of addicts, despite the large number of them. they have even created departments in mental and psychiatric hospitals to treat addicts. ()

The Iraqi legislator authorized the court in Article 39 of the law on Narcotic Drugs and Psychotropic Substances to decide to place a person who proves his addiction to drugs in one of the health institutions prepared for this purpose, or oblige him to review a psychiatric clinic established for this purpose once or twice to help him to get rid of the , This text is more developed and in keeping with modern concepts in the treatment of addicts than it is in Article 14 / VII of the previous Drug Law No. 68 of 1965, which allowed the court to deposit anyone who proves his addiction to drug use because of a sick condition suffered by his health in one of the sanatoriums or places allocated by the Ministry of Health for it is not a mistake to be tried in accordance with human standards. He was admitted to a sanatorium for treatment. ()¹⁹

Conclusion

After completion of the preparation of our search tagged ((the crime of drug abuse in accordance with Iraqi law)) we came to the most important results that we would like things to build any community, safe and sound, where the drug is a serious problem for its role in the collapse of society and common crime .

Iraq has witnessed a lot of wars and the subsequent economic blockade and terrorism hit many of our wallets, all of which helped to the emergence of a complex problem called Drugs, and one of the most important causes of drug abuse is the absence of the role of parents, guidance and educational guidance in addition to friends of the bad .

Drugs also lead to bad results on the individual with regard to the currency, His will, his social status and people's trust in him and lead to abuse of his relationship with others, loss of balance, lack of adaptation to society and rejection of morals because the use of them causes a disorder in perception and senses and imbalance in thinking and physical imbalance and then drugs and effects

¹⁸ Ali Abdullah Al-Hamada-drugs-research submitted to the University of Aleppo, Faculty of Law, 2007, p.63.

D. Kamel Farid Malik - criminal drug laws-Beirut-Al Halabi publications-2006-p. 216

¹⁹ Yusuf al-Barik-international social change of drugs-Nayef University of security sciences - Riyadh – 2007, 175.

Mental No. 50 for the year 2017 with new rules and provisions that did not exist in the previous Drug Law No. 68 for the year 1965, where he added some provisions related to drugs, which help to reduce the illegal spread of drugs and Psychotropic Substances and suppress the gangs that deal drugs and through the above we will indicate the most important:-

First. Conclusions

1 - I'm a drug Ava dangerous to society and multiple types differ in their properties, and prove them, and has received several definitions of narcotic drugs in the literature, but the criminal legislation of most of them took with your inventory of narcotic substances schedules follow the law.

2 .in our study of the elements of the crime of drug abuse, we found that in addition to the physical and moral element, it requires the presumptive element (the place of the crime), which is the substance that predates the existence of the crime.

3. the crime of drug use requires, in addition to general intent, the availability of special intent.

4 - week prevalence of the drug is many and varied, including myself, social, and economic.

5. drug abuse inflicts significant losses on national and individual income by spending considerable money on the purchase of drugs as well as government expenditures to combat drug smuggling, promotion and abuse.

Second; Recommendations

1-establishment of specialized hospitals in the treatment of cases of addiction and abuse and not only departments in psychiatric and mental hospitals.

2. limit the dispensing of narcotic substances used for medical purposes to specialized pharmacies that dispense these drugs so that they can be controlled easily and easily.

3. the need to highlight the dangers of drugs by the media and to prepare programs to sensitize young people about their harm.

4-increase government support to drug control managers and increase cooperation between them and other regulatory bodies.

5-activate the role of competent bodies to monitor non-licensed pharmacies and criminalize work in licensed pharmacies by persons not qualified to practice the profession of Pharmacy.

6. the penalty for the offence of drug abuse shall be increased in the event that one of the cases provided for in Article 29 of the Narcotic Drugs and stimulants act is available because of the seriousness of the offence and its impact on the individual and society.

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7. activating Article 39 of the Narcotic Drugs and Psychotropic Substances Act, which provides for the placement of all persons who use narcotic drugs and psychotropic substances in one of the sanatoriums and places chosen by the Ministry of Health for this purpose.

8-attracting energies, especially young people in development and reconstruction projects and encouraging them to practice useful hobbies and sports activities, which fills their free time and keeps them away from the scourge of drug abuse.

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