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Elements and stages of the criminal sentence

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Abstract. :Judicial work in the field of criminal courts is culminated in the criminal judgement and this provision must be drafted by the Court and its necessary elements, In addition to its characteristics, the fact that the criminal judgement is not handed down at once but goes through several stages qualifies the competent court to pronounce it and declare it to be decisive for the proceedings before the courts on the one hand, In order to be free from imbalances and shortcomings and as a result it cannot be overruled by

the authority responsible for monitoring his health and therefore this provision must have its own self-evidenced in this study.

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عناصر ومراحل الحكم الجزائي

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معلومات البحث :

الخلاصة: يتلخص العمل القضائي في مجال المحاكم الجزائية بالحكم الجزائي وهذا الحكم

تواريخ البحث:

يجب أن تصوغ المحكمة وعناصره الضرورية، وبالإضافة إلى خصائصه فإن كون الحكم

- الاستلام : ٢٤ / ايار / ٢٠٢٤

- القبول : ١٩ / ايلول / ٢٠٢٤

الجزائي لا يصدر دفعة واحدة بل يمر بعدة مراحل تؤهل المحكمة المختصة للنطق به وإعلانه

- النشر المباشر : ١ / كانون الاول / ٢٠٢٤

حاسماً للإجراءات أمام المحاكم من جهة، ولكي يكون خالياً من الخلل والقصور وبالتالي لا

الكلمات المفتاحية :

يجوز نقضه من قبل الجهة المسؤولة عن مراقبة صحته وبالتالي فإن هذا الحكم يجب أن يكون

- حكم

له ما يبرره في هذه الدراسة.

- قرار

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- عملي

- لغة الحكم

- صياغة الحكم.

I. INTRODUCTION

Undoubtedly, one of the main functions of the State is the administration of justice among the people. This is done only through the establishment of the judicial facility, which is one of the State's main powers. The existence of the democratic State is accompanied by the existence of the judicial facility, which is one of the pillars of the democratic State.

The State embodies the judiciary's work through courts whose jurisdiction applies to all natural and moral persons, and in order for the judicial function to be fulfilled, judicial decisions in various types of disputes are required to achieve the desired justice.

Since procedural law, specifically the Code of Criminal Procedure, is concerned with the organization of criminal proceedings heard by the courts, In turn, it is the law that does the penal provisions regulated by the legislature in the Penal Code and the penal provisions contained in the special laws. It regulates the procedures for the consideration of criminal proceedings and the civil proceedings that are considered thereunder. From the commencement of proceedings until the issuance of a criminal judgement, it was decided and executed.

Since it is presumed in the criminal judicial judgement to have the special language and rules required by law, The elements on which it is based, as well as its implications, which must exist in order for the sentence to be conclusive in its significance and in its wording. In view of the fact that it is an argument in its content, penal legislation has given the penal judgement the utmost importance as a procedure in which the judiciary shows its proper and desirable appearance.

II. The importance of research.

The importance of research stems from the place of criminal judgement in the work of the court, The means or procedure to give effect to the Court's opinion on ending the dispute and thereby establishing justice is equal, When a judge masters the art of linguistic and legal wording of a judgment, he will be free from criticism and then cassation. The importance of the examination of the criminal judgement is not limited to the judge's judgement, but is linked to the legislator's ability to establish sober rules for sentencing and to adjust the correct meaning of the judgement away from

the incorporation of terminology that may be shared by him into certain characteristics, so as to facilitate its application by the judiciary.

The problem of research:

The examination of the elements and stages of the penal judgement highlights a number of problems, most notably the absence of a study on the penal judgement by the jurisprudence. If such a study exists, it should be general for all judicial decisions without highlighting the specificity of the penal judgement, or it should indicate what the comparative legislation has established without addressing the position of Iraqi legislation. The problem with research is not to use a single term to refer to a sentence, but to confuse a sentence with other procedures that take some of the characteristics of a sentence, making it somewhat confusing for some specialists and the general public.

Research objectives:

The aim of the study is to enrich the legal research in some detail of the subject of the penal provision by accurately stating its stages and elements in accordance with the context approved by the legislature and established by the judiciary.

Search plan:

It is understood that each research plan is consistent with its nature, through which the information is logically sequenced to make it easier for the reader to learn the idea that the researcher wants to put forward, and the information that he has come up with, so we see that the appropriate plan to study the subject is as follows:

First claim: Elements of the sentence.

Second requirement: stages of the criminal sentence.

Conclusion:

It is understood that the criminal judgement consists of several proceedings which should be taken into account by the trial court or otherwise be null and void. (222-226) of the Iraqi Code of Criminal Procedure. For the purpose of addressing the rules governing the issuance of a criminal sentence in a tight manner, free from prejudicial brevity or boring elaboration, we consider it more appropriate to indicate the elements of the sentence and therefore to address its stages in the following two requests:

First requirement

Elements of the penal sentence

It is understood that each judgement has a particular form that corresponds to the nature of the proceedings examined by the court. Judicial rulings do not have a uniform form form, since the laws do not provide for a uniform form form of judicial judgement in general and criminal judicial judgement in particular. The procedural laws did not regulate the language in which the judgement or decision of the Court must be rendered, but this Order was regulated by article 4 (II) of the Constitution of Iraq of 2005, which stipulates that: "Speaking, addressing and expressing in official fields such as... and the courts... in either language". Both languages are what the same article defines in its first paragraph, which reads: "Arabic and Kurdish are the official languages of Iraq...". Thus, other languages may not be an official language in the work of Iraqi courts. However, there are elements that must be found in each judgement. These elements are as follows:

First: preamble.

It is the first part of the judgement, which is the first part of the judgement. It is the first part of the judgement, which is the first part of the judgement. The first part of the judgement is directly preceded and prepared by the reasons. Therefore, the preamble constitutes an important element of the judicial judgement. This part of the judgement contains numerous and important formal information that must exist to indicate both the court and the nature of the judgement. ⁽¹⁾ In the criminal judgement of the Iraqi courts, they must be dealt with. Each judgment after Basmala in the words of the Republic of Iraq and below the words of the Supreme Council of the Judiciary, and then the name of the Court shall be given to the issuer of the judgment. Then the name of the governing body was the first or second body, If the court is a problem of a bench and the name of the individual judge or judges who have heard the case, In doing so, it is possible to know the competence of the judge who heard the case.⁽²⁾

⁽¹⁾ Said Ahmad Bayoumi, presentation by Dr. Mohammed Salim Al-Awwa - Language of Judgment - Seminal Synthetic Study - 1 Library of Literature - Cairo - 2007 - 99.

⁽²⁾ d. Bra Munzir Kamal Abdul Latif - a former source - Ph 302.

The preamble to the judgement also contains the case number, which is an important part of the judicial process. Each case has a specific number with a date that distinguishes it from the other claims,⁽¹⁾ as well as the date of the hearing. It is worth mentioning that the judicial decisions in general must be made in the name of the people and has embodied the Iraqi Constitution. Article 6 of the Iraqi Judicial Organization Act stipulates that: preceded by the Iraqi Code of Civil Procedure, which states: "Judgements shall be handed down in the name of the people".⁽²⁾

The preamble to the judgement includes the names of the litigants, the accused and the representative of the prosecution, the description of the offence assigned to the accused and the applicable legal article,⁽³⁾ as well as the paragraphs on which it relied, depending on the mention of the legal article of the court's jurisdiction, whether it was from the ordinary or specialized courts.⁽⁴⁾

It is important to point out that not all statements that must be mentioned in the preamble at a single level of importance. There are statements that do not result in the nullity of the criminal judgement, such as the omission of data on the accused's age, occupation and place of residence, since the accused does not claim to have been at an age affecting his responsibility.⁽⁵⁾

However, there are data of such significance that their backwardness makes the sentence flawed, for example the date of the crime. Such a statement has legal consequences, particularly with regard to the right to initiate criminal proceedings, as does the reference to the date of the criminal judgement, which is a fundamental statement whereby the sentence is declared null and void.

(¹) Decision of the Twelfth Central Criminal Court of Diwaniyah No. 460/CM 12/2008 in 27/1/2009. (unpublished decision).

(²) Article 65 of the Constitution of Iraq of 1970 stipulates that: "Laws and judicial decisions shall be issued on behalf of the people."

(³) Article 6 of the Iraqi Organization Act stipulates: "Judgements shall be handed down and executed on behalf of the people."

(⁴) Article 154 of the Iraqi Code of Procedure No. 83 of 1969, as amended.

(⁵) Decision of the Salahuddin Criminal Court/2nd Bench No. 101/2/2016 in 16/3/2016. (unpublished decision).

Article 224 (a) of the Iraqi Code of Criminal Procedure stipulates that some of the statements previously reported must be mentioned: "The judgement or decision shall include the name of the judge or judges who issued it, the name of the accused, the other litigants and the representative of the Public Prosecution Service and the description of the offence assigned to the accused and its legal material."

Second: Facts.

The facts are arranged by recounting the events that led to the conflict, and the procedures that it has gone through until its final stage, the adjudication phase, but the narrative in the language of the criminal judgement and the judicial judgement in general is merely a step in its proof, and its exclusive function is to present the facts in question or to appeal; It is a subsequent account of past events, not so much a rhetorical account as a serial demonstration of events that provoke a criminal fact.⁽¹⁾ The purpose of this presentation is to prepare the ground for the establishment and then the expression of an opinion. The role of the judge is therefore that of the narrator who takes note of everything in the proceedings. The function of the drafted sentence is to impart the events honestly.⁽²⁾

The Iraqi legislature referred to this when it stated in the Code of Criminal Procedure that: "The trial shall have a record signed by the judge or the President of the Court on all its pages and shall include the date of each hearing, whether it is public or confidential, the name of the judge or the judges who heard the case, the clerk, the representative of the prosecution, the names of the accused, the other adversaries and their agents, the names of the witnesses, the following papers, the requests, the proceedings, the summary of the decisions rendered and other."⁽³⁾

He initiated the article with the word "edited". Writing is a fundamental element of the judgement. It is evidence of its existence and of its issuance by the court. Without codification, there is neither the judgement nor the

⁽¹⁾ Judgement Unit - former source - p. 19.

⁽²⁾ Saeed Ahmed Bayoumi - former source - p. 101.

⁽³⁾ Article 222 of Iraq's Code of Criminal Procedure.

judgement. Consequently, the law does not recognize an unwritten judgement.⁽¹⁾

It is noteworthy that the Iraqi legislature has stressed the importance of codification in all proceedings, as stated in many citizens of the Code of Criminal Procedure, because of its importance, as well as the gravity of its infringement of individuals' personal freedoms.⁽²⁾

Third: attribution:

It is the legal arguments and factual evidence on the basis of which the Court's operative judgment is based, and the jurisprudence calls it the word "merits", which leads to the conclusion. In the judgements of the Court of Cassation, the Court of Cassation's function is limited to monitoring the validity of the application of the law, whereas the courts of the matter of various kinds discuss the law and the reality.⁽³⁾

Through the Iraqi Code of Criminal Procedure, the legislator is obliged to include in the judgement the reasons for the judgement. Article 224 (a) stipulates: "The judgement or decision shall include..... The grounds on which the Court rendered its judgement or decision and the grounds for commutation or aggravation of sentence "...⁽⁴⁾

One of the litigants' most important guarantees in the proceedings is that leads to the parties' reassurance of the fairness of judgments, It obliges the judge to formulate introductions that would reasonably lead to the judge's conclusion. The judge is also required to thoroughly examine the contested proceedings.⁽⁵⁾ The judge does not render his judgment under the influence of his emotions or personal knowledge. It also allows adversaries to see why the judge has taken his view, thereby assuring them of his fairness. as well as

(1) d. Mohammed Said Abdel Rahman - former source - p. 181.

(2) Articles 43, 49, 50, 54, 57, 58, 61, 62, 63, 65, 67, 86, 96, 109, 121, 123, 125, 128, 129, 130, 131, 135) of Iraq's Code of Criminal Procedure are considered.

(3) Article 259 (b) of the Code of Criminal Procedure stipulates that: "The Court of Cassation shall set out in its decision the grounds on which it was issued."

(4) Judgement Unit - former source - p. 19.

(5) Jean Larguier "Droit pénal de affaires", librairie Armand Colin, Paris, 1975. p.57.

making it easier for the Court of Cassation to ascertain the conformity of the criminal sentence to the legislator's point of achieving full justice.⁽¹⁾

The formulation of the grounds for the sentence is generally of a number of reasons, with the use of the formulations indicative of certainty, which gives rise to the conviction of the parties to the dispute that the judge has worked his mind and logic in reaching the outcome of his judgement.⁽²⁾

On the basis of the advantage of the sentence in which the penalty sentence is drafted, the penalty is not limited to the aforementioned. In the reasons for the judgement, it is necessary to indicate the fact, the circumstances, the applicable legal text and the date of the sentence, and to respond to any defence, request or substantial payment. In a conviction, a statement of the punishable event should include a statement of unequivocal verification of the elements and circumstances of the offence.⁽³⁾

Operative paragraph (judgement paragraph):

The operative part of the judgment is defined as "the final decision of the Court in the dispute before it". The operative part of the judgment is that of the litigation, in which the Court discloses the legal status of the litigants and gives the Court a solution to the dispute before it. In the criminal judgement, it is the determination of the Court's view of the description of the incident before it and the consequent sanction.⁽⁴⁾

The operative part must therefore be clear, precise and decisive. The phrase of the judgement in general and penal in particular extends only to a final judgement that is focused, decisive and conclusive in all claims of adversaries in their criminal or civil proceedings.⁽⁵⁾

Although the operative part of the judgement must be read out publicly or understood in the hearing and contain adjudication of applications and defences, it is not necessary to explicitly state in the operative part the

(¹) d. Said by Allah Abdullah - a former source - p. 412.

(²) Steven M.Cox and Jhon E.Wade " the criminal justice network (An introduction)", 3th.ed, McGraw-Hill, U.S.A., 1998, p.73

(³) Saeed Ahmed Bayoumi - former source - p. 114.

(⁴) d. Said by Allah Abdullah - a former source - p. 412.

(⁵) Saeed Ahmed Bayoumi - former source - p. 115.

rejection of the defendant's arguments in the hearing merely on its grounds, since by serving his conviction he would imply that such defences would be raised.⁽¹⁾ In fact, only the operative part of the judgement possesses the force of the judgement and accepts an appeal in accordance with the methods prescribed by law, and the reasons for the judgement must correspond to its operative nature, thereby not challenging the grounds for the judgement without challenging its operative part.⁽²⁾

1 - Be in conformity with the judge's statement at the sentencing hearing, otherwise invalid unless the error is material and can be corrected. What is reliable is what the judge uttered at the sentencing hearing.

2. If the sentence is pronounced in camera, the sentence shall be pronounced in public. "

3. To be free from inconsistencies between the operative part and the reasons set out in the provision, as the contradiction entails the invalidity of the provision.

To refer to the legal provision under which the judgement was to be found null and void. "

The criminal sentence shall be handed down by agreement or by majority, and the conviction shall be accompanied by another sentence of punishment. "⁽³⁾

V. Conclusion of the judgement:

Some of the jurisprudence indicates that judgements in general must contain a conclusion clarifying important information that may result from their omission, namely, how and when the judgement was rendered, fees, expenses and legal fees, and the signature of the judges who handed down the judgement, as this information is important for the purposes of appealing the judgement, calculating the terms and how the judgement was calculated.

For our part, what the above jurisprudence says overlaps in some of its parts with what has been described in the preceding elements. We therefore

⁽¹⁾ Judgement Unit - former source - p. 19.

⁽²⁾ Saeed Ahmed Bayoumi - former source - p. 116. ؛ d. Said by Allah Abdullah - a former source - p. 418.

⁽³⁾ d. Said by Allah Abdullah - former source - P.O. 418, 419.

consider that what should be included in the conclusion of the judgement is the name of the judge or the bench and the signature of the judge or the judges issuing the sentence.⁽¹⁾ In addition to the court's seal, article 224 (a) of the Code of Criminal Procedure stipulates that: "The judgement or decision shall include the name of the judge or judges who rendered it, the name of the accused, the other litigants and the representative of the prosecution.... Each judgment or decision shall be signed by the judge or bench with the date of its issuance recorded and sealed by the court ". As for what is referred to in the jurisprudence (fees, expenses and lawyers' fees), they are part of the operative part of the penal provision.⁽²⁾

(¹) d. Adi Suleiman al-Mazouri - a former source - p.303.

(²) d. Suleiman Abdel-Monim - former source - p. 624

Second requirement

Stages of the criminal judgement

The Penal Code is in various stages of existence, including those explicitly stipulated by the legislature, including those which can be extracted from the texts of the law and on which judicial work has been established.⁽¹⁾

First. Writing a record of the proceedings:

After the completion of all trial proceedings delayed by the writing of a record of the defendant's last speech, A record shall be drawn up after which the trial will be recorded. This is signed all pages of the record by Judge of Wisdom if he is alone or by the President of the Court if it is a problem of a body, The record must include the date and nature of each hearing - confidential or public - on the grounds of confidentiality if it is confidential.⁽²⁾ This is what the Code of Criminal Procedure explicitly states: "A record signed by the judge or the President of the Court shall be drawn up at trial and shall contain the date of each hearing and whether it is public or confidential..."⁽³⁾

The name of the judge or judges who heard the case must also be codified. The name of the clerk of the Tribunal, the name of the prosecutor, the name of the accused or accused and the rest of the litigants and witnesses, With the statement of the following papers such as documents and records, as well as the codification of the submissions made and the actions done, The summary of such decisions as arrest, arrest, release, postponement and other decisions taken at trial, the most important of which is the accused's statement and defence.⁽⁴⁾

Second: Declaration of the conclusion of the trial:

Upon completion of the codification of the proceedings taken by the Court, the Court shall declare the conclusion of the trial. After such declaration, the litigants shall not file new motions. However, the declaration of the conclusion of the trial shall not preclude the Court from reopening the trial provided that

⁽¹⁾ d. Adi Suleiman al-Mazouri - a former source - p.303.

⁽²⁾ d. Bra Munzir Kamal Abdul Latif - former source - p.301, 303.

⁽³⁾ Unit of Judicial Judgements - former source - p. 20.

⁽⁴⁾ Article 222 of Iraq's Code of Criminal Procedure.

the judgement is not rendered if it considers it necessary and considers that the procedure is important for the case.⁽¹⁾

Third: confidential deliberation (memory).

It is obvious that in order for a sentence to be handed down, it must be after a deliberation among the members of the court that it was a problem of a body or memory and review if it consisted of a single judge.⁽²⁾

Through this debate, members of the Court have an exchange of views in order to arrive at the correct opinion on the sentence to be handed down in the context of the criminal case. The deliberation is an exchange of views among the members of the Tribunal for what they deem to be the proper application of the law and the discussion of these Views in order to reach a fair judgement in the proceedings. The purpose of the requirement to deliberate prior to the judgment is to ensure that it is issued in a manner that includes the results of the views and experiences of all members of the Tribunal and is thus closer to the truth and thus to the achievement of the desired justice.⁽³⁾

If a judge is alone, as is the case in the misdemeanour courts, he may disagree with himself -- so-called memory or review -- in order to formulate the judgement or decision he considers by convincing him of the evidence presented in the case.

Deliberation must be a secret among members, and confidentiality here is to maintain respect for the prestige of the judiciary before the public. The exchange of views among the members of the Court may be interspersed with disagreement regarding the adaptation of the incident, its circumstances or any other related matter. If it is open to the public, it may negatively affect the status of the judiciary.⁽⁴⁾

During the course of the proceedings, the Court may not hear or accept from a litigant a paper or a memorandum. This is due to the declaration of the

(¹) d. Bra Munzir Kamal Abdul Latif - former source - p.300. The text of article 222 of Iraq's Code of Criminal Procedure shall be considered.

(²) d. Bra Munzir Kamal Abdul Latif - former source - p. 300. Article 157 of the Iraqi Code of Civil Procedure is considered.

(³) d. Adi Suleiman al-Mazuri - a former source - p. 222.

(⁴) d. Bra Munzir Kamal Abdul Latif - former source - p. 300.

conclusion of the trial, and the judgement is handed down after unanimous or majority deliberation.⁽¹⁾

Part of the doctrine is that deliberation should be among the judges of the Court combined, Where it is invalidated if it occurs in the absence of one of them even if the rest constitute the majority of the body, Nor may he participate in the deliberation other than the judges who heard the hearing, If a judge who has been tried for any reason changes, the case must be reopened and re-examined by the new body.⁽²⁾

However, the Iraqi legislator has contradicted this by stipulating that: "If the case is heard by a judge and replaced by another judge before the decision is rendered, the successor judge may base his judgement on the proceedings and investigations carried out by his predecessor or return them himself." In so doing, the Order is permissible for the Court to base on the preceding proceedings and may reinstate them, In our view, building on previous proceedings may affect the litigants' confidence in the judge hearing the case, Moreover, this is contrary to the principle of oral trial, which requires that a person who adjudicates the proceedings must have personally been informed of all proceedings and evidence and not merely examined.⁽³⁾

Fourth: Codification of the draft provision:

A draft judgement shall mean a paper signed by the judge or the bench as a summary of its findings after scrutiny and deliberation. The paper shall be kept in the case file for the court's pronouncement. It includes the reasoning, reasons and signature of the Tribunal's bench.⁽⁴⁾

In the Code of Due Process, the Syrian legislator referred to periods of registration of the draft judgement, making it 24 hours in summary proceedings, three days in cases under the jurisdiction of the Magistrate's Court and seven days in other cases.⁽⁵⁾ While emphasizing that it is necessary for the Court to edit the original judgement within a period that allows the litigants to assess their legal positions and status in order to exercise their right

⁽¹⁾ d. Adi Suleiman al-Mazuri - a former source - p.293.

⁽²⁾ d. Said by Allah Abdullah - former source - p. 405.

⁽³⁾ Article 161 of Iraq's Code of Criminal Procedure.

⁽⁴⁾ Unit of Judicial Judgements - former source - p. 20.

⁽⁵⁾ Article 203 of the Syrian Code of Due Process No. 84 of 1953, as amended.

to appeal against it, the Iraqi legislator has stipulated in the Code of Pleadings that: "If the case is prepared for the judgement, the Court shall decide the conclusion of the proceedings. It shall then render its judgement on the same day or set for pronouncement another date not exceeding fifteen days from the date of the conception of the conclusion of the case. "⁽¹⁾

With regard to the position of the Iraqi legislator, he did not refer to the establishment of a draft provision in the Code of Due Process, but referred to the court's discontinuance of the wording of the judgement, stating that: "a. The court shall vacate the wording of the judgement or decision in the hearings designated for its issuance and after it has been completed, the hearing shall resume publicly...". It should be noted, however, that the Court⁽²⁾

judgements and decisions shall be rendered by consensus or majority and the dissenting member of the Commission shall explain his opinion in writing " In other words, to explain his opinion in writing on a separate paper and attach to the Court's decision and thus the Court may finalize the judgment or work on a draft⁽³⁾, To be amended or approved content as it is after deliberation, i.e. that order is permissible, The law did not oblige the court to do so, nor did the draft judgement, as what had been taken by the court had no legal value until after the judgement had been handed down.⁽⁴⁾

The value was thus due to the Court's pronouncement and not to its draft, and therefore the litigants could not challenge the draft judgment that might not exist because it was not required by the legislator.

Some of the legislation that necessitated the drafting of the provision identified the data in which there should be general and overall availability:

(¹) Article 156 of the Iraqi Civil Procedure Act.

(²) Article 161 of the Iraqi Code of Civil Procedure stipulates that: "The operative part of the judgement shall be read out publicly after the drafting of the judgement and the reasons for it have been written in the particular hearing. It shall be duly notified. However, the judgement shall be deemed to have obtained its signature from the adversaries or to prove its non-signature."

(³) Article 223 (a) of Iraq's Code of Criminal Procedure.

(⁴) Article 158 of the Iraqi Code of Civil Procedure stipulates that: "Judgements shall be rendered by agreement or by a majority of opinions. If opinions are manifested, the member shall have the least degree to join one of the opinions to form the majority.

The reasons for the judgement, in operative part, are the signature of the judge or judges who rendered the judgement and the date of deposit of the draft. The opponents have access to this draft without the right to obtain copies of it until the original judgement has been completed. This means that the draft judgement does not require full data to be found in the original judgement. If the draft does not contain the above-mentioned data, its legal value is null and void and an ordinary non-meaningful paper.

While it is important to have a draft judgement, we consider it preferable that this be the Court's permissibility. The trial court is best able to know the requirements for the preparation of the judgement and this is due to the ability and intelligence of the members of the judiciary. We also believe that it is illogical for opponents to have access to and challenge the draft judgement. That would inevitably confuse the judiciary's work as well as delay the resolution of disputes.⁽¹⁾

Fifth: sentencing:

The sentencing is intended to be read orally at the particular hearing, and is done by a public reading of only his or her operative with his or her reasons. Sentencing is a condition for its existence, since the judgement shall not be deemed to have been handed down at the end of the deliberation, but from the moment it is pronounced, even if it is written and signed in accordance with the law. Accordingly, each judge may modify his or her opinion and request a re-discussion with his or her colleagues before sentencing. Also, if a judge dies or is removed from office prior to sentencing, proceedings must be opened and restored before the new judiciary.⁽²⁾

The sentencing must be held in public. This is what the Iraqi Code of Criminal Procedure explicitly refers to when it states: "- The court shall abolish the wording of the judgement or decision..... The hearing shall resume publicly and its wording shall be read out to the accused or understood by its content ". Therefore, if the sentence is delivered in secret, its judgement is null and void, and the trial hearings are secret, because openly sentencing is a duty expressly prescribed by law, as well as that the sentencing of a secret hearing

(¹) Unit of Judicial Judgements - former source - p. 20.

(²) d. Said by Allah Abdullah - former source - p. 407.

undermines the desired trust in the judiciary and thus undermines people's confidence in it.⁽¹⁾

It is original that the judgement should be rendered immediately and publicly, that is, after the conclusion of the deliberation, and be heard at the same hearing at which the trial was concluded, and that the Court may delay its pronouncement, but not exceeding the period prescribed by law. With regard to Iraq's Code of Due Process,⁽²⁾ he did not set a specific time limit for sentencing, so it could be pronounced by the court at the same hearing where the hearing was closed "or postponed to another close hearing. However, the Iraqi Code of Civil Procedure limited the sentence to: "If the case is prepared for the judgement, the court shall decide the conclusion of the case."⁽³⁾

It shall then render its judgement on the same day or set another date for pronouncement not later than fifteen days after the date of the conception of the conclusion of the case. " Since the Code of Civil Procedure is the reference for all of Iraq's procedural and procedural laws, we believe that the date of sentencing must not exceed the period specified in the provisions of the Code of Pleadings, which is 15 days from the conclusion of the proceedings.⁽⁴⁾

The judgement results in the termination of the dispute between the litigants, the removal of the case from the Court's authority, and the judgement thereby becomes a right of the litigants. The Court may only amend or review it on the basis of an appeal in the ways specified by law.⁽⁵⁾

Nevertheless, it can correct material errors and the form established by the Code of Criminal Procedure, which states: "The court may not revert to, change or change its judgement or decision except to correct a material line, provided that it is written down and considered part of a footnote".⁽⁶⁾

(¹) Article 223 (a) of Iraq's Code of Criminal Procedure

(²) d. Abdelnasser Musa Abu al-Bassan - a former source - P407.

(³) Article 156 of Iraq's Code of Civil Procedure.

(⁴) Article 161 of the Iraqi Code of Civil Procedure stipulates that: "This law shall be the reference for all laws of procedure and procedure if it does not contain a provision expressly incompatible with it." Article 90 and article 186 of the Iraqi Code of Criminal Procedure are also considered.

(⁵) d. Said by Allah Abdullah - former source - p. 408.

(⁶) Article 156 of Iraq's Code of Civil Procedure.

The seal

Through our study of the elements and phases of the Penal Code, we have reached a set of conclusions and proposals, the highlights of which can be explained as follows:

First: results:

1-The penal provision can be defined as: "A final legal procedure in the criminal and civil proceedings pursuant to the law establishing conviction, innocence or irresponsibility".

2-In practice, in rendering a judgement, the Court uses the term "decision" to express the judgement and often uses the phrase "decision" or "decision". This is a confusion, and the legislature distinguishes them in terms of their respective effects.

3-The Law on Due Process stipulates the expression of the decision. It distinguishes between the decision, i.e. the separation of the case and the non-final decisions. It also uses the term "criminal order" to indicate the simplified procedure for the termination of the minor criminal case.

4-The decision was worded as a term given by the legislator to the action taken by the Court, although it was final on the merits of the case. However, he wished that it should not give rise to the status of consistency and stability enjoyed by the judgement, except over a certain period of time the legislator estimated that it would ensure the correctness of the decision taken, in order to gain consistency and take advantage of the judgement.

5-The lawmaker may use the word "ordinance" explicitly and sometimes the word "miscellaneous", such as the term "assignment", "assignment", "assignment" and "authorization".

6-The Iraqi legislature has created two types of penal provisions in terms of the possibility of appealing them: first, preliminary (non-PAT) judgements, which can be appealed by ordinary recourse methods such as objection to an absentee sentence, discrimination and correction of discriminatory decision, and second, "final" provisions, which can be appealed by extraordinary remedies of retrial.

7-The Iraqi legislator used the term "final judgement" as a synonym for the term "pat". Therefore, all the penal provisions in question can be appealed by way of a retrial.

8-Although the Code of Due Process does not explicitly provide for the stages and elements of the criminal judgement ", it can be inferred from the texts contained therein, as well as from the practical realities of the judicial process.

9-While it is important to have a draft judgment, we consider it preferable to have it as a passport of court. The trial court is best able to know the requirements for the preparation of the judgement and this is due to the ability and intelligence of the members of the judiciary. We also consider it illogical that opponents have access to and challenge the draft judgement. That would inevitably confuse the judiciary's work as well as delay the resolution of disputes.

Second: Proposals:

1-Since the terms used by the legislator are intended solely for a specific matter, it is therefore necessary to add a definitive article to the terms of the judgement indicating the meaning of each of the legislators' words on the procedure allocated by the legislature at the conclusion of the proceedings.

2-The Code of Criminal Procedure does not provide for the time required for the issuance of a sentence. Article 223 (a) of the Code of Criminal Procedure must be amended to read as follows: "a. The court shall vacate the wording of the judgement or decision in the hearings designated for its issuance. After the hearing has been completed, it shall resume in public. The wording shall read out to the accused or is understood by its content. If the judgement is not rendered on the same day, it shall set for its pronouncement another date not exceeding fifteen days from the date of the conclusion of the hearing."

3-Since the judge's follow-up to the proceedings and court proceedings is necessary to take account of the circumstances of the criminal case in order to reach the proper judgement, we consider it necessary to amend the text of article 161 of the Code of Criminal Procedure to read as follows: "If the case is heard by a judge and replaced by another judge before the decision is rendered, the successor judge shall return the proceedings and investigations

himself, and may base his judgement on the proceedings and investigations carried out by his predecessor if the court is a problem of a judicial body."

4-Since what is expressed by the legislator (penal order) is only a simplified penal provision, and in order to unify the terms in the Code of Criminal Procedure, we consider it necessary to redraft article 205 to article 211 and use the term "simplified penal provision" instead of the penal order.

5-The need for the Supreme Council of the Judiciary to organize instructions that stipulate precision in the terms of the Court's criminal judgement. When the Court renders a criminal judgement, it is expressed: "The Court ruled". When the Court renders a decision, it is expressed as "The Court's prudence in its simplified judgment".

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