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# Remission the imprisonment punishment of in Iraqi Traffic Law No. 8 of 2019

Assistant Professor Dr. Nawras Rashid Taha

College of Law, University of Nahrain, Baghdad, Iraq

[nawras.rasheed@gmail.com](mailto:nawras.rasheed@gmail.com)

Professor Dr. Baraa Munther Kamal

College of Law, Tikrit University, Salah al-Din, Iraq

[Baraa\\_law@tu.edu.iq](mailto:Baraa_law@tu.edu.iq)

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**Abstract:** The new Iraqi Traffic Law No. 8 of 2019, which entered into force on October 5, 2019, includes a new principle in the Iraqi legislative system: "The penalty of imprisonment shall be dropped by waiver and mutual consent." This principle applies to crimes related to fatal run-over accidents, as regulated by the Iraqi legislature in Articles 36-37 of the aforementioned law. The effect of the penalty being dropped does not apply to other crimes. Accordingly, the new law has raised numerous problems before Iraqi courts. Based on these problems, we have attempted, through this research, to develop appropriate solutions to mitigate the effects of these problems within the paragraph related to recommendations included in the conclusion of our research.

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# سقوط عقوبة الحبس في قانون المرور العراقي رقم ٨ لسنة ٢٠١٩

أ.م.د. نورس رشيد طه

كلية الحقوق، جامعة النهرين، بغداد، العراق

[nawras.rasheed@gmail.com](mailto:nawras.rasheed@gmail.com)

أ.د. براء منذر كمال عبداللطيف

كلية القانون، جامعة تكريت، صلاح الدين، العراق

[Baraa\\_law@tu.edu.iq](mailto:Baraa_law@tu.edu.iq)

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### الكلمات المفتاحية :

- قانون المرور
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- الحوادث

**الخلاصة:** يتضمن قانون المرور العراقي الجديد رقم ٨ لسنة ٢٠١٩، والذي دخل حيز التنفيذ في ٢٠١٩/١٠/٥، مبدأً جديداً في المنظومة التشريعية العراقية يتمثل ب ( بسقوط عقوبة الحبس بالتنازل والتراضي)، بالنسبة للجرائم المتعلقة بحوادث الدهس المميتة التي نظمها المشرع العراقي في المادتين (٣٦-٣٧) من القانون المذكور آنفاً، ولا يسري أثر السقوط للعقوبة على غيرها من الجرائم ، وعليه فقد أثار القانون الجديد العديد من الإشكاليات أمام المحاكم العراقية ، والتي على أساسها حاولنا من خلال هذا البحث وضع الحلول المناسبة للحد من أثار تلك الإشكاليات ضمن الفقرة المتعلقة بالتوصيات التي تضمنتها خاتمة بحثنا.

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## 1- Introduction :-

The aim of any system is to benefit from the positive that it will achieve and regardless of the negative that it will result in whether the positive is above it, but each system requires that its disadvantages not overcome its positive aspects. This has a negative effect on recognition as a positive system that reduces abuses of constitutional human rights and is a positive consequence of the system of remission the penalty contained in traffic law No. 8 of 2019, which reduces the effects of imprisonment resulting from the crime of prostitution in relation to the death of the victim. In this case, the Iraqi legislator preferred the offender's interest in preserving his freedom from any prejudice he or she may get, in return for consent or waiving by the victims' families, in order to achieve the principle of criminal justice. In particular, the perpetrator was not intended to cause the crime, especially if it was his first crime and he had a good reputation and had no social risk to society, which gave rise to the imposition of the system of remission the penalty a package of positive energies aimed at removing the offender at first sight from mingling with dangerous

perpetrators. In particular, the legislature has distinguished in traffic offenses the interests of the offender in the enjoyment of his or her personal freedom by applying the system of sentencing, in the interest of society in the implementation of his or her right, as it balanced the interests of the offender in the enjoyment of his or her liberty. The benefit of the victims is that the restriction on the application of the system of commutation of the sentence by the victims' relatives to concede or to consent to the offender through the latter's provision of a municipality or appropriate compensation is agreed upon in exchange for waiving their right to apply the penalty of imprisonment against the offender. The penalty imposed if waived by the victims.

### 1-1 The importance of research and the reasons for its selection

The importance of the subject "the system of remission the sentence in traffic law No. 8 of 2019" stems from:-

Scientific area: The importance of this research stems from the vitality of the topic in being a newborn in the Iraqi Traffic Act No. 8 of 2019, despite the fact that it is close to the crime fall and the punishment that is mentioned in the Iraqi Penal Code. There are, however, some differences that distinguish them.

Practical: -

The importance of this research shows that it is a means from which to draw the attention of the Iraqi legislator on the negative consequences of the system of remission the penalty in order to reduce the incidence of chaos and instability caused by the lack of coverage of the said traffic law for serious and minor cases, and this is an untiring approach. Especially in the case of short-term imprisonment and its negative effects on the behavior and **Remission** re behavior of the offender as a result of his or her mixing with dangerous prisoners, which raises an increase in the number of dangerous criminals and therefore has no role in disciplining the accused and floating his or her un juggling. On the contrary, it has activated a seed of crime within it.

## 1-2 The Problem of the Research

The problem of the discussion lies in the question of mixing the regime of the fall of crime with the regime of the fall of the punishment in which the Iraqi legislator was imposed on one hand and the fall of the sentence on the other. We will therefore state the basics of that problem in the form of questions, which we will answer when discussing the details of the research as follows:-

Does the sentence of death differ from the sentence of the offense in terms of the offense as a criminal constraint on the guilt of the offender? .

Are the legal provisions of the system of remission the penalty contained in the traffic law in question different from the legal provisions of the death penalty regime contained in Penal Code No. 111 of 1969? .

## 1-3. Research objectives :-

To highlight the negative effects of the system of remission the penalty contained in traffic law No. 8 of 2019, and the extent to which it affects the legal rights of the accused, we will therefore seek the necessary guarantees to limit those effects.

The Iraqi legislator's attention was drawn to the question of including in the system of remission the penalty for serious and minor cases of harm other than death, because it is a matter of priority to include the said regime in cases of harm without death.

## 1-4. Research methodology:-

The approach taken in our research is the analytical approach to the texts of Iraqi laws on the subject.

The concept of the imposition of punishment, In order to go through the definition of the system of the imposition of a sentence on the one hand, and to define the term of the death of a sentence on the other, the system of remission a sentence must be defined, and then the characteristics of the system of remission the sentence should be studied.

The concept of the imposition of punishment

In order to go through the definition of the system of the imposition of a sentence on the one hand, and to define the term of the death of a sentence on the other, the system of remission a sentence must be defined, and then the characteristics of the system of remission the sentence should be studied.

## 2.1. Definition of the abolition of sentence

The passing of the penalty is a means of judicial disrespect for punishment, which is realistic and is intended to be a punitive measure subject to the judicial authority's estimates of how much during the balance between the case of the sentenced person and the execution of the sentence (Abdul Latif, 2009,p 283).

The death penalty is intended to exempt the victim from a penalty that is due and specified in the penal provision before the death of the victim, but the penalty set forth in the Act requires several conditions, namely a judicial decision to convict the accused, and a waiver or compromise between the offender and the victim is also required after the sentence has been handed down (On , 2019, p. 1306). The effect of the death penalty is to end the executive power of the penal judgment while maintaining the conviction.

The fall was defined as a "procedural sanction resulting from the non-exercise of the mechanization in the conduct of the procedural act within the time limit set by the law (summer, 1998, p. 159). It is clear from this definition that it is different in meaning from the meaning of remission the penalty in article 36 and (37) of the Iraqi Traffic Act No. 8 of 2019, because the projection takes place after the practice of the mechanization during the legally defined period, and the fall is achieved if the competent authority does not exercise its jurisdiction at the time Defined by law.

The interest in the fall of punishment is to see the peaceful conditions in order to stabilize society and to move toward progress and development, rather than the tensions and chaos created by the state of enforcement and the negative effects on the rights of the accused and their care. Despite the positive effects of the punishment, the driver of the vehicle is more cautious in his future actions than his previous actions, which resulted in a prison sentence. However, the Iraqi legislator has preferred the private interest to the public interest in traffic offenses because, in our view, traffic offenses do not amount to the level of criminal offense that characterizes the traditional criminal in other offenses. This led the legislator to take the system of punishment and improved the Iraqi legislator's action in this position.

## 2.2 Self-determination of the system of sentencing

The system of remission the penalty is special and distinguishes it from other regimes, such as the system of the fall of punishment and the regime of the fall of crime, where we will distinguish between these regimes.

2.2.1 a distinction is made between the system of remission and remission the sentence

It is obvious that the two systems are very similar in terms of the legal effect of not executing the sentence against the perpetrator, and they are similar in that the crime is recorded as a restriction on the offender even if the sentence is not carried out against him. They are also similar in that they are only achieved after the pictures of the penal judgment regarding the conviction of the accused. The two are similar in that they do not investigate further the abdication of the victim, as is the case in the case of the death penalty system under the Penal Code. The victim's relatives have waived the penalty-remission regime under the new traffic law, but the difference is that the execution may be subject to default, subordination and supplementary punishment, and the original penalty may fall, as in the case of suspension, while the penalty for police surveillance or the absence of certain places or places Bars during the period specified for the sentence, which in any case does not exceed five years under article 99/a of the Iraqi Penal Code No. 111 of 1969. Part of the penalty may fall below the other part, as in the case of the conditional release after the accused spends three quarters of his sentence or two thirds under article 331 of the Iraqi Criminal Procedure Code (Amendment) No. 23 of 1971, which stipulates that: "A- a police release may be granted in accordance with this provision The law on a person sentenced to an original penalty of liberty if he spends three quarters of his term or two thirds if he is an event and the court finds that he is straight and well-behaved, and that his term is not less than six months... " .

The difference also seems clear in terms of the criminality as a criminal constraint on the guilt of the accused, which can be taken into account in cases of return or aggravation when determining the punishment of the accused for the crimes subsequent to the offense for which the sentence has fallen.

#### 2.2.2. Distinguish between the incidence of crime and the abolition of punishment

The fall of the crime is the cause of the death of the penalty because it is the former existence, so the cause of the fall of the crime is connected to the cause of the death of the penalty for the association of the illness between them (Ali, 2019, p. 1305). However, they are similar in terms of the legal effect that the fall of the crime, as in the case of death, general amnesty and the end of the criminal proceedings, i.e. the statute of limitations introduced by the Iraqi legislature in article 70 of the Juveniles Act No. 76 of 1983 (amended), which stipulates that: "First, the criminal invitation shall proceed Ten years in crimes and five years in misdemeanors.

The measure shall be terminated if it has not been carried out for 15 years in offenses and three years after the expiration of the sentence in other cases(Kamal and Majed, 2021,p21).

The offense remains in the custody of the accused and has been acquitted of punishment because of legal incapacity, such as a case of legal defense. The difference, however, seems obvious in that the crime falls before a penal sentence is pronounced, as in the case of a minor offense or after a penal sentence has been pronounced, as in the case of a retrial if one of the cases provided for by the law in article 270 of the Code of due process Criminal Code No. 23 of 1971, amended.

As for the abolition of the sentence, the accused will be convicted after the sentence has been issued. The other difference arises in terms of the source of the offense, the fall of the crime is carried out by the competent judicial authority, but with regard to the abolition of the penalty, it is applied by an administrative authority authorized by the legislator to apply that system to discredit the offender from the penalty imposed. If the condition of waiver or consent of the victim's relatives is satisfied with the offender

### **3. Legal provisions for the abolition of punishment**

The system of remission the sentence is close to some of the regulations stipulated in the Iraqi law, but it differs in some respects. The system of remission the penalty contained in the new traffic law has conditions that must be available to enable its application to take effect, and it is obvious that its application will have effects that have a distinctive feature in the realm of criminal law, and therefore the Iraqi legislator should be firm in its actions against those effects. The basis of which is the legal model to be included under the Penal Code, the Code of Criminal Procedure or any other penal code.

#### **3.1. Conditions of application and effects of the system of sentencing**

It is well known that every legal system has legal conditions that must be fulfilled to be properly applied, and it is known that every positive system, in return, has the disadvantages of making that system have a tangible effect on the authority of those who apply it to it. And to look into the conditions and implications of the application of the system.

##### **3.1.1 conditions for the application of the system of remission the penalty**

Both the text of article 36 and (37) of the Iraqi Traffic Act No. 8 of 2019 contain conditions that must be met in order for the system of remission the penalty to be applied on the basis of those conditions, which we shall act as points as follows:

1. The crime of prostitution may lead to the death of a person. Or death of a person and injury to one or more persons with serious injury or permanent disability.



If the victim's relatives give a waiver or consent, after the sentence is handed down, that means that the waiver or consent must come after the sentence is handed down. It cannot be accepted if the judgment is passed and from our point of view the Iraqi legislator is not in agreement with this position, because it leads to the prolongation and complexity of the proceedings, as long as there is flexibility in dealing with the offender if he is waived or satisfied with him. The system of remission the sentence before the judgment was handed down was first applied.

The most important of which is the routine burden on citizens on the one hand and the judiciary on the other. He may also give the offender a chance to take refuge in his livelihood, to support his family members and to grant them the constant patrimonial affection, rather than to spend days and nights in detention or imprisonment, and in vain, as long as the penalty can be dropped if the victim is reconciled with the victims. This path has both physical and moral advantages. Moreover, the acceptance of a waiver or consent before the judicial order is issued would result in the offender being released from the offense of prostitution as a criminal constraint against him. The consequences of this are to be taken into account in the aggravation of the sentence against him in the event of a second offense of precriminality or any other offense under article 139 of the Iraqi Penal Code (No. 111 of 1969, amended).

The penalty is imprisonment in the sense that the system of remission the penalty does not include imprisonment and fine, because the remand is for imprisonment only, even if the accused is sentenced to imprisonment and fine together, or only the accused is sentenced to fine, it is not included in the remand.

### 3.1.2 effects of the application of the system of sentencing

It is self-evident that every reaction has its effect, and therefore the application of the system of sentencing has many effects that must be highlighted in order for the system to be the same, which distinguishes it from other regimes, such as the amnesty system. Therefore, we will work to illustrate these effects in the form of points as follows:-

The penalty of imprisonment cannot be commuted to any other punishment, if the offender is sentenced to imprisonment and the sentence is waived or disagreed upon after the sentence has been handed down. The penalty of imprisonment may not be commuted to any other, lighter, penalty of imprisonment or non-sex as a fine. The term commutation of sentence means: The imposition of a non-negative penalty of liberty against a convicted person with a range of alternatives to a judge: The penalty of imprisonment shall be commuted to a service performed by a custodial for a class of society or to an educational facility benefiting a prisoner for the purpose of repairing and



protecting him from harm and providing a service to his community (Anzi, 2016, p. 15).

The penalty of a fine imposed with a sentence of imprisonment cannot be overturned, since the said regime includes imprisonment without a fine.

The failure to release the offender from the offense for which the penalty has been dropped is therefore considered to be a reason for aggravating the penalty if he commits a subsequent offense within the offenses set forth in article 139 above, or any other offense for which the penalty is to be increased. Because of its criminal seriousness, which can be revealed by its first crime, the penalty has been dropped under waiver or consent.

### **3.2 the legal model of the system of sentencing**

The legal model means the legal text dealing with any social problem that may affect the interests that the legislator sees as considered and worthwhile, as it works hard to establish legal texts that purport rights and affirm their protection. It is self-evident that the legislator, through the application of the system of remission the penalty, should achieve the important interest of protecting the personal liberty of the offender from punishment, and that practical experience has proved that it is useless to punish a person who is not criminally dangerous and with whom a sentence of imprisonment should be applied. Because it often commits crimes of pretending, but the wrongdoing, that is, the error of negligence, negligence, inattention, or sponsorship, or as a result of its violation of the law.

The legal model of crime has been defined as "a mere legal definition of the minimum elements required for an act or omission to be characterized as a crime, and is applicable to the various forms of crime in the outside world" (Ahmad, 2014, p. 306).

The legal text contains three characteristics: First: Its coverage of general provisions that are mandatory to face all and binding on them, second: To have an autonomous self (Saeedi, 2014, 94), that is, to say, no other text in determining its content in terms of its organization of both criminalization and punishment.

The term "commutation of sentence" is six times included in the Iraqi Traffic Act No. 8 of 2019, article 36 of the first stipulates that: (A) a sentence of not more than seven years' imprisonment and a fine of at least three million dinars (300,000) and not more than six million dinars (6000000) shall be punishable by a maximum of seven years' imprisonment and a fine of three million dinars (300,000). Six million dinars each person who caused the death of a person as a result of driving a vehicle without observing the laws, instructions and traffic regulations, or a lack of the conditions of durability and

safety in his vehicle, shall be liable to imprisonment in case of concession and consent.

Second: The penalty shall be imprisonment for a term not less than (7). Seven years and not more than (10) years, a fine of not less than (4000000) four million dinars and not more than (7000000) seven million dinars if the offense set forth in section (I) of this article results in the death of more than one person or the death of a person and the causing serious injury or permanent disability to a person or person More than a sentence of imprisonment shall be imposed in the event of waiver and consent.

Third - imprisonment for a term not less than (7) seven years and not more than (10) years and a fine of at least (500,000) five million dinars and not more than (9000000) nine million dinars each person who caused the death of a person as a result of his driving is a vehicle with negligence or care, or under the influence of a drunker, anesthetic or escape without informing the authorities concerned about the accident and falling a sentence of imprisonment in case of waiver and consent.

Fourth - imprisonment for a term not less than (10) years and a fine of at least (500,000) five million dinars and not more than (100,000) Ten million dinars if the offense set forth in clause (III) of this article results in the death of more than one person or the death of one person and the causing of serious injury or permanent disability to one or more persons and the penalty of imprisonment in case of waiver and consent).

Article 37 emphasized the introduction of the sentence, stating that it was First, an aggravating circumstance for the purposes of the application of articles 135 and 136 of Penal Code No. 111 of 1969 the driver of the vehicle committed a crime of pretenses and did not help the person who was the perpetrator by immediately transferring him or her to the nearest hospital or health center, or by any means aiding him or her if he could not be transferred The incident occurred in areas designated for pedestrian crossing on roads with signs and markings of the transit system and the fact that pedestrians are not given precedence or if the scene is left without the permission of the competent investigative authority and a sentence of imprisonment is dropped in the event of waiver and consent.

Second: A legal excuse for the purposes of implementing articles 130 and 131 of the Penal Code is the initiative of a vehicle driver who commits a crime of subpoensis to immediately transfer the injured person to the nearest hospital, health center, or to inform the police immediately of the accident if he or she cannot be transported for any reason or the accident occurs outside the crossing area Imprisonment shall be imposed in the case of waiver and consent.)

From the extrapolation of the above-mentioned texts, it is clear that this system is limited to the crimes of prostitute causing death, injury, and not to other traffic offenses. Thus, although not a crime in article 3, paragraph a, of the Code of Criminal Procedure, it covers offenses which are traffic offenses by remission the penalty, and thus are offenses of a general right.

Despite our support for this system and its positive aspects in the field of restorative justice, but through the application of the law in the last few months and through the extrapolation of cases before the Iraqi judiciary, we note that the legislator has limited the application of the sentences of the death penalty after the end of investigation, trial and sentencing. We believe, however, that this system should be expanded to include the investigation and trial stage in order not to involve the courts and the parties to the proceedings in lengthy legal proceedings. The result is that the sentence should be dropped, and that the legal proceedings could be shortened and expended through the extension of this system and the provision that the criminal proceedings should be terminated if the waiver occurs Consent during the investigation and trial, but if it occurs after the judgment is handed down, the sentence imposed by the court will be dropped(Kamal and Rashed ,2021,p18).

We also found that the law restricted the remission of the penalty to traffic offenses resulting in death (prostitution), and we believe that traffic offenses resulting in injuries, whether minor or permanent disability, are a traffic offense. Also, the crimes that cause only material damages are supposed to be covered by this system as being less serious crimes, and the introduction of this system will end the disagreement between the two parties, the failure of the courts to engage in lengthy procedures and the failure of the criminal to engage in minor offenses in prison prisons. He mingling him with the most serious criminals, thereby avoiding the risk of negative penalties for short-term freedom.

#### **4-Conclusion :-**

After we have finished our research details, "the system of remission the penalty in traffic law No. 8 of 2019. We have reached many conclusions The most important suggestions are :-

It is not possible to apply the system of remission the sentence at the investigation or trial stage because the law required that the sentence be dropped after the judgment.

The introduction of the system of abolition creates many disadvantages that need to be taken into account in order to reduce the scale of attacks that are serious about the rights and freedoms of individuals. It is a negative thing to get the offender sentenced to a short-term sentence mixed with dangerous prisoners, which negatively affects his behavior in the future.

The system of remission the sentence does not abhor the offender from the offense for which the penalty has been imposed.

We therefore recommend to the Iraqi legislator:

The reconciliation or consent shall be accepted at the investigation or trial stage, It is not necessary to postpone after the end of the court and to issue a judicial judgment because it prolongs the proceedings that would waste judicial time and work in cases of termination known to be dependent on waiver or compromise, as well as affecting the rights and freedoms of individuals.

We propose that the Iraqi legislature take into account the crimes of traffic abuse in terms of its inclusion in the system of remission the penalty, in order to give effect to the principle of criminal justice, it is not fair to include the most serious crimes without the least serious crimes in the said system.

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