

THE CRIMINAL PROTECTION BUG OF THE JUDGE

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ABSTRACT

Under contemporary criminal policy, criminal law has become the ideal tool to protect these interests due to the severity and rigor of criminal policy that would reflect on the motives driving criminal behavior and restrain them from going out to the outside world in the form of behavior that harms the values and interests of society. If the criminal law intervenes to protect the rights and interests worthy of criminal protection, those rights or interests become protected by a provision and a legal sanction.

Key words: criminal protection - contemporary criminal policy - judge - protection bug.

Introduction

First: An introductory introduction to the subject of the research and its importance:

The reason is due to the criminal protection report for judges to protect the judiciary and its sanctity, and to prevent harm to judges in any way. Without this protection, few judges would remain on the bench, so it became necessary to give judges the language and safety in their judicial work, and because the mission of the judiciary cannot be achieved without judges who enjoy criminal protection that provides them with safety and keeps them away from fear. Hence, the judge must be protected in society, as whenever the judge is safe, justice is safe. The judiciary, represented by judges, is the bulwark to guarantee the rights and freedoms of people's interests, and those who carry out this representation are entitled to special protection. Moreover, the work of judges requires that they be granted criminal protection commensurate with the high and dangerous status of their work. This is because one of the ABCs and axioms of the rights of the judge is to be safe for his life and safety by granting him criminal protection commensurate with the nature and seriousness of his work and so that the judge is enabled to perform his duty to the fullest, and in a way that achieves judicial justice.

Second: Research Problem:

The determination of criminal protection for the judge with a text and a criminal sanction in accordance with the general provisions contained in the Penal Code is no longer sufficient in light of the increasing cases of assault on judges, which requires the legislator to intervene

for the purpose of issuing their own criminal organization.

Third: Research questions and its objective:

The research aims to answer the following questions:

1. A statement of the nature of criminal protection for the judge.
2. Statement of the reason for criminal protection of the judge.
3. Statement of the criminal self-protection of the judge.

Fourth: Research Methodology:

The research relied on the analytical approach through the analysis of the legal texts under study to reach the optimal text, as well as the comparative approach by comparing the position of the Iraqi legislator with the comparative legislation in question.

1. Definition of criminal protection for the judge

The Criminal Code aims to combat crime and sets in order to achieve this goal the texts that define crimes and indicate the penalties and precautionary measures prescribed for them because the crime is no longer the work of a person whose effects are confined to a narrow circle, but has become an aggression against the basic interests of society and the criminal law - under contemporary criminal policy - has become the best tool to protect these interests due to the severity and rigor of criminal policy that would be reflected on the motives driving criminal behavior and curb them About going out into the outside world in the form of behavior that harms the values and interests of society. If the criminal law intervenes to protect the rights and interests worthy of criminal protection has become those rights or interests protected by text and legal sanction, and based on the foregoing we will divide this section into two requirements address in the first what criminal protection of the judge either the second requirement we will allocate to indicate the place of criminal protection of the judge and as follows.

1.1 What is the criminal protection of the judge

To talk about the reality of this protection determined by the criminal law in light of contemporary criminal policy requires the definition of criminal protection as the effective means determined by the Penal Code to protect the basic interests in society when the criminal activity leads to damage or threat of damage to the right or interest subject to criminal protection and to find out what criminal protection is must be defined linguistically and idiomatically with an explanation of the reason for criminal protection and finally a statement of its subjectivity and we will address All in a separate requirement as follows:

1.1.1 Definition of criminal protection of the judge

The definition of criminal protection requires the definition of protection first, then the definition of felony second, in terms of language, Sharia, legal definition, and then the

definition of criminal protection idiomatically, and this requirement will be talked about through three separate paragraphs and as follows:

First: Definition of criminal protection language:

1- Meaning of protection:

Fever: What is protected from the thing and protected the thing, so it is a fever and protection: preventing it and pushing it away from it. And he protected the sick that which harmed him: he forbade it, and he took refuge from that, he refrained and protected the place: he made it a fever that does not come near. He was defended by a lawyer: he was defended¹. And the people protected him with protection and protection: prevent him². And the fever in which every person is protected from people to graze, and God protected his mahrams, and protected the ³place from people in a way that prevented him from them and protected the name of it, and protected him by a thousand made him a fever that does not come close and does not dare him.

The fever protected and protected: it prevented it. He said: If people abstain from him and know that he is a mother, I will say protect him⁴

And fever is different from what is permissible: that is, what is forbidden. It is said that this is a fever, i.e. forbidden, and it is a fever that does not come closer, and if he refrains from it, he will ⁵protect him.

2.1.1 Meaning of felony:

First: Felony Language:

Felony is guilt or crime and what a person does, which requires him to be punished or retribution in this world and the hereafter.

So-and-so reaped on himself: if he dragged a crime⁶, and reaping is like criminality: it is to claim a sin against him that he did not do, ⁷and janaabah: a name for what he earns from evil, which is every prohibited act that includes damage either offer, money, self or parties. It was said: It is the name of every act that is forbidden by Sharia, and his people reaped a

¹ Ibrahim Mustafa, Ahmed Hassan Al-Zayyat, Hamid Abdul Qadir and Muhammad Ali Al-Najjar, The Intermediate Dictionary, Dar Al-Da'wa for Printing and Publishing, Istanbul, 1989, p. 200;

Abi² al-Fadl Jamal al-Din Muhammad ibn Makram, known as Ibn Manzoor al-Afriqi al-Masri, Lisan al-Arab, Al-Rushd Library, Riyadh, 1994, 3rd edition, vol. 14 , p. 199.

³ Intermediate Dictionary, Dictionary of the Arabic Language, op. cit., p. 122.

⁴ Ibn Manzur, Lisan al-Arab, op. cit., p. 200.

⁵ Ahmad bin Faris, Language Academy, edited by: Zuhair Abdel Mohsen, Al-Resala Foundation, Beirut, 1994, 1st edition , vol. 1, p. 250.

⁶ Professor Saeed Abu Habib, Lisan al-Arab, by Abu Manzur, previous reference, vol. 14, p. 154; Fiqh Dictionary Language and Conventions Dar al-Fikr - Damascus - year 1988 AD - 2nd edition , p. 70.

⁷ Muhammad Muhyiddin Abd al-Hamid Muhammad Abd al-Latif al-Subki, Mukhtar al-Sahih, Commercial Library, Cairo , p. 85.

felony, i.e. he committed a sin to be taken for it⁸, and the predominance of felony in the tongues of jurists on wounding, cutting and collecting felonies, and ⁹reaped - felony: he committed a sin.

It is said that he reaped a felony against himself and reaped a crime against his people and reaped a felony against him that he did not do. Janaabah in law: an offence punishable mainly by death or hard labour for life or temporary¹⁰.

From the foregoing, it is clear that the legal language recognizes the felony in a broad sense, covering all crimes.

Second: The meaning of felony in positive jurisprudence:

If the term felony is launched in the law or jurisprudence, it goes to serious crimes without others and the gravity of the crime is defined in view of the degree of punishment prescribed by law on the perpetrator, which is in Iraqi law according to the text of Article (25) of the Iraqi Penal Code No. 111 of 1969, as amended, what was punished by death, life imprisonment or imprisonment for more than five years to fifteen years, either Egyptian law was punishable by death or hard labor for life or temporary or Sentenced to more than three years' imprisonment¹¹.

As for other crimes, they are not called felonies, but rather misdemeanors or violations, and this means that the term crime is more comprehensive than the word felony because the crime includes felonies, misdemeanors and violations.

If felonies are one of the types of crimes, they are undoubtedly the most serious and important of them, and they receive attention from the street that other types of crimes do not receive, and the perpetrators are the most dangerous criminals in society^{12, 13}.

It is clear from the above in the definition of felony in the law, which means a serious crime and not others, and that felony is one of the types of crimes, as not all crimes are felonies.

Third: The meaning of criminal protection idiomatically:

The criminal legislator may deem his intervention to protect a right or social interest threatened with danger, and to preserve this right or interest, the criminal legislator intervenes with the purpose of binding criminal provisions that prohibit prejudice to this right or interest.

⁸ Boutros Boustani, *The Ocean - by the Teacher*, Librairie du Liban, Beirut, 3rd Edition, 1983 , p. 131.

⁹Al-Misbah al-Munir fi Gharib al-Sharh al-Kabir, op. cit., vol. 1, p. 112.

¹⁰ Intermediate Dictionary, op. cit., part I, p. 141.

¹¹ Professor Abdul Qadir Odeh, *Islamic Criminal Legislation*, vol. 1, Dar al-Fikr, Cairo, 1986, p. 67; Ali Hassan Al-Sharafi, *The General Theory of Crime*, Awan Media Services, Cairo, 1997, p. 23.

¹² Mahmoud Naguib Hosni, *Explanation of the Penal Code - General Section*, Dar Al-Nahda Al-Arabiya, Cairo, 5th Edition, 1982 , p. 3.

¹³ Mahmoud Mahmoud Mustafa, *Explanation of the Penal Code - General Section*, 10th Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1983 , p. 35.

From this standpoint, it can be said that criminal protection in general is: the protection granted by criminal law to a particular interest in order to prevent it from any criminal act that may be committed against it¹⁴.

Or it is: criminalization and punishment by the legislator in order to protect the rights and interests that the legislator deems worthy of criminal protection¹⁵.

Or it is the legislator's choice of facts of a gravity that harm or threaten the rights or interests of society and include criminalization and punishment¹⁶.

2. The criminal protection bug of the judge

The reason is due to the criminal protection report for judges to protect the judiciary and its sanctity, and to prevent harm to judges in any way. Without this protection, very few judges would remain on the bench, so it is necessary to give judges the language and security in their judicial work, and because the mission of the judiciary cannot be achieved without judges who enjoy criminal protection that provides them with safety and keeps them away from fear. Hence, the judge must be protected in society, as whenever the judge is safe, justice is safe. The judiciary, represented by judges, is the bulwark to guarantee the rights and freedoms of people's interests, and those who carry out this representation are entitled to special protection. Moreover, the work of judges requires that they be granted criminal protection commensurate with the high and dangerous status of their work. This is because one of the ABCs and axioms of the rights of the judge is to be safe for his life and safety by granting him criminal protection commensurate with the nature and seriousness of his work and so that the judge is enabled to perform his duty to the fullest, and in order to achieve judicial justice. In order to ensure the realization of the right and its restitution to its owners, and the achievement of justice, it needs a courageous judge who is not afraid and who secures his life and safety through the criminal protection approved by the legislator. The judge also rules and rules on the most important and dangerous matters for a person, which are himself, his safety, his freedoms and his money and his honor and honor. Those who rule on such matters should be provided with special criminal protection, and finally, because one of the guarantees of judicial justice at the time of sentencing is the psychological situation of the judge¹⁷.

Through justice, values are preserved, principles are stabilized, the citizen's sense of belonging to his homeland is multiplied and human dignity is exalted, and through the

¹⁴ Mr. Medhat Mohamed Al-Hussein, Criminal and Civil Protection of Possession, Printing House, Alexandria, 1991, p. 19.

¹⁵ Professor Faraj Al-Harish, Criminal Protection of Agricultural Activities, Garyounis University Press, Benghazi, 1988, p. 30.

¹⁶ Husni Al-Jundi, Explanation of the Yemeni Penal Code - Special Section, Dar Al-Qalam, Cairo, 1991, p. 16.

¹⁷ Theyab Abdul Karim Akl, Hassan T. Yaseer Shammout, Guarantees of Achieving Justice Related to the Issuance of Judicial Judgment in Islamic Sharia and Law, research published in the Journal of Sharia and Law Sciences, Kuwait, 1996, p. 50.

judiciary, everyone who has been attacked can prove his right by means of proof and receive his right to achieve confidence in the judiciary facility and impose its prestige to finally achieve the public interest, which is in itself the highest interests and its name, so the provisions of the Criminal Code came only to protect these real human interests established by a legal text.

These interests, which the provisions of the Penal Code came to protect, do not depart from three things: achieving confidence in the judiciary, imposing the prestige of the judiciary, protecting the affairs of justice and protecting the victim, the judge.

1.2 Achieving confidence in the judiciary:

The function of the judiciary was and is still one of the most important functions in society and the most dangerous affair and the work of judges and still for the business and the largest impact by resorting to the judiciary infallibility of blood and shed and goods are forbidden and married, and money proves its ownership and robbery, and transactions knows what is permissible and what is forbidden and hated and lamented, and for this it was natural that all systems are interested in the judiciary and those in charge of it to achieve its function in society⁽¹⁸⁾, the legislator has taken care of the judiciary and decided to protect the criminal judge To achieve confidence in the judiciary facility, which can be talked about as follows:

1 - the function of the judge imposes on him to accept every lawsuit presented to him as long as it is true and meets all its conditions, and the judiciary in the shortest period until the rights are returned to their owners, so as not to overwhelm the falsehood on the right and extract confidence in the judiciary, and the judge may be reluctant not to accept the lawsuit or slowdown in issuing the legal judgment despite the claim and the fulfillment of all legal procedures If he refuses to accept the lawsuit, it is considered a denial of justice violating the judiciary, because the purpose of filing the lawsuit to the judiciary is to accept it And to rule in the shortest period, otherwise the judiciary becomes in vain, because the slowness in litigation provides time to defend falsehood and leads to the existence of a psychological state afflicting society and many questions in front of this slowdown and die in the souls of the look of reverence for the judiciary, as well as disrupting the interests of people and stirring up sedition and destabilizing security and stability, The souls of the victims are filled with anger waiting for the issuance of a just verdict to heal their anger if their claim is rejected or there is procrastination in deciding on the verdict and issuing it, they resorted to revenge and revenge themselves against the offender, which leads to destabilization of security and stability and lack of confidence in the judiciary, so it is necessary to protect the judiciary from every crime that violates the course of justice and lacks confidence in the judiciary The criminal legislator has decided the penalty for every judgewho denies justice and refuses to accept the case despite its validity or delays cases and disrupts judgments¹⁹.

¹⁸ Dr. Muhammad Saad Ahmed, *Maqasid al-Sharia and its relationship to evidence*, Dar al-Hijrah, Riyadh, 1978, p. 213.

¹⁹ Dr. Muhammad Saad Ahmed, *op. cit.*, p. 214.

2 - If the work of the judiciary for the sake of business and the largest impact because it deals with the judgment on the necks of people and their money, this rank depends mainly on the integrity of the judge and his justice when issuing judgments, so the judge must be honest in the rulings issued away from inclination and negligence and in a way of passion and shadows and favoritism in order to achieve the judiciary right and justice, if he ruled without the right and money in his judges in response to a hope or recommendation or mediation or inclination of one of the litigants, it has gone out of The scope of his mission and he ruled on the basis of friendship and kinship, degraded his dignity, violated the provisions of the law, divided people on the basis of friendship, kinship and knowledge rather than on the basis of truth and justice, and undermined people's confidence in the judiciary²⁰.

3 - often the community in the secrecy of some facts and lack of publicity, especially what was related to the purposes, and the disclosure of the secret of the secrets of the case may expose the judiciary to not access to the truth and thus collapse confidence in the judiciary, if the court sees an investigation or trial in secret to preserve public order and public morals, it is forbidden to disclose the secret of the secrets of this investigation or trial, it is in the interest of the group - especially if the complaint submitted to the judiciary is concerned Family affairs - The proceedings or trial must be confidential in order to preserve the rights of the family and protect it from publication, and if these procedures are inscribed, they make the complainant refrain from resorting to the judiciary and thus gain confidence in the judiciary. ²¹

1.1.2 Imposing the prestige of the judiciary:

Judicial councils are the place where justice is done to the oppressed, and by resorting to the judiciary, rights are restored and people preserve their dignity, blood and honor.

They are trustworthy councils surrounded by prestige and reverence, so there is no room for gossip, tampering, bad manners and prolongation of words that are not appropriate for these councils because they are councils that adjudicate disputes by binding information about God's law, so it is not permissible to tamper with them.

Anyone who offends morality in the Judicial Council by word, deed, writing or in any other way during the hearing or before the investigating authorities on the occasion of a criminal investigation must be punished, because any conduct that disrespects the judiciary and its dignity is prohibited.

The offender's insult to the judiciary is the worst case of mockery of the status of the judiciary and the most serious violation of its prestige, so it is necessary to punish the offender because he stood in the judicial arena and did not respect its sanctity and majesty and underestimated its prestige and dignity.

²⁰ Dr. Abdel Hamid El Hefnawy, History of Law, Knowledge Foundation, Alexandria, 1985, p. 196.

²¹ Dr. Ali Mohammed Jaafar, History of Laws and Stages of Islamic Legislation, University Foundation, Beirut, 1986, p. 47.

In order to ensure this protection, the criminal legislator has established a penalty for anyone who violates the position, prestige or authority of a judge or attempts to influence him in any case during the hearing.

The criminal legislature not only prohibits insulting judges in order to impose the prestige of the judiciary, but also prohibits false communication as an offence that would lead to disregard for judicial authorities, which should receive communications in the proper manner required by the public interest. If the judicial authorities receive a false blaha based on incorrect facts and bad faith, they may decide a misplaced conviction, this on the one hand, and on the other hand, this communication deducts from the time and effort of those in charge of the judiciary without achieving only the wishes and intentions of the offender bad and harm to the victim, which thus affects the dignity of the judiciary and takes it out of its social function in addition to the fact that this crime requires disturbance of public order, because it enters the fraud on the judiciary It resorts to research, investigation, investigation and follow-up²² in fictitious matters, achieving only the healing of personal hatreds²³.

2.1.2 Protection of the right and rights of the victim judge:

The determination of criminal protection with a provision and a criminal sanction has the interest of the victim in protecting himself, his property, his honour and all his rights, because although the crime primarily affects society, its security and stability, it affects the victim more and the individual is harmed by it before society.

We will talk about the protection of the victim's right to himself and his property and present it in three paragraphs as follows:

1. Protection of the victim's right to judge:

Since human life is not very valuable, the law of just heaven was keen to protect the human soul from the tampering of the tampering and reckless and decided to equal punishment on the bodies as it was forbidden whenever it leads to damage to the soul and if the criminal legislator aims to determine the criminal protection of the judge to protect the course of justice, it nevertheless aims to protect the right of the victim judge in himself and we present here some examples to illustrate this: The protection of the right to oneself involves within one's own body parts²⁴, since their loss or destruction is the destruction of the right to life in itself. Whoever tries to influence the witness to prevent him from giving testimony or to induce him to bear false witness or refrains from taking an oath or conceals some facts has violated the victim's right to himself and exposed the judiciary to error in the search for truth and justice. Therefore, it is necessary to protect judges from these crimes, which includes protecting the same victim or his members from being lost due to the lack of evidence on which the judge relies in his ruling.

d²². Ahmed Abdul Aziz Al-Alfi - Memoirs in the Special Section - Penal Code - Year 1988 - p. 253.

d²³. Jundi Abdul Malik - previous reference, p. 119.

d²⁴. Muhammad Saad bin Ahmed Al-Youbi - The purposes of Islamic law and its relationship to legal evidence - Dar Al-Hijrah for Publishing and Distribution - Saudi Arabia - Riyadh - 1st Edition - 1978 AD - p. 213.

Laxity in protecting one's right leads to rivalry, the domination of the powerful over the weak, the tendency of the weak to seek illegal means to protect themselves and their members, and the disintegration of the group and its dissolution.

The destruction of legal evidence that guides justice by communicating information useful for self-protection is a violation of the victim's right to life. There is no doubt that the intention of the offender to change the status of persons, places or objects obtained from or related to the crime destroys evidence about the crime and erases its impact and exposes the investigation to serious obstacles that may eventually be the loss of the same victim to the judge. Or one of its members because the judicial system does not have access to legitimate legal evidence and conclusive evidence proving the guilt of the offender and thus impunity and thus the same victim is lost because of this crime.

Since felonies harmful to the public interest at the same time harm the individual interest, the criminal legislature establishes criminal protection for the private interest, especially if prejudice to them leads to damage to the basic interests of society. The protection of society is confirmed by protecting the human soul and respecting all his rights, which achieves social interests. When the criminal legislator formulates criminal legal provisions for the protection of the judge, he thus guarantees the protection of the human soul and organs. By achieving the protection of oneself and organs, security and stability are achieved, because insecure man cannot create, produce or benefit society. The first basis for the survival of a group in security and stability is the protection of its members, and individuals are protected only by the existence of a fair and impartial judiciary and the provision of a prescribed sanction for anyone who harms the judiciary, violates the course of justice or infringes the rights of individuals²⁵.

2. Protection of the right of the victim to present it:

If the penalties were legislated to protect society and their purpose is to protect the sanctities of God Almighty and make people reassured in this land, they are nevertheless to protect the victim's right to himself, his money, his honor and all his rights, and the felonies that are considered an attack on judges - as they are the most important pillars of justice that must be protected in order for every oppressed person to resort to it for justice and protection of his rights - is at the same time an indirect attack on personal interest, as the crime of false communication against judges It²⁶ also affects the judge in presenting him with a crime that violates honor and esteem and humiliates him among members of society and exposes the individual against whom the reported person is subjected to suspicions, investigations and false claims, which are often a despicable means of healing personal hatred²⁷.

The legal provisions for the protection of judges also protect judicial councils from tampering with words that are not appropriate for them in order to preserve the status and

²⁵ Imam Muhammad Abu Zahra, Al-Aqaba , Dar Al-Fikr Al-Arabi, Cairo, 1982, p. 84.

Dr²⁶. Ahmed Abdul Aziz Al-Alfi, previous source , p. 253.

d²⁷. Jundi Abd al-Malik - previous reference, p. 119.

prestige²⁸ of the judiciary.

The protection of judicial councils and the imposition of his prestige and dignity protect the person of the judge from anything that affects his presentation or undermines him by word, deed, writing or other movements that detract from the judge.

Therefore, the criminal legislator has established criminal protection to serve the purpose intended by the legislator when stipulating the criminal penalty for the crime of insulting the judiciary, in order to protect the person of the judge from any word, action or reference made to the person of the judge during the hearing or when conducting a criminal investigation.

3- Protection of the victim's right to his property:

Since man by nature loves ownership and has multiple demands in life, which allows its use and ownership, so it was a duty to regulate the instinct of love of ownership, and this is what the Sharia of Islam called for, so it called for halal earning, owning money and preserving it to achieve the interests of the people in reaching their needs in legitimate ways, and to protect this money, it is forbidden to attack or destroy it and every act that leads to the loss of money. An act is considered a crime only if, in the view of the legislator, it prejudices a personal or collective interest, and offences that harm the public interest at the same time harm the personal interest²⁹.

A false oath is one of the major sins that lead its owner to immorality because it harms the public interest, which is the course of judicial justice and because of its cunning and betrayal. However, it harms the interest of individuals and wastes the right of the victim to the judge in his money, as it leads to eating people's money with falsehood.

In order to protect the right of the victim to his property³⁰, Islam forbids the false oath taken by the offender knowing that the matter is contrary to what he swore to him, in order to be entitled to nullity or nullity of a right, such as deducting infallible property or harming a Muslim.

The criminal legislator has realized the seriousness of this felony on the individual and society, so he imposed a criminal penalty for every person assigned by the judiciary to take an oath against him and falsely swore it in order to deduct Muslim money.

If the crime of false oath has its seriousness on the right of the victim judge in his money, the crime of destroying a document belonging to the judge may be invoked before the judiciary is no less dangerous than the previous one as documents are a means of proving rights found to meet the needs of people in the use of writing in transactions to register contracts and document debts and rely on them when a dispute arises or it was useful to present them as evidence of any procedures and the reason for the protection of these documents seems to be a means of proof of what is protected The victim's right to his

²⁸ Ahmed Abdul Aziz al-Alfi, op. cit., p. 256.

²⁹ Al-Shatby, Approvals, vol. 2, Dar al-'Ilm al-Hadith, Cairo, 1975, p. 121.

³⁰Al-Zawjar on committing major sins - by Abu Al-Abbas Ahmed bin Muhammad bin Ali bin Hajar Al-Maliki Al-Haythami - in the year 909-974 AH - Dar Al-Kutub Al-Ilmia - Beirut - Lebanon - vol. 2, p. 304.

Every instrument or document drawn up by writing to be used in the fulfillment of rights, discharge of receivables, satisfaction of needs and act of destruction shall destroy the document, thus losing the victim's right to his property recorded in the instrument or document, especially if the document proves a debt with the debtor and can be relied upon or presented as evidence to be invoked before the courts.

The act of destruction by the offender of the document, which may be something from books, insights, records, bills of exchange, commercial or banking papers, whether by executing it so that it does not remain a material trace or by placing it in a state where it is impossible to extract the data indicated therein after this act is an attack on the right of the victim to his property, or the act of destruction is prohibited by the Penal Code as long as it harms the public interest and causes harm to others.

The legislator will not stop at this point in protecting the right of the victim to the judge's property, but also prohibits interference in the judges' affairs so that such interference does not harm people's rights and property, whether such interference is carried out by order, request, hope or guidance.

It is certain that this interference in the affairs of judges in favor of one of the litigants harms the victim, which often occurs only from the official authorities in the state or senior officials in their official capacity or by people of authority such as sheikhs and notables who have strong influence to waste the rights of individuals and their property, especially if the victim against whom the intervention took place from a weak family does not find anyone to protect him and defend his right. The legislator has decided the criminal penalty against anyone who interferes in Justice affairs, in this regard, in order to protect the right of the victim to judge³¹.

3.1.2 The criminal self-protection of the judge

There may be confusion or conflict between the term criminal protection of judges and other terms so that at first glance it seems that all these terms carry the same meaning. Among the most prominent of these terms are judicial immunity and judicial independence, and in order to remove the suspicion of confusion and conflict, we see that they are dealt with as follows:

First: Judicial Immunity and Criminal Protection of Judges:

Judicial immunity is a restriction on the freedom of the Public Prosecution to exercise its competence and functions in initiating public proceedings against a judge when he commits an offence that requires prosecution. It is a procedural act³² issued by the Judicial Council to initiate criminal proceedings against the judge to which it belongs.

This immunity is guaranteed by law in view of the gravity, importance and supremacy of the judge's task of administering justice among the people, so that the office of judge is surrounded by great respect, prestige and protection from arbitrary or malicious measures

³¹ Raed Abdul Hakim Ahmed Al-Maori - Crimes of Interference in Justice - Research submitted to the Higher Institute of Police Officers to obtain a diploma in criminal sciences, 1995, p. 36.

³² Dr. Ahmed Fathy Sorour, Mediator in Criminal Procedures, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 696.

that may be directed against him³³.

This immunity seeks to provide protection and guarantee for the judge to carry out his work free from any influence on the course of justice, let alone to enshrine the independence and impartiality of the judge³⁴.

The foregoing highlights the discrepancy between the criminal protection of judges and the judicial immunity granted to them. Protection protects them from any attack that occurs or will occur during the course of their judicial work, by punishing the perpetrator of such attack, and criminalizing him in advance so that those who intended to attack them know that his act is a punishable crime.

Judicial immunity for judges is a restriction and a procedure, while criminal protection for judges involves a crime and a penalty for the offence, in the sense that immunity is a restriction and a procedure for the prosecution of the judge, as the prosecution is held until the immunity of the judge is lifted. As for protection, it includes a part that criminalizes assault on a judge, and a second part punishes such assault with a criminal penalty, immunity is a means of protecting a judge when he is a perpetrator, while protection is a means of protecting him when he is a victim.

Despite this difference, there is no doubt that both aim to protect the judge, with different essence of the content of protection.

Second: Independence of the Judiciary and Criminal Protection of Judges:

The independence of the judiciary means that the judge is not subject to any influence in the performance of his work except by the law that applies it and the dictates of his conscience, and that the judge in his judicial work is not subject to authority or any authority, but his work is purely in the pursuit of the right. Justice, law and conscience³⁵.

The independence of the judiciary also means freedom from any interference by the legislative and executive branches and the fact that judges are subject to nothing other than the law³⁶.

The independence of the judiciary has a personal connotation, that is, the independence of judges as persons, and their freedom from any interference, pressure or material or moral influence, regardless of the source of such influence or pressure. The objective implication is that the judiciary is independent as an authority and entity from the rest of the State authorities, and that those authorities are not allowed to interfere in its work or affairs and

³³ Article 64 of the Iraqi Judicial Organization Act No. 160 of 1979, as amended.

³⁴ Dr. Mahmoud NjYib Hosni, *Explanation of the Code of Criminal Procedure*, Dar Al-Nahda Al-Arabiya, Cairo, 1999, p. 138; Omar Al-Saeed Ramadan, *Explanation of the Code of Criminal Procedure*, Dar Al-Nahda Al-Arabiya, Cairo, 1984, p. 97; Muhammad Subhi Najm, *Code of Criminal Procedure*, Dar Al-Thaqafa, Amman, 2008, p. 79

³⁵ Muhammad al-Habib al-Tijkani, *The General Theory of Judiciary and Evidence in Islamic Sharia with Comparisons with Positive Law*, Dar Al-Jeel, Cairo, 2009, p. 15.

³⁶ Medhat Al-Mahmoud, *The Judiciary in Iraq*, Dar Al-Sanhouri, Baghdad, 2010, p. 36.

Accordingly, it is clear from the foregoing that the independence of the judiciary differs from the criminal protection of judges in terms of meaning, content, substance, objectives and reason. The independence of the judiciary means that the judge must be free from any interference in his judicial work, and that he should not be subjected to any intimidation or coercion, whether by the legislative or executive authority or any of their members.

As for the criminal protection of judges, it means preventing any attack on a judge during the performance of his work or on the occasion of a procedure by virtue of his work or on his occasion, and considering such an attack a criminal offence that requires accountability and punishment. With regard to the objectives, the independence of the judiciary aims to ensure a fair trial, to establish confidence in the judicial system and to ensure the satisfaction of litigants with the rulings it renders, thus achieving social and political stability, advancing economic life and protecting rights and freedoms³⁸.

As for the goal of criminal protection for judges, it lies in achieving judicial security for judges and their sense of safety, tranquility and fearlessness, and for the purposes of preserving the body and supremacy and sanctity of the judiciary, because attacking judges is an attack on the judiciary. Without this protection, judges would have been reluctant to prosecute or sentenced under fear, terror and physical and psychological insecurity³⁹.

The end:

Through the research, we reached the following conclusions:

1. There are significant discrepancies between the independence of the judiciary and the penal protection of judges, and if there are one or more similarities between them, it is due to the human element, which is judges, both of which are closely linked to judges.
2. The goal of criminal protection for judges lies in achieving judicial security for judges and their sense of safety, tranquility and fearlessness, and for the purposes of preserving the body and supremacy of the judiciary, because an attack on judges is an attack on the judiciary.
3. Criminal protection for judges means preventing any attack on a judge during the performance of his work or on the occasion of a procedure by virtue of his work or on his occasion, and considering such assault a criminal offence that requires accountability and punishment. As for the objectives, the independence of the judiciary aims to ensure a fair trial, achieve confidence in the judicial system and the reassurance of litigants of the rulings it issues, thus achieving social and political stability, advancing economic life, and protecting rights and freedoms.

³⁷ Association for the Justice of Judicial Security and the Quality of Judgments, Dar Al-Qalb, Rabat, 2013, p. 15

³⁸ Ahmed Maher Zaghoul, The Summary of the Principles and Rules of Pleadings, University House, Alexandria, 1995, p. 63.

³⁹ Muhammad Nour Shehata, The Independence of the Judiciary from the International, Arab and Islamic Perspectives, Dar Al-Rukn Al-Arabi for Studies, Riyadh, 1993, p.6.

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