

## **Child Protection in the Field of Execution Penal Provisions**

**By**

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### **Abstract**

The general rule applicable in the procedural laws is the execution of the execution of the sentence, for the purposes of the execution of the penal sentence. However, through justified advertisements and the human aspect, sometimes, a pestilence, an epidemic, and an epidemic of hunger.

**Keywords:** Penal Provisions; Field of Execution; Child Protection

### **Introduction**

The penal judgment enjoys force in execution, which is called immediate execution, as penal judgments, as soon as they are issued, enter into force. And what is related to caring for the public interest. Therefore, the postponement of the execution of the judgment is defined as "the failure to implement the criminal penalty in spite of the judgment gaining executive force, due to the existence of an objector or based on the discretionary power of the court or the competent authorities. This definition shows that despite the force of execution of the criminal judgment, it is not executed. Executing it except in the event that the reason for the postponement has disappeared, so it is re-implemented - However, what is meant by suspending the execution of the penalty is the suspension of the execution of the penalty during a period specified by the law, and the sentence is forfeited and is considered null if the convict did not commit any crime during the period specified by the law, but if the convict committed a crime during the specified period or violated a condition in the judgment, the suspension is cancelled. Execution and the sentence imposed is carried out, and the system of stopping the execution of the sentence assumes that the convict has been sentenced to conviction, and despite this, his freedom is not taken away and he is not placed in the reform and rehabilitation center, unless he violates any of the conditions of the stay of execution, which is represented by the good behavior of the convict without committing a felony or a misdemeanor during the probation period. (Al-Kharshah and Darawsha, 2017: 22).

When referring to penal legislation, we note that the reason for deciding cases to postpone the implementation of a criminal sentence is represented by several considerations, including the principle of the personality of the punishment, meaning that the punishment is only imposed on those who are proven guilty of committing the crime or when contributing to it, as it does not affect anyone else, regardless of his connection. Therefore, the legal nature of the provisions for postponing the execution of the sentence is that it is an exceptional procedure, which is a departure from the rule of direct execution of penal rulings, and this departure is considered praiseworthy because it takes care of the human aspect of the convicts or other persons who are affected by the ruling, including children (Al-Janabi, 2021 : 278), so

contemporary penal legislation resorted to To the postponement procedures for these rulings in a way that protects the rights of the child to preserve his life, care for him, and take care of him in a way that guarantees his upbringing and care in the correct and sound manner, so most of the legislation stipulated procedural protection in postponing the implementation of penal rulings issued against the mother and father or the pregnant mother in order to preserve the interest of the child, but This protection varied in terms of the controls for its postponement and conditions, so we will present this discrepancy through what was stated in the legislation of the comparative countries and Iraq, as follows:

### ***Significant of the study***

This research shows the importance of shedding light on the human aspect of the principle of postponing the implementation of penal rulings, as well as applying the principle of personal punishment and its non-infringement on others, taking into account the right of others to enjoy their basic rights.

### ***Problem statement***

The research problem consists of the following questions:

- 1- Did the Iraqi legislator consider all cases of postponement of the implementation of penal provisions for the protection of children?
- 2- Was the period of postponing the execution of criminal sentences sufficient to protect children?

### ***Methodology of the study***

In order to study this research, the comparative analytical approach was adopted, through analyzing the criminal legislation texts of each of the Iraqi, French, Egyptian and Jordanian legislation, in order to reach the results that aim to develop solutions to the problem of this research.

This research was divided into three demands, the first requirement deals with postponing the execution of the penalty of deprivation of liberty against one of the spouses, and the second demand includes postponing the execution of the death sentence on a pregnant woman, while the third demand deals with postponing the implementation of the sentence of deprivation of liberty on a pregnant woman.

### ***First Topic: the periodic implementation of criminal judgments against one of the spouses in the interest of the child***

Criminal legislation took the permissive way to postpone the execution of the sentence, as it left this matter to the discretion of the court, in the event that the spouses were simultaneously sentenced to a penalty of deprivation of liberty and they sponsor a child.

When we refer to the French legislator, we find that he did not expressly stipulate the postponement of the execution of the penalty depriving the spouses of liberty in order to preserve the interest of the child and ensure that no harm is done to him. Just as justice requires that the impact of a sentence imposed on his caregivers not extend to him, but he implicitly adopted that from Through the exceptions he mentioned to the rule of implementing penal rulings after they become final (Article 708, 2011). That is through the authority or power that the judge enjoys in executing the criminal judgment in the French Criminal Procedure Code of 1958, according to Articles (116-277), and within this power is the fragmentation of the sentence or its postponement, as the judge of execution of the penalties can postpone the sentence, by for a health, family, occupational, or social justification. (Mohammed, and Salih, 2018 : 561).

As for Article (57) of the French Penal Code, which provides for the postponement of the execution of the sentence for a period of five years in the event that a penalty is imposed on the person sentenced to imprisonment for a period of one year, but he coupled it with the condition that the convict did not commit another crime during the postponement period, which allowed the court to postpone the implementation of the sentence in In the case of the existence of the necessary reasons that call for postponing it, including health reasons related to the convict, humanity, or other reasons that require mercy. (Article 57, 2016)

It is noted that the French legislator, when he specified the reasons for postponing the penalty depriving of liberty, including humanity or that calls for clemency, that he guaranteed through them the right of the child to be cared for by his parents, but he made it within the discretionary power of the court, and therefore this is considered the human goal of kindness to the child and taking into account the factors Mercy, humanity, and not depriving him of the care of his parents is one of the reasons the court resorts to in postponing the execution of the sentence.

As for the Egyptian legislator, we note that he followed the method of the French legislator with regard to the rule of implementing criminal rulings as soon as they become available, but he stipulated exceptions, including the case of postponing the implementation of the penalty depriving of freedom issued to one of the spouses who have children who need care, by stipulating that It was explicitly stated in Article (488) of the Egyptian Code of Criminal Procedure, but it stipulated that the penalty of imprisonment for one of the spouses be postponed for a period not exceeding one year, and that they had not been imprisoned before, and that the age of the child under their care should not exceed five ten years of age, in addition to the condition of the place of residence known to them in Egypt - Article (488) of the Egyptian Criminal Procedure Law No. 150 of 1950, which stipulates: "If a man and his wife are sentenced to imprisonment for a period not exceeding one year, even for different crimes, and they were not previously imprisoned, the execution of the penalty may be postponed for one of them." until the other is released, and that is if they are sponsoring a minor who does not exceed fifteen full years of age, and they have a well-known place of residence in Egypt. The Jordanian legislator did not address it in the Jordanian Procedure Code, but rather took this case as one of the cases of permissive postponement of the implementation of the penalty of deprivation of liberty against the spouses, through the text of Article (27/ 3) of the Jordanian Penal Code - Article (27) Paragraph (3) of the Jordanian Penal Code, which stipulates: "If they were sentenced to imprisonment for a period not exceeding two years prior to the occurrence of the crime, then the court may, based on their request and for a justified reason, order the execution of the penalty against them for successively, provided that they have a fixed and known place of residence in the Kingdom.

As for the Iraqi legislator, we note that it stipulated the postponement of the implementation of criminal judgments against one of the spouses, in Article (296) of the Code of Criminal Procedure, which is in the case if the spouses and they had a child under twelve years of age were sentenced to a penalty of deprivation of liberty for a period not exceeding years and they have not been imprisoned before, it is permissible to postpone the execution of one of them until the other is released if they are sponsoring a young person who has not completed twelve years of age and they have a specific place of residence - Article (296) of the Iraqi Code of Criminal Procedure No. 23 of 1971, which stipulates: "If a man and his wife are sentenced to a penalty of deprivation of liberty for a period not exceeding one year, even for different crimes, and they were not previously imprisoned, the execution of one of them may be postponed until The other is released if they are sponsoring a minor who has not completed twelve years of age and they have a specific place of residence. It is clear from this that the

Iraqi legislator stipulated a condition for postponing execution, among other conditions, which is that the penalty be imprisonment and for a period not exceeding one year, and that they have not been imprisoned before and that they have a minor who has not completed twelve years of age with a place of residence known to them. The criminal judgment and the attempt to reduce the impact of this judgment on them when they have a child under the age of twelve, with the aim of not depriving him of the care of his parents. In conclusion, the interest of the child in postponing the execution of the sentence against one of his parents is considered as a procedural and penal protection for childhood, which was mentioned in the legislative texts in most penal legislations, and therefore it went to balance between two considered interests, which is the interest of implementing judgments and the interest of the child in care and attention, and preferred the interest of the child. To implement the rulings as they are the most appropriate, important and priority.

***Second Topic: The interest of the child in postponing the execution of the death sentence on the pregnant woman***

The principle of personal criminal punishment is considered one of the fundamental principles in most penal legislation, and by this principle it is intended that the punishment is only for those who are proven responsible for the crime, so that it does not affect anyone but the perpetrator (Abd Al-Sattar, 1977 : 221) and applying this principle, the pregnant woman who is sentenced to death is considered The only one responsible for her act is that her fetus is innocent and has no guilt, so the legislation sought to protect it, and extended the scope of its protection until its birth, but penal legislation differed in the period of protection when it was newly born.

Where it is noted that the French legislator basically abolished the death penalty on 8/29/1981 and it was ratified on 10/9/1981, and as a result of that the French constitution stipulated on 2/2/2007 approving this through Article (66) which stipulated “No one shall be punished with the death penalty,” and this text came as an affirmation of the final abolition of the death penalty (Article 66-1). As for the Egyptian legislator, it is noted in Article (476) of the Egyptian Code of Criminal Procedure that it did not allow the execution of the death sentence against a pregnant woman except after two months of giving birth - Article (376) of the Egyptian Code of Criminal Procedure No. (150) of 1959 amended by Law (189) of 2020, which stipulates: “The execution of the death penalty shall be suspended for pregnant women until two months after giving birth. This procedure was organized in the judicial instructions of the Public Prosecution, provided that if a woman sentenced to death claims that she is pregnant, a forensic doctor is assigned by the Attorney General, in order to conduct a medical examination of her pregnancy - Article (1450) of the Public Prosecution / Judicial Instructions, which stipulates: “If a woman sentenced to death claims that she is pregnant, the attorney general shall assign the forensic doctor to sign a medical examination on her to confirm her pregnancy, and if this is found to be true, the execution must be suspended She has to wait until two months after giving birth, and the reason for that is to save the fetus, in application of the principle of personal penalties. It is clear from this that the Egyptian legislator extended the scope of criminal protection to the postpartum stage, that is, the aim of this is not only to protect the fetus, and I gave a period of two months in order to take care of the newborn child, but from our opinion that this period is not sufficient to take care of it The Egyptian legislator should increase this period until weaning.

As for the Jordanian legislator, he stipulated this in Article (358) of the Jordanian Code of Criminal Procedure, and indicated that the death penalty may not be carried out against a pregnant woman until after three months have passed since the birth of her pregnancy, but the Jordanian Penal Code we find in Article (17) thereof, which obliges a replacement The death

penalty is reduced to life imprisonment with hard labor if the woman is pregnant. It is noted on these two articles that there is a contradiction and it is unimaginable, as one side of the Jordanian jurisprudence held that the field of application of each of these two articles is different from the other. In Article (17) Jordanian penalties are applied if it is proved in it that the woman is pregnant when the death sentence is issued, i.e. Before this ruling becomes final, as for Article (358), it is applied when it is proved that the woman is pregnant and after the sentence becomes final against her ( Al-Saeed, 2011 : 538), and it is noted that what was stated in the Jordanian Penal Code that a pregnant woman benefits from her pregnancy as an excuse mitigating the penalty, as for what was stated in Code of Criminal Procedure Her pregnancy caused the postponement of her death sentence.

As for the Iraqi legislator, he explained in detail the procedures that are followed in the event that it is found that the woman against whom the death sentence was issued is pregnant, by making the order to carry out the death penalty against a pregnant woman something that is not possible and that it must not be executed until four months have passed since the delivery, and this is in connection with what he stated. The legislator (... it shall not be implemented until four months have passed since the date of delivery of her pregnancy, whether she was delivered before or after the receipt of this order). As for the detailed procedures followed by the prison administration, it informs the Chief Public Prosecutor, who in turn presents his review to the President of the Supreme Judicial Council to postpone or reduce the sentence, and the Minister of Justice presents the review to the President of the Republic and delays the implementation of the sentence until the decision is issued, whether to postpone the implementation of the sentence or reduce it - Article (287) of the Code of Criminal Procedure No. 23 of 1971, which stipulates:

A - If the convict is found pregnant when the execution order is received, the prison administration must inform the Chief Public Prosecutor so that he submits his review to the President of the Supreme Judicial Council to postpone the execution. The sentence or its commutation, and the President of the Supreme Judicial Council submits this review to the President of the Republic. The execution of the sentence is delayed until a renewed order is issued by the Minister based on what the President of the Republic decides. if the renewed order requires the execution of the death penalty, then there is no execution except after the lapse of four months from the date of giving birth Whether it was placed before or after the receipt of this matter.

B - The provisions of Paragraph A shall be applied to the convicted woman who gave birth before receiving the execution order and four months have not passed since the date of her delivery. The penalty shall not be executed before the lapse of four months from the date of its imposition, even if the renewed order of execution is received. It is noted that the Iraqi legislator has given the President of the Republic two options for the convicted woman if she is pregnant, where he can reduce the sentence, such as making her sentence life imprisonment instead of death, or he can also postpone the sentence for four months after giving birth, and the death sentence is not executed after the period has passed Its right is only by a new order from the President of the Republic. It is also understood, through what the Iraqi legislator mentioned in this text, that he relied on the human aspect, by not exceeding the punishment of the crime to an innocent person who did not commit it, namely the fetus or the infant, and this is contrary to the principle of personal punishment. (Permanent Representation of the Republic of Iraq to the United Nations Office, 2022)

It is clear that the position of the Iraqi legislator towards the implementation of the death penalty against a pregnant woman is to postpone its execution until the pregnant woman gives birth to her child, as the execution of the death penalty continues to be postponed until four months have passed since the date of her delivery, and the execution order is irrelevant,

whether it was mentioned after delivery or before delivery. Then it must pass four months after its birth, and then it will be implemented, according to Article (287) of fundamentalism (Al-Darkazli, 2003 : 47), In conclusion, the Iraqi legislator took the interest of protecting the fetus and his right to life, and extended it to his protection in terms of caring and taking care of him as he is a newborn child However, the Iraqi legislator should increase the duration of this care, as he is a weak creature and requires special care and attention.

### ***Third Topic: The interest of the child in postponing the execution of the sentence of deprivation of liberty against the pregnant woman***

The cause of the state of health weakness of the convict is a penalty that deprives the pregnant woman of freedom, and it means the penalty of deprivation of liberty, and it is that punishment that is decided by a penal judgment, as it results in depriving the convict of his freedom, by placing him in correctional institutions, while subjecting the convict to this penalty to the system applied in the institution in which he was deposited, for the sake of rehabilitation and reform (Al-Dhahabi, 1975: 64), so some penal legislation decided to grant the pregnant convict a special treatment, as some legislation gave the authority entrusted with the implementation of penal judgments the power to postpone the execution of penalties against the pregnant convict, and he took these legislations in a case The permissibility of postponing the implementation of freedom-restricting penalties for a pregnant woman. One of the legislations that adopted this approach is the Egyptian legislator, through what was stated in Article (485), When it was stipulated that the woman be pregnant in the sixth month and the delay period is only two months, but if the pregnant woman is sentenced to a penalty of deprivation of liberty and it turns out that she is pregnant, i.e. less than the sixth month of her pregnancy, then here she is treated like the treatment of detainees in remand - Article (485) of the Egyptian Procedural Law No. 150 of 1950, which stipulates: "If the woman sentenced to a custodial penalty is pregnant in the sixth month of pregnancy, execution may be postponed until she gives birth and two months have passed since delivery. The convicted woman, or it appears during execution that she is pregnant, must be treated in prison as those held in custody until the period prescribed in the previous paragraph expires. As for her treatment only the legislator stipulated In Article (19) of the Egyptian Prisons Regulation Law, special treatment is given to a pregnant woman who is sentenced to a penalty of deprivation of liberty, starting from the sixth month of her pregnancy. Health care for the mother and her newborn in terms of food, clothing and rest - Article (19) of the Egyptian Prisons Regulation Law, which stipulates: "A pregnant prisoner shall be treated, starting from the sixth month of pregnancy, with special medical treatment in terms of food, work, and sleep until she gives birth and forty days have passed since delivery, and care must be given to the mother and her child." The necessary health conditions along with food, clothing and rest. A pregnant prisoner or mother may not be deprived of the food prescribed for her for any reason whatsoever. It is noted on these two articles that the Egyptian legislator in the article of the Egyptian Procedure Code gave the right to postpone the judgment if the woman is six months pregnant, meaning that the Egyptian legislator permitted the postponement in order to preserve the health and comfort of the mother until she reaches the age of Her newborn is two months old, but if the verdict was issued against her before she entered the sixth month of her pregnancy, then the verdict may not be postponed, but rather she shall be treated as a precautionary arrest.

As for the Jordanian legislature, it was devoid of a text on this case, and did not make the pregnancy of the convict a reason for postponing the execution of the sentence against the convict, as it did not indicate the possibility of postponing the execution of the pregnant convict except in one case, which is the case in which he is sentenced to death, only the aforementioned. However, the Jordanian legislator has granted the convict who is pregnant with

a penalty of deprivation of liberty special treatment that provides her with the necessary medical care, through the Jordanian Correction and Rehabilitation Centers Law, by giving special care to the convict who is pregnant with a penalty of deprivation of liberty - Article (15) of the Jordanian Correction and Rehabilitation Centers Law, “The pregnant inmate shall be treated appropriately according to the doctor’s instructions and in accordance with instructions issued by the Minister for this purpose.

As for the Iraqi legislation, we note that despite the necessity of postponing the implementation of the penalty depriving of liberty in the event that the convict is pregnant, the Iraqi Code of Criminal Procedure in force lacks a text that includes this postponement, as well as the Prison Service Law No. (151) of 1969 in Iraq, it is devoid of any text explaining how a pregnant prisoner should be treated. Therefore, we call on the Iraqi legislator to address this issue by granting the Public Prosecution the authority to consider requests for postponement of execution, and then to make appropriate recommendations in this regard to the competent judicial authorities to postpone the sentence of deprivation of liberty for pregnant women, because the effects of this punishment are indirect, because they do not stop at the limit of the convict, but it goes beyond it to other people, which is protecting her fetus and caring for her newborn. In this regard, we call on the Iraqi legislator to explicitly stipulate postponing the implementation of the right of the pregnant woman until she delivers her pregnancy and a period of time expires after the delivery, as is the case with the rest of the penal legislation, some of which went to consider the postponement of implementation in this case as obligatory and without stipulating a period of time for the age of her fetus and estimating the duration of the pregnancy. appropriate time for the birth of her child.

## **Conclusion**

After we finished studying our research, we reached several results, including:

## **Results**

- 1- The Iraqi legislator, like the rest of the comparative legislation, decided to postpone the execution of the sentence depriving one of the spouses of liberty, in order to protect the interests of the young.
- 2- The Iraqi legislator made the postponement of the execution of the death sentence against a pregnant woman for a period of four months, taking into account the protection of the right of the fetus to life, and did not extend the scope of its protection to take into account its young age.

## **Recommendations**

- 1- We recommend to the Iraqi legislator to increase the period of postponing the execution of the death sentence for a pregnant woman, based on what was stated in Islamic law regarding the care of the newborn until the completion of lactation.
- 2- We recommend that the Iraqi legislator adopt the case of postponing the implementation of the penalty depriving a pregnant woman of liberty.

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