

## The crime of claiming disability or special need contrary to the truth: A comparative study

By

**Nisreen Mohsen Nima'a Al Husseini**

Law Department, Imam Al-Kadhim College of Islamic Sciences University, Babylon, Iraq

Email: [Drnsreenalhusainy@alkadhum-col.edu.iq](mailto:Drnsreenalhusainy@alkadhum-col.edu.iq)

**Mayada Hussein Salman**

Imam Al-Kadhim College of Islamic Sciences University, Iraq

Email: [mayada\\_law@alkadhum-col.edu.iq](mailto:mayada_law@alkadhum-col.edu.iq)

### Abstract

The crime poses a social risk because it violates legally recognized social interests. Additionally, it puts human security and stability at risk. It is well-established that the primary goal of criminal law is to defend the fundamental freedoms that support civil society. Therefore, the legislator criminalizes voluntary acts that infringe on these rights and considers them crimes that deserve the responsibility and punishment of the perpetrator. Among these acts is the claim of disability or special need, contrary to the truth, which was criminalized by the Iraqi legislator based on the provisions of Article (21) of the Law of Welfare for Persons with Disabilities and Special Needs No. (38 of 2013). The legislator criminalized it by the text: "Anyone who claims, contrary to the truth, that he has a disability or needs special care, and obtains an exemption, facilitation, privilege or grant from what is stipulated in this law, shall be punished." In light of the foregoing, we will deal with this crime by explaining its concept, its pillars, and the penalties ensuing from it in Iraqi legislation and comparing it with the Egyptian legislation.

**Keywords:** claim contrary to the truth, disability, special need.

### Introduction

**Research topic:** The rights of every person, regardless of rank, are strongly protected by societies. Given that persons with disabilities have a greater need for specialized protection and integrated care, it gives special attention to the group that is unable to satisfy its needs on its own. It gives attention to the criminalization of acts that constitute aggression from others. The legislator sets a penalty that is commensurate with its importance and the necessity of criminalizing it. The Iraqi legislator believes in the seriousness of violating the interests of people with disabilities and special needs, the Iraqi legislation included criminal penalties with the aim of implementing these rights and obliging the competent authorities to implement them and not compete for them from people other than this category based on the provisions of Article (21) of the Law on the Welfare of Persons with Disabilities and Special Needs, as well as Articles (51). (49) of the Egyptian Law on the Rights of Persons with Disabilities No. 10 of 2018.

**Research problem:** The subject of the study raises many questions, the most important one is the concept of the claim contrary to the truth? What are the forms of behavior *that* can be included in the allegation? Did the legislator overlook the criminalization of some acts worthy of incrimination? What is the best punishment for this crime?

**Research Methodology:** The analytical method of legal texts in Iraqi legislation, compared with Egyptian legislation is the most appropriate approach for this study.

**Study plan:** We separated the study into two areas to make it easier for readers to understand the issue. The first topic dealt with the idea of the crime of falsely claiming a handicap or special need. The first necessity is to research the definition of crime. The second topic deals with the components of the crime and the penalty that follows it in two demands, whereas the study of the second issue is its legal character. In accordance with the following, we allocate the first to the broad components of the crime and the second to the primary and secondary punishments that come from it:

***The concept of the crime of claiming disability or special need contrary to the truth***

To define the concept of crime, it is necessary to clarify its definition and legal nature. We will specify the following two requirements for it:

***Defining the crime of claiming disability or special need contrary to the truth:***

For the purpose of defining the crime, it is necessary to clarify its meaning in the legislative and jurisprudential terminology through the following two branches:

***Section one: Legislative definition:***

As usual, the Iraqi legislator neglected a definition for the crime of claiming disability or special need contrary to the truth. It is a commendable trend, because definitions are not among the legislature's duties. The same applies to Egyptian legislation, as it is devoid of any reference to a definition of the crime, and it is content with stating its elements and the penalty ensuing from it. Nor did I find, within the limits of the decisions I reviewed, a comprehensive judicial definition of it. As for the term disability or special need, definitions were known. In the international framework, persons with disabilities are defined in the Convention on the Rights of Persons with Disabilities "as persons who suffer from long-term impairments, whether intellectual, physical, mental or sensory. These impairments prevent them, when dealing with various barriers, from participating effectively and fully in the life of society on an equal basis with others" (See Article (1) of the Convention on the Rights of Persons with Disabilities 2006).

Regarding national law, the Iraqi legislator defined disability as "the restriction or incapability of a person due to a disability or malfunction directly to perform interactions with his surroundings, within the extent to which a person is considered normal" in the Law for the Care of Persons with Disabilities and Special Needs. He also mentioned a definition for people with disabilities, "it is anyone who has lost the ability, completely or partially, to participate in the life of society, insulted by others, as a result of having a physical, mental or sensory impairment, which led to a deficiency in his functional performance" (See: Article (1 / First, Second) of the Law on the Care of Persons with Disabilities and Special Needs 38 of 2013). The category of people with special needs was defined in Article (1/7) of the same law as "a person who has shortcomings in performing his role and tasks in relation to his peers in age, social, economic and medical environment, such as education, sports, vocational training, family relations, and others. Those of short stature are considered as people with special needs."

As for the Egyptian legislator, he defined a person with a disability as "a person who has a complete or partial deficiency or defect, whether it is physical, mental, mental or physical. If the defect or deficiency is stable, it prevents him from participating fully and effectively when dealing with various obstacles from participating fully and effectively with society equally with others." (See: Article (2) of the Egyptian Law on the Rights of Persons with Disabilities).

***The section Two: The legal definition:***

We did not find a comprehensive definition of the crime under study in jurisprudence, while we note that criminal jurisprudence defined crime in its general sense that the crime is “every behavior that can be attributed to a perpetrator and which causes harm or threatens to endanger a social interest that is protected by a criminal penalty” (Suleiman, 1998). With regard to the terminological definition of the claim of disability or special need, the prosecution defined its jurisprudence as “establishing the evidence for the truth of an alleged matter, given legal implications it entails” (Markuss, 1981; Asaad & Shabdin, 2021).

As to disability, it has been defined in jurisprudence as “the inability of the individual to respond to the environment and adapt to it as a result of mental, behavioral or physical problems. It is the disability that causes these problems when the affected individual interacts with the environment” (Al-Maubatt, 2009; Butt et al., 2021).

As for people with special needs, they were defined as “the category in which there are differences from natural persons, whether mental, psychological, or physical. This category needs special treatment and care at a higher level than others. It also needs appropriate protection and oversight for their different rights.” (Al-Shaibani, 1989; Çağatay & Erten, 2020).

As for contrary to the truth, it means changing or reversing the truth and achieving falsehood in order for a person to reach his goal (Abbas, 2015). Accordingly, the crime of claiming disability or special need, contrary to the truth, can be defined as “a person claims, contrary to the truth, that he has a disability or needs special care, for which the prosecution would obtain a facilitation, exemption, privilege or grant. This is done before any of the Governmental and non-governmental bodies competent to implement the law on the care of people with disabilities or special needs.

***The legal nature of the crime:***

Legally, each crime differs from one another. As for the legal nature of the crime of claiming disability or special need contrary to the truth, it can be stated as follows:

***The first section / in terms of behavior and the result of the crime:***

The criminal act is defined as either a positive activity or a negative activity, where the positive activity is either performing one act or several acts (Sorour, 1972). In fact, the crime of claiming disability or special need, contrary to the truth, is one of the positive crimes whose criminal behavior is completed by a positive action that takes place through a voluntary organic movement. The crime cannot occur by abstaining from the act. It does not occur without an external behavior that would lead to obtaining rights and privileges allocated to the category of people with disabilities and special needs. This is because the legislator has limited the offender’s activity by making an effort through his making of the allegation and not by the way or the means used by the offender to do so.

After extrapolating the legal text of the crime under study in the Law on the Welfare of Persons with Disabilities and Special Needs, Article (21) of it, “Anyone who claims and obtains an exemption shall be punished.” We note that the legislator asked for the imposition of the penalty that the behavior leads to the achievement of the criminal result of obtaining illegal rights and privileges restricted to the category of people with disabilities and special needs. Accordingly, the claim must be valid for obtaining a facilitation, exemption, or privilege in order to reveal the complete crime. Otherwise, the crime does not occur in this case. As for the Egyptian legislator, the text of Article (49) of the Law on the Rights of Persons with Disabilities

can be used. The forms of behavior contained therein consider the crime a dangerous crime. As criminalization focuses on the behavior itself, whether it is an act or an omission, regardless of whether a certain result has been achieved or not.

This is according to the text of Paragraph (1) whoever forges a card shall be punished. (2) He makes an incorrect statement, submits to it, or conceals information..." of the stated article. The same applies to the text of Article (51/1,2) of "whoever applies for any service, whoever impersonates a person with a disability." This phrase indicates that the mere act of criminal behavior makes a person committing a complete crime. On the other hand, obtaining a document, card, or certificate without a right, is one of the harm crimes that require the achievement of the criminal outcome. Accordingly, the Iraqi legislator is considered to have suspended the acknowledgment of the criminal responsibility of the alleged crime, contrary to the truth, on the completion of its materiality by performing the material behavior with the achievement of the harmful criminal result of the prosecution's behavior.

### ***The second section / in terms of the gravity of the crime***

In certain legislation, crimes are classified as felonies, misdemeanors, or infractions depending on how serious the punishment. Triple division is the name given to this process. The harshness of the punishment imposed by the law establishes the category of crime. In light of this, the crime in question is a misdemeanor, according to the Iraqi legislation, which is punishable by imprisonment or a fine or both. (See: Iraqi Penal Code 1995: Art. 25-27). As for the Egyptian legislator, whoever conducts forgery of a disability proof card, integrated services or qualification certificate, or using it with knowledge of its forgery, or making an incorrect statement or concealing information with the intent to unduly benefit from the rights and privileges allocated to people with disabilities, has been considered by the Egyptian legislator. This is mentioned in the text of Article (49) as felonies. He was punished with imprisonment and a fine, as indicated by Article (10) of the Egyptian Penal Code, which described felonies as crimes punishable by death, life imprisonment, hard labor, or imprisonment. Article (51) also considered that applying to obtain a service or advantage guaranteed to persons with disabilities, or actually benefiting from those advantages or who impersonated a person with a disability, is a misdemeanor, and in terms of the punishment represented by imprisonment (Egyptian Penal Code, Art. 18), or a fine. This is based on Article (11) of the Egyptian Penal Code, which considered misdemeanors to be crimes punishable by imprisonment or a fine of a maximum of one hundred pounds.

### ***Elements of the crime of claiming disability or special need contrary to the truth and its punishment***

The crime of claiming disability or special need, contrary to the truth, is identical to that of other crimes, which must fulfill its foundations. These pillars are the material pillar and the moral pillar. If the elements of the crime are completed, the offender will be entitled to the penalty prescribed for it in accordance with the provisions of the law. In light of the foregoing, we will address that in this section and through two demands, the first is devoted to the elements of the crime, and the second is devoted to clarifying its punishment as follows:

### ***The elements of the crime***

We shall thus explore the two elements of crime, material and moral, through the next two parts:

***The material element:*** It is the essence of the crime and its perceptible nature, which means its materiality represented by the disturbance caused by the commission of the act

(Shams, 2012). The crime is not realized unless there is an external material activity for which the law intervenes with criminalization and punishment.

Article 28 of the Iraqi Penal Code defines the material element as “criminal behavior by committing an act criminalized by law or refraining from an act ordered by law.” Accordingly, the material element in every crime consists of three basic elements, namely, the criminal behavior and the criminal outcome. It is also insufficient for the crime under study to occur and the criminal result to be achieved, but rather the result must be attributed to that behavior with a causal relationship. This is what we will show through this branch of the material pillar, as follows:

**1- Criminal behavior:** The tangible physical component that makes up the crime changes as a result of an external activity which takes the form of positive activity. Article (21) of the Law on the Welfare of Persons with Disabilities and Special Needs expresses this by stating that “Whoever claims, contrary to the truth, that he has a disability or... shall be punished.” Of the concept of the text, it becomes clear that the criminal behavior for its occurrence requires an activity carried out by the offender represented by the claim contrary to the truth. The offender here wants to obtain restricted rights and privileges for people with disabilities and special needs. He pretends to get it with a voluntary movement that would prove his claim. We note from the text that the Iraqi legislator did not specify the forms of criminal behavior that represent the meaning of the claim of disability or special need. Thus, the scope of the prosecution expands to include any behavior that the offender may resort to, to carry out his activity. This claim may be interpreted by writing forgery or verbally, such as giving false information or any other way in which the offender seeks to prove the validity of his claim that he is disabled.

According to Public Health Instructions No. (2) of 1998 about the assessment of the degree of impairment, the competent medical committee in each governorate estimates the percentage of disability and handicap to show the disability. Instructions No. 2 of 1998 were issued based on the provisions of Articles 105 and 94 of the Public Health Law No. 89 of 1981. Article (94) stipulated that “the Minister of Health shall form medical committees for the purposes of assessing the degree of disability and handicap.” Article (105) states that “regulations, instructions and data may be issued to facilitate the implementation of the provisions of this law. Public health is the competent authority that determines whether or not the persons covered by the law for the care of people with disabilities and special needs (See: Art 15/1<sup>st</sup> of the Iraqi Law for the Care of Persons with Disabilities and Special Needs).

Therefore, conducting the allegation may be accompanied by fraud or deception. For example, if the offender tampered with the medical report prepared to prove the disability so as to change his health status and prove to himself the disability by changing the percentage of disability or deleting the name of the original reporter. Then he shows it to the competent departments for the purpose of including it with what is prescribed by law. This may be done by the competent employee when he performs his job, or by any person charged with issuing these certificates, which include false info that the person they were given is disabled or needs special care. Accordingly, if it is not necessary to change the situation contrary to the truth, the crime of claiming to have disability does not take place. If a person confirms data that matches the truth, even if he believes that these data are incorrect, the allegation is not based. Thus, the lesson is the truth of the case, regardless of what the person believes (Al-Marsfawi, 1995).

In conclusion, even if a saying may seem to validate a legal claim, the authorities charged with upholding the law do not depend on it. However, the claim must be accompanied



by the external manifestations that support it. In addition, the competent medical committee to assess the degree of disability is not limited to what the applicant says but is based on scientific laboratory and clinical examinations (Instructions of Iraqi Medical committees 1995). As for the Egyptian legislator, in fact, it did not explicitly stipulate the behavior contrary to the truth, but we can conclude that any of the behaviors that were mentioned exclusively in Articles (49) and (51/4, 2, 1) of the Law on the Rights of Persons with Disabilities. It is possible for the offender to take it as a means that leads him to claim contrary to the truth. These cases are

***A. Forging or using the disability proof card, integrated services or rehabilitation certificate***

Criminal behavior is represented in the form of the offender's forgery of the disability proof card, integrated services or qualification certificate, whether the forgery was done by the offender or by others (Al-Qahwachi, 2006).

The disability proof card and integrated services are defined as "the only approved method for proving the type and degree of disability that helps the disabled in obtaining the various services, facilities and benefits assigned to him." See: Article (5) of the Egyptian Disabled Rights Law, corresponding to Article (1) of the UAE Disabled Rights Law. The card is also known in view of physical composition. It is a plastic card with certain standard dimensions bearing the name of the issuing authority, its logo, the name of the holder, the type of disability, the date of validity, a secret number known only to the holder, and sometimes a personal photo" (Brahimi, 2015). It may also contain a magnetic tape which has invisible data.

The offender may fabricate the basic components and falsify the visual information on disability card. As for forgery on the magnetic tape, it is either by encryption or by obtaining information from a valid card and by illegal means by defrauding its holder through websites. The beneficiary receives an email that appears to be from the card issuer, wishing to update or verify the beneficiary's information. Persons with disabilities send their information to the site similar to the original site. Thus, it can identify the card numbers and data (Al-Radaidah, 2013). The offender's activity may be limited to using the forged document to benefit from it to fulfill the purpose for which it is intended. This is done by the offender holding on to and protesting the forged card or certificate before the competent authority as if it were true. In order for the crime to be realized, it is required that the offender knows that he is using a forged document and that his desire is to stick to that it is a valid document.

***B. Providing incorrect information or concealing it.*** The behavior is done either with a positive activity represented by the offender making or submitting statements that the law requires to be stated before the competent authority. This data is unfounded and such false information may be included in the official documents required by the competent law enforcement authorities to benefit from the rights of people with disabilities. As for what happens from it with an activity of concealing, it is represented by the act of concealment, which is the withholding of the applicant, or the beneficiary of the data required to be acknowledged by the employee responsible for editing it. If he hides the truth that he has recovered from the disability.

***C- Applying to obtain or benefit from an undeserved service or advantage:*** This case is achieved by the offender applying to the concerned authority for the purpose of obtaining a service or advantage offered by that entity even though he is not entitled to. Accordingly, the crime is complete even if this is not followed by the acceptance of the donor. The application can also be express in clear terms or in writing submitted to the competent employee or submitted via the website of the donor.

***D- Impersonation of a person with a disability or assistance in impersonating it:*** The impersonation of the identity as a form of criminal behavior is to appear in front of others in the appearance of the person who has been impersonated so that the person dealing with him and looking at him believes undoubtedly that he is dealing with the person who has been impersonated (Bin Nasif, 2021). The behavior is carried out by the offender unjustifiably impersonating a person with a disability until he obtains the status enjoyed by the person with the impersonated capacity or obtains the advantage that he has. As for assistance in impersonating a person with a disability, it is represented by the offender helping a person to commit the crime, such as someone who forges the seal of the medical committee or the qualification certificate with the help of a person to impersonate a person with a disability. The culprit is the one who forged and helped the impostor commit his crime.

***E. Obtaining a document, card, document, or certificate of disability illegally):*** The demander for the document is obliged to announce the information and data to determine his person or the type and degree of disability and others when he/she applies to get them. Accordingly, the authority decides whether to issue it to applicant or not. If he submitted his data and in the light of it, the concerned authority issued what he requested, then it would become clear that those data were incorrect. There is no doubt that the one who issues the document has made it to applicant based on fraud and deception. Accordingly, the offender's behavior is fraud, deception, and providing false statements that changed the truth. That is, if the competent authority had not been deceived by the means used by the offender, it would not have provided him with the required document.

## ***2- Criminal consequence:***

The result is achieved in this crime by obtaining the claimant of disability or special need to an exemption, facilitation, privilege, or grant. Therefore, an allegation without consequence, even if it was made by an ordinary person, does not fall within the scope of the crime. This is because every person has the right to submit a request to the competent authorities in order to include him in the rights and privileges of this law. But the crime rises if the offender obtains one of the rights he is not entitled to as a result of his claim. The offender is responsible as long as his act is the cause of the criminal result achieved.

Accordingly, the initiation of this crime is imagined, as if the offender begins to carry out the behavior of the claiming to be disabled, but he has stopped or failed due to reasons beyond his control. For example, this person claims disability or special need, in any way, but he did not succeed in proving his claim. In this case, the rules of initiating the crime of claiming disability or special need, contrary to the truth, are applied to him. But if the allegation is made and it is accompanied by the availability of other elements of a crime, the offender must be questioned according to Article (142) of the Iraqi Penal Code, which dealt with the issue of the plurality of crimes that result from multiple acts and are inseparably linked to each other and committed to achieve one purpose wanted by the offender from the beginning. This investigation is to obtain rights for people with disabilities and special needs. The claim is based on the whole. If the offender alleges that he is disabled by using fraudulent methods or forging the medical report and then using it, then his act is considered two indivisible offenses, in which the law enjoins the punishment prescribed for each crime and the execution is limited to the most severe only. (Muthanna Appeal Court Decision / Cassation Commission / No. 57 / TJ / 2019 on 3/31/2019 (unpublished). We also see that the Iraqi legislator neglected to address certain cases. There are categories of disabled people with emergency and recovering disability. Despite the person's recovery, he continues to benefit from what is prescribed for the disabled. In this case, the person is not subject to the provisions of Article (21) because obtaining the privileges was in accordance with legal procedures without taking the path of

prosecution. Therefore, we call on the legislator to make the medical examination periodically every year for a period of five years. For example, to review the changes that occur to the degree of disability, whether they are positive or negative changes or there are errors in the diagnosis.

**3- Causal relationship:** It is insufficient for accountability for the crime to occur by a doer and the harmful result to be achieved. In addition, this result is related to that action, as the reason is related to the cause. Hence, the offender's obtaining an exemption, facilitation, or privilege, or granting it unlawfully, must be attributed to the criminal activity carried out by the offender represented by the claim contrary to the truth. Without this activity, the result would not have happened.

### ***The second: The moral pillar***

Undoubtedly, the crime is not only a purely material existence, but has material origins in the offender's thinking. As we mentioned, the crime of claiming, contrary to the truth, does not occur unless intentionally. Its moral pillar is represented in the form of the general criminal intent defined by the Iraqi legislator in Article (33/1) of the Penal Code by saying, "It is to direct the offender's will to commit the act constituting the crime, aiming at the result of the crime that occurred or any other criminal consequence." Therefore, researching the moral element of this crime requires a statement of its elements represented by the elements of knowledge and will:

**Knowledge:** The concept of knowledge in criminal intent becomes clear by informing the offender and his knowledge of the legal facts that are necessary from the legislator's point of view to give the crime its legal description and distinguish it from other realities. Knowledge goes out to inform the offender of the law. The offender must also be aware that the rights he takes or receives are not due to him. He knew that he got it as a result of his claim contrary to the truth. He must be informed of the seriousness of his act of violating the law and the right of the state to preserve the rights of people with disabilities and special needs. By doing so, he regularly violated the work of the competent law enforcement authorities.

**Will:** It is that the will of the offender is directed to commit the act and that his will is valid. If his will is tainted by any defect of the will, the crime does not occur. The offender is not held accountable for his behavior and its consequences unless he expresses it willingly. The matter is not limited to the element of knowledge, as it is a complete state within the human being that does not have the criminal character unless it is mixed with the will to carry out the activity that is criminalized by law and the pursuit of the events of the result (Abdul-Aziz, 2005).

### ***The penalty for the crime:***

Punishment is a penalty that involves an intentional act determined by law, by implementing the judicial decision issued by the competent court on whoever is proven to have committed the crime (Jalal, 2005). Whenever the elements of the crime are available, in contrary to the truth, the perpetrator deserves the punishment prescribed by law. To show the extent to which the penalties for the crime under study match, I wanted to divide this requirement into two branches: we dedicate the first to indicating the original penalty for the crime, and the other to indicate the ancillary and complementary penalties as follows:

**Section One: Original Penalties:** They are the basic penalties stipulated by law and their estimation for the crime, which cannot be implemented unless the judge expressly stipulates them in his judgment (Ashatheli, 2015). The original penalty prescribed for the crime



under study stipulated in Article (21) of the Law for the Care of Persons with Disabilities and Special Needs.” A penalty of imprisonment for a period not exceeding six months or a fine of no less than five hundred thousand dinars, or with both penalties, shall be returned, provided that all amounts and privileges that were granted for him shall be recovered”. In the sense that the incident is considered a misdemeanor punishable by two basic penalties, which are imprisonment or a fine by way of option or combination.

The Iraqi legislator defined imprisonment, both severe and simple, as “the placement of the convict in one of the penal facilities legally designated for this purpose for the period prescribed in the sentence.” We see that the criterion for distinguishing between them is the duration of the sentence and the practice of work within the penal institution. In the case of severe imprisonment, the period of imprisonment shall not be less than (3) months and not more than (5) years, with the convict assigning to perform the work legally prescribed in the penal facilities. As for simple imprisonment, its period shall not be less than (24) hours and not exceeding one year, without assigning the convict to perform a certain work. (Iraqi Penal Code, Art.88 and 89). This means that the law has made the crime a misdemeanor punishable by simple imprisonment not exceeding six months. As for the fine, it is a financial penalty defined by the Iraqi legislator as “the obligation of the convict to pay to the public treasury the amount specified in the judgment. In estimating the fine, the court takes into account the financial and social condition of the convict and what he benefited from the crime or was expected to benefit from it...” In addition to ruling the original penalties, the court must rule for the recovery of money and all privileges such as financial aid, tax exemptions and other privileges enjoyed by the offender during the prosecution period. The judge must rule it with a sentence of imprisonment or a fine or with both penalties, otherwise his judgment is void.

The Egyptian legislator, on the other hand, was stricter, considering the first and second types of behavior described in Article (49/2,1) of the Law on the Rights of Persons with Disabilities to be felonies punishable by "imprisonment for a period not exceeding ten years and a fine, less than 2.000 and not more than 10.000 pounds, that does not exceed ten years. He was punished by imprisonment for a period of no less than six months or a fine of no less than ten thousand pounds and not more than 30.000 pounds in the event that he committed any of the misdemeanors mentioned in the third, fourth and fifth behaviors included in Article (51) of the aforementioned statement. From the foregoing texts it is clear that the crimes mentioned in their simple form range between the penalty for felonies and misdemeanors, between imprisonment, and a fine, according to the gravity of the criminal behavior.

### ***Section Two: Further Complementary Penalties***

Further penalties are defined as “the penalties that inflict the convict in an automatic capacity by force of law without the need to stipulate them in the judgment” (Iraqi penal code, Art.95). It cannot be imagined that a verdict is issued for an accessory penalty on its own, because it is sufficient to impose it on the convict, and without original penalties, it does not have the desired effect with regard to dangerous offenders.

As for the complementary penalties, they are secondary penalties that do not inflict on the convict unless they are expressly stipulated by the judge’s ruling along with the original penalty as a complement to it.

Further penalties in the Iraqi Penal Code are represented in the deprivation of certain rights and privileges and police monitoring, which follows felonies without misdemeanors. Since the crime under study is a misdemeanor, it is not subject to the further penalties stipulated in Articles (96-99) of the Penal Code, nor the complementary penalty stipulated in Article

(100), which includes “deprivation of the convict from one or more of the rights set forth.”. This is because the penalty for the crime is simple imprisonment not exceeding six months. As for the second complementary penalty (confiscation). It is possible to judge them in misdemeanors, as stipulated in Article (101) of the Iraqi Penal Code. The judge may rule on the sources of any privilege or grant, whether financial or in kind, obtained from the crime. As for the third complementary penalty (publication of the judgment) (Iraqi Penal Code, Art.102), the law has permitted judgment for it exclusively in felonies. Therefore, it cannot be applied to the misdemeanor of claiming disability or special need, contrary to the truth.

As for the Egyptian legislator, he organized the further penalties in the Penal Code and defined them in four penalties stipulated in Article (24) of the Penal Code: namely, deprivation of rights and privileges, dismissal from honorable functions, placing the convict under police surveillance and confiscation. Considering that the Egyptian legislator considered the forgery of the disability proof card or the qualification certificate or its use with knowledge of its forgery or making an incorrect statement or concealing information contained in Article (49) of the Law on the Rights of Persons with Disabilities as felonies. Therefore, the first penalty may follow, based on the text of Article (25) of the Penal Code, which states: “Every sentence for a felony penalty inevitably entails depriving the convict of the following rights.” The same applies to the second penalty (dismissal from public office). As for the punishment of police surveillance contained in Article (28) of the Penal Code, which states: “Anyone who is sentenced to life imprisonment, rigorous imprisonment, or imprisonment for a felony that violates the security of the government, or...”. The felonies in this article are specified exclusively, and the crimes in question are not among them.

As for the misdemeanors mentioned by the Egyptian legislator in Article (51) of the same law, the penalties are not subject to it, with the exception of the ruling for its confiscation of the seized items obtained from the crime and according to the general rules (Article 25, 26, 28, and 30 of the Egyptian penal code). When the offender is convicted, the court is under an obligation to return what he seized without prejudice to the rights of bona fide third parties who had no knowledge of the commission of the crime. He does not deserve to be punished.

## Conclusion

After finishing the research entitled "crime of claiming disability or special need contrary to the truth (a comparative study), we reached the following results and suggestions:

### *First: Results*

1. The crime of claiming disability or special need, contrary to the truth, can be defined as “that a person claims, contrary to the truth, that he has a disability or needs special care. The prosecution must obtain a facility, exemption, privilege or grant legally prescribed for this category. This is done before any of the governmental and non-governmental agencies concerned with the implementation of the Law on the Care of Persons with Disabilities or Special Needs.
2. The Iraqi legislator was successful when he did not define the forms of behavior in which (the claim is contrary to the truth) to include all the methods used to fabricate disability or special need to take advantage of rights and privileges unjustly, which may arise in the future.
3. We believe that the legislator did not criminalize specific cases that deserve criminalization, such as continuing to exploit a disability or special need despite the

beneficiary's recovery, or a case of intentional obstruction to benefit from undue rights and privileges.

4. The punitive confrontation in the Iraqi legislation for this crime is insufficient, and the behavior of the disability claimant indicates the presence of signs of criminal danger represented by the baseness of the motive that prompted the assault on the rights of others.

### **Second: Recommendations**

1. We suggest the Iraqi legislator to modify the text of Article (21) of the Law for the Care of People with Disabilities and Special Needs and to establish criminal responsibility for the mere act of the prosecution. This is carried out without waiting for the result to be achieved, and it is to intensify the penalty because it is not commensurate with the seriousness of the crime and its harmful effects, so that the text is as follows: "A penalty of imprisonment for a period of no less than one year and a fine of no less than five hundred thousand dinars shall be imposed on whoever claims, contrary to the truth, that he is a person with a disability or needs special care to obtain Exemption, facilitation, privilege or grant from what is stipulated in this law."
2. We urge the Iraqi legislature to take into account the ongoing exploitation of a disability or a special need to receive benefits that are not their right as an aggravating condition for punishment, emphasizing that this is required and not permitted.
3. We suggest that the legislator examine the evidence of disability or special need periodically to review the changes that occur to the degree of disability, whether they are positive or negative changes or mistakes in the diagnosis. We suggest that the text be as follows: "The percentage of disability is determined by a medical committee. The examination is periodic for every year and for a period of five years, with the exception of severely disabled cases."

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