

The concept of the rule of inadmissibility of apology due to ignorance of the law

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Abstract

It may happen and a person commits an act that he does not know that the law stipulates as a crime that is prohibited by law and the realization of which entails a penalty to be imposed on its owner, that is, when a person commits a behavior - violating a penal law - and does not know that his behavior is a criminal, and the lack of knowledge here is not decided because he is ignorant of the elements of the criminal act of his behavior, but rather because he is ignorant of the existence of the law that criminalizes that behavior. This case is reasonable and possible, but it faces a fixed rule in criminal law, which is the rule that it is not permissible to apologize for ignorance of the law. The accused cannot evade criminal responsibility as a result of his ignorance of the law that criminalizes the committed act.

Keywords (ignorance of the law, criminal intent, rule).

Introduction

Ignorance of the law is characterized by reasonableness, due to the impossibility of knowing every law issued within the state, whether by ordinary individuals or by specialists in the legal field. Narrow range and in exceptional cases. Jurisprudence and the judiciary have given this rule several names, including the inadmissibility of apologizing for ignorance of the law, and the assumption of knowledge of the law, and ignorance of the law is not an excuse, and no one is supposed to be ignorant of the law. This rule is not absolute as there are certain exceptions. The problem of the research is that this rule is based on the assumption far from reality that the actual knowledge of the law is not possible once it is published in the Official Gazette. The second requirement will show through which exceptions to this rule.

Chapter One

The meaning of the rule of the inadmissibility of apology due to ignorance of the law

The state represented by the legislative authority undertakes to set the rules of criminal offense, in compliance with an important constitutional principle which is the principle of legitimacy, this principle through which the protection of individual rights and freedoms is achieved, as the criminal policy is based on the need to protect rights and freedoms in the face of the state, where there is no legal system that punishes individuals for behavior that the legislator did not stipulate to be removed from the scope of the permissibility and criminalized, the principle of legality prohibits punishment in the absence of a legal text prohibiting the commission of that act.¹

¹ Michael Zimmerman: Living with Uncertainty: The Moral Significance of Ignorance (Cambridge: Cambridge University Press, 2008), p.194.

This makes the legislator required to create criminal legislation to protect the public interest on the one hand, and to preserve individual rights and freedoms by not violating them on the other hand, since the conflict is permanent between the requirements of the public interest and the requirements for the individual to enjoy the rights and freedoms assigned to him. In the same context, the principle of legitimacy represents the protection of Effective rights and freedoms. If the protection of society is to be resorted by the legislator to criminalizing a certain behavior, then the rights and freedoms established for individuals necessitate that this behavior be specified by the text of the law before it is committed. Since the mechanism of enacting the law requires that it passes through several stages in order to be considered effective, and the last of these stages before its application is the stage of publication, the Criminal Code, like all other laws, passes through all its stages until the stage of publication in the Official Gazette specified by the Constitution to be considered enforceable.²

According to this rule, no one may argue that he is not aware of the existence of a law criminalizing his act, and accordingly, the principle of the inadmissibility of apology for ignorance of the law is not valid unless the law is published in the ways specified for its publication, either before that, it is not possible to apply this principle. Also, any person may invoke his ignorance of the law in this case, and the court cannot invoke the rule that ignorance of the law or its application cannot be apologised.³ Therefore, the rule that it is not permissible to apologise due to ignorance of the law means that when the law is verified from its official source and becomes enforceable through its publication in the Official Gazette, it applies to all those who are addressed by its rulings, whether they know it or not, and no one is allowed to invoke the lack of knowledge of it in order to evasion of applying it to him when he falls under it authority.⁴

As most criminal legislation has established the rule that it is not permissible to apologize for ignorance of the law, which means that individuals are fully aware of all punitive laws and know the consequences of violating them, in order to control society and prevent chaos.⁵ Although this knowledge is impossible to achieve, as it is not possible for ordinary individuals to be aware of all punitive laws and their penalties, and this impossibility is achieved for law specialists.⁶

Even if the legislative and executive authorities used various media such as print, audio and visual media, even if they used advertising in public stores. Some individuals are ignorant of reading and writing, and some of them may be in a sick condition that prevents them from seeing the laws that have been published, in addition to those who are outside the country and were not aware of the law's issuance.⁷ And other reasonable and realistic cases that prevent knowledge of the laws, but based on the rule that ignorance of the law may not be apologised, they are subject to its provisions and cannot argue that they are not aware of it, as what is justified is to preserve the public interest and the maintenance of society. This was confirmed by the Egyptian Court of abolition in its ruling issued in 1995, where it stated within the framework of the principles of governance that "...knowledge of the law and its proper

² Article (129) of the Permanent Constitution of Iraq of 2005, "Laws shall be published in the Official Gazette and shall come into force from the date of their publication, unless otherwise stipulated." (34) for the year 2007 - in Article One / First on "The Iraqi Gazette is the official newspaper of the Republic of Iraq...".

³ Mohsen Najji, General Provisions in the Penal Code, 1st Edition, Al-Ani Press, Baghdad, 1974, p. 167.

⁴ Dr. Yasser Basem Thanoun Al-Sabawi, The rule of ignorance of the law is not an excuse, a legal principle or an objective legal rule, Tikrit University Journal of Human Sciences, Vol. 12, No. 5, 2005, Iraq, pp. 196-197.

⁵ Florence picavet, Nul n'est censé ignorer la loi, université Paris ouest nanterre la de'fens, Paris, france, 2015, p.2

⁶ Qu'est ce qu'un devoir civique, reportage publie' sur le site vie-publique, a'ladate te 14 September 2021, date de visite 19/1/2022, 10:26 pm.

⁷ Dr. Yasser Basem Thanoun Al-Sabawi, previous source, p. 191.

understanding is an assumption in all people, although this assumption sometimes contradicts reality, but it is an assumption dictated by practical reasons to protect the interest of the masses..."⁸

The rule of ignorance of the law is not a well-established excuse in all Anglo-American jurisprudence systems, as it was stipulated in English common law for a long time, and from it it was transferred to the United States of America and was implemented despite the lack of text on it in the core of the law, but American jurisprudence and judiciary It has been applied and recognized.⁹ It was cited for the first time in one of the oldest opinions of the US Supreme Court that "ignorance of the law will not excuse any person, whether civil or criminal, and this is a legal doctrine as firm as any rule."¹⁰

Also, this rule was approved by various Arab criminal legislations such as the Libyan, Lebanese, Syrian and Jordanian legislation, as well as the Iraqi legislator included it in the Penal Code, where it stipulated that "No one can invoke his ignorance of the provisions of this law or any other penal law..."¹¹

And since the criminal law is a set of rules that define the acts that are considered crimes with deciding the appropriate penalties for them. Accordingly, the objective rules are those rules that define the elements of crimes, indicate the penalties imposed on them, and specify the reasons that affect them by aggravating, mitigating or exempting them.¹²

Thus, it is clear that the provisions of the Code of Criminal Procedure are not considered to be the provisions of penal laws because they are concerned with regulating the formal and procedural aspect, so the rule does not apply to them. In the light of this, the rule that it is not permissible to apologize for ignorance of the law applies to all penal laws, that is, as we mentioned laws that establish criminal rules that determine what is considered a crime of individual behavior and the consequences of doing that behavior, and it is equal if this criminal rule has been received In the Penal Code, or has the legislator included it in other penal legislation.¹³ This principle does not justify accepting the defense of ignorance of the law as a reason for permissibility that makes the offender a right in what he committed, as knowledge is assumed - it is difficult to prove the opposite - and it applies to the criminal code and the complementary penal laws.¹⁴

Such as the Narcotics and Psychotropic Substances Law No. 50 of 2017 and the Law of Preventing the Use and Proliferation of Silent Weapons No. 38 of 2016. This means that if an accused person pleads with ignorance of the provisions and rules of the Penal Code, this plea is not accepted based on the inadmissibility of apology due to ignorance of penal laws. But if he pleads ignorance of the provisions and rules of laws other than the penal laws, then that plea is accepted and his criminal intent is negated.¹⁵

⁸ Appeal No. 10015 of judicial year 63, session January 19, 1995, cassation judgments, criminal, year 46, date of visit 20/1/2022, 11:07 pm.

⁹ Edwin Meese III & Paul J.Larkin, Jr.: "Reconsidering the Mistake of Law Defense," 102 Journal of Criminal Law & Criminology (2012). p. 725.

¹⁰ The Joseph, 12 U.S.(8 Cranch) 451 (1814).

¹¹ Article (37/1) of the Iraqi Penal Code No. 111 of 1969, as amended and effective.

¹² Qais Latif Kajan Al-Tamimi, Explanation of the Iraqi Penal Code, Legal Library, Baghdad, 2019, p.9..& Dr.. Mahmoud Najib Hosni, The General Theory of Criminal Intent, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2006, p. 152.

¹³ Nasreen Abdel Hamid Nabih, Criminal Behavior (An Analytical Study of Criminal Behaviour), New University Publishing House, Alexandria, 2008, p. 74.

¹⁴ Hussam Abdel Karim Youssef, Ignorance of the law and facts and its impact on criminal responsibility, a study of promotion to the first category of judges submitted to the Supreme Judicial Council, Baghdad, 2020, p. 24.

¹⁵ Dr. Mahmoud Najib Hosni, The General Theory of Criminal Intent, previous source, p. 150.

Because knowledge of the texts of these laws is not assumed as an assumption that cannot be proven otherwise. Ignorance of them may be acceptable if it is based on one of the issues of these laws that affects the entity of the crime, so it is tantamount to ignorance in reality because of which the criminal intent is negated, not because of ignorance of that law.¹⁶

This distinction between punitive laws and other non-punitive laws, in terms of the application of the rule of the inadmissibility of apologizing for ignorance of the law to the first without the second, is justified by the Italian jurist (Alimena) that non-criminal laws -such as civil law, for example- include texts that are not based on morals and human values established in The human soul, and therefore it would be natural and reasonable for individuals to be ignorant of it as the rules of civil obligation. Ignorance of such rules and the absence of knowledge of them does not suggest the danger of the ignorant one to society in contrast to the criminal rules, as it is unreasonable for a person to claim that he is ignorant that murder or theft are criminal acts on the grounds that their criminalization is rooted in the human soul, so whoever is ignorant of them constitutes danger to society.¹⁷

However, this cannot be accepted to justify this distinction in the application of the rule that it is not permissible to apologize for ignorance of the law, because even if it is true to say that the act of killing, stealing or harming is firmly rooted in the minds of individuals and its perpetration is contrary to moral values and humanitarian principles and it is clear that doing it is prohibited and therefore no one can He is ignorant of it, but there are criminal rules that criminalize acts of impossibility for the individual to imagine that they are prohibited behavior as in traffic laws, customs laws and export laws. Likewise, when the legislator stipulated the rule that it is not permissible to apologize for ignorance of the penal law, it extended its scope to all crimes, whether it was a felony, a misdemeanor or a contravention, and did not differentiate between them. The other one is ignorant of many of her being a criminal, so it would have been better to excuse those who are ignorant of her. In addition, the application of this rule leads to problems in daily life, including its conflict with the Sharia and legal rules that decide that it is not permissible to commission the impossible.¹⁸

Chapter Two

Exceptions of the rule

After the issuance of the legislation, it is not acceptable for any person to argue that he was not aware of its issuance, and this applies to the citizens of the country at home and abroad, as it applies to the foreigner, given that entering the territory of any country means acceptance by him and recognition of all the laws in force in it.¹⁹

It is worth noting that this rule is not absolute, as criminal legislation did not take the principle that ignorance of the law may not be excused for its release, so I went to report some exceptions and restrictions on them. These exceptions were taken by the criminal legislator in many countries that approved this rule, such as the Syrian legislator, where it stipulated in Article 222 of the Penal Code that “2- However, it is considered an impediment to punishment: A- Ignorance of the new law if the offense is committed within the three days following its publication. b- The foreigner who came to Syria three days ago was unaware of the existence

¹⁶ Dr. Akram Nashat Ibrahim, General Rules in the Comparative Penal Code, 1st Edition, Al-Fatean Press, Baghdad, 1998, pp. 276-277.

¹⁷Radulesco.j. De l'influence de l'erreur sur la responsabilite' pe'nal these', paris, 1923,p_69.

¹⁸ Saadoun Obada Abboud Hassan, Theory of Error in the Iraqi Penal Code, a diploma research submitted to the Judicial Institute, Baghdad, 2014, p. 27.

¹⁹ Dr. Yasser Bassem Thanoun Al-Sabawi, previous source, p. 197.

of a crime in violation of man-made laws that is not punishable by the laws of his country or the laws of the country in which he was residing. It is noted in this text that the legislator included two exceptions to the rule that it is not permissible to apologize for ignorance of the law, as it made the commission of the criminal act by the citizens of the state within three days from the date of publication of the law in the Official Gazette is considered an impediment to punishment if the accused pleads with his ignorance of the provisions of this law, either in relation to the foreigner is considered Ignorance of the law prevents punishment, but with conditions, which is to commit the act within three days from the date of his arrival in the state, even if the act is not punishable in his country or the country in which he was residing. As for the Iraqi legislator, he took the rule of ignorance of the law that is not an excuse in Article 37 and provided two exceptions to it, where it came in the text of the aforementioned article: (1) No one can invoke his ignorance of the provisions of this law or any other penal law. Force majeure.2- The court may pardon a foreigner who commits a crime within seven days at most from the date of his arrival to Iraq if his ignorance of the law is proven and the law of his place of residence is not punishable. It is understood from the text of the previous article that the Iraqi legislator mentioned two exceptions, one of which is related to force majeure and the other applies to the foreigner, and we will discuss them according to the following:

First: force majeure

In the context of our research on the concept of force majeure, it was known that it is a circumstance that surrounds the perpetrator and makes it impossible to know the law that is published while he is aware of those circumstances, so it is not permissible to punish him if he commits an act in violation of that law. Because the rule of inadmissibility of apologizing for ignorance of the law is based on the possibility of knowing it, If this possibility is denied, then the assumption of knowledge of the law is negated, and the impossibility of knowledge here is absolute, Such as trapped because they are prisoners or missing or because of natural disasters²⁰

Referring to the Iraqi Penal Code, we find that the Iraqi legislator did not know force majeure and left the matter to the discretion of the court to consider the case as force majeure or not. The same applies to the criminal legislation of other countries such as Egypt, Lebanon, Syria and Algeria.

Accordingly, we see that force majeure can be understood as that forced state of which absolute impossibility is one of its features and prevents the possibility of knowledge of the law, which is reflected in the application of the rule that no one is excused due to his ignorance of the criminal law and its failure. And the impossibility that we mean here is the absolute impossibility that prevents the offender from knowing the law, and makes him - no matter how careful and careful he takes - he cannot know the law, and this absolute impossibility is the fruit of force majeure, like the case of those trapped in an area if that siege ends and they go out and violate the laws published during the siege and was It is impossible for them to know about it, and in the case of the enemy's occupation of a part of the state's territory, the residents of that territory, if they violated the laws that were published and enforced during that siege, and they were not able to know about it, here force majeure is achieved as an exception to the rule of assuming knowledge of the law.²¹

This is true of the circumstances that the entire world has experienced from the outbreak of the Corona epidemic (Covid-19), as this pandemic can be considered as a force majeure, and since it is left to the discretionary power of the court in determining whether the circumstances

²⁰ Dr. Akram Nashat Ibrahim, General Rules in the Comparative Penal Code, previous source, p. 278.

²¹ Dr. Mahmoud Najib Hosni, The General Theory of Criminal Intent, previous source, pp. 145-146.

are such as force majeure or not, by referring to the judicial precedents. We find that the French Court of Appeal in Colmar, in its first ruling in 2020 after the outbreak of the epidemic, considered the failure of one of the litigants to appear before it due to the state of quarantine for having contact with a person infected with the Corona virus as a force majeure being out of control.²²

However, within the framework of the concept of force majeure that we are going to explain in this regard, it must reach the point of executing the ability of knowledge of the law, if the judiciary has stressed taking all legal measures against violators of the curfew, and this suggests beyond any doubt that the countries considered Corona (Covid-19) is a force majeure in general, and those infected with it have to comply with isolation and quarantine procedures in hospitals.²³

Second: Exempting the foreigner

The application of the rule that it is not permissible to apologize for ignorance of the law on the foreigner who has recently arrived in the country was the subject of discussion by the jurists. This possibility is restricted on the condition that the behavior does not contradict human principles and morals rules firmly established in the human mind, so it is not accepted from him to push him out of his ignorance that the law punishes theft, murder, forgery, indecent assault and other acts that are forbidden by the rules of morality, as his action must be contrary to Man-made laws, i.e. those laws that are concerned with organizing society according to certain policies that are far from the principles of justice and moral rules such as traffic laws, cash and entry of goods into the country.²⁴ Until he accepts his apology for ignorance of the law. And since it is not possible for the foreigner to be aware of the national criminal legislation in the country he is visiting, then he must be given a specific time limit, after which the law will be applied against that foreigner if he commits a behavior that is criminalized by the national law of the country in which he is located.²⁵ The scope of this period has differed in the criminal legislation of different countries, as the Syrian criminal legislator specified this period to three days at most from the date of the foreigner's entry into Syria,²⁶ and the same is the case for the Lebanese legislator, but the Jordanian legislator did not provide for this exception, as Article 85 of the Law The Jordanian penalties were absolute, without any exceptions.²⁷

With regard to the Iraqi legislator, he stipulated this exception by saying, "The court may pardon a foreigner who commits a crime within seven days at most that will pass from the date of his arrival to Iraq if his ignorance of the law is proven and the law of his place of residence is not punishable",²⁸ In order for the exception text to apply, the following conditions must be met:

1. If the perpetrator of the crime is a foreigner.
2. If he commits the crime within a period of seven days from the date of his arrival in Iraq.

²² cour d'appel colmar, 6^{me} chambre, 12-03-2020, no : 20/01098, LEXIS 360.

²³ Bin Zaid Fathi, The Corona pandemic as a force majeure to adhere to the principle of permissibility of excuses for ignorance of the law, Annals of the University of Algiers, Volume 34, Special Issue: Law and the Covid pandemic, Algeria, 2020., pp. 196-199.

²⁴ Ibtisam Musa Said Al-Saleh, The Impact of Ignorance and Error on Criminal Responsibility in Jordanian Legislation, PhD thesis, International Islamic University - College of Sharia and Law, Jordan, 2014, p. 100.

²⁵ Hossam Abdel Karim Youssef, previous source, pp. 30-31.

²⁶ Article (222/2) of the Syrian Penal Code No. 148 of 1949, effective as amended: "2- However, it is considered an impediment to punishment: A- Ignorance of the new law if the offense was committed during the three days following its publication. B- Ignorance of the foreigner who came to Syria since Three days at most, in the presence of a crime in violation of man-made laws that is not punishable by the laws of his country or the laws of the country in which he was residing.

²⁷ Article (85) of the Jordanian Penal Code No. 16 of 1960:

"Ignorance of the law is not an excuse for anyone who commits any crime."

²⁸ Article (37/2) of the Iraqi Penal Code No. 111 of 1969, as amended and in force.

3. If he proves his ignorance of the law that punishes the crime he committed.
4. If the law of the foreigner's place of residence does not punish this crime.

It is noted on this text that the legislator left the exemption of the foreigner in this case to the discretion of the court. This exception applies to foreigners due to the clarity of the above text, and since the legislator defined the foreigner as anyone who does not hold Iraqi citizenship,²⁹ This excuse does not benefit the Iraqi who has not visited Iraq for a long time in the event that he comes to the homeland and commits a crime in accordance with the Iraqi punitive laws, but it raises the question whether that foreigner enjoys Iraqi nationality in addition to his foreign nationality, especially since the constitution has permitted dual nationality.³⁰

What is the ruling in this case, does the exception apply to him because he is a foreigner, or does it not apply to him because he enjoys the Iraqi nationality, so he is considered a citizen of the state and knowledge of the law is presumed upon him? long. Especially since some legislations give the foreigner and the national the right to apologize for ignorance of the law during a certain period from the date of publication of the criminal law as an exception to the rule that it is not permissible to apologize for ignorance of the law, including the Lebanese and Syrian Penal Code, where the legislator restricted in these laws the enjoyment of nationals and foreigners with this exception that ignorance of the law is paid Within a certain period, which is three days from the date of publication in the Official Gazette. In the same context, and with regard to the exception we are about, the Iraqi legislator specified its period by stipulating that "the court may pardon the foreigner who commits a crime within seven days at most, from punishment From the date of his arrival to Iraq...", which is a time condition that requires that the date of committing the crime by the foreigner be within seven days from the date of his arrival to Iraq. What is meant by the date of committing the crime is the date of committing the material act constituting it and not the date of the result of the crime, which is what It means that if the act was committed within the specified period for enjoying the exception as an excuse preventing punishment, which is the period of seven days, but the result occurred after the expiry of this period, then it is accepted from him to invoke ignorance of the law as long as the act was committed within the period and the time of the result is not considered.³¹

The fulfillment of this condition alone is not sufficient to make it impossible to be ignorant of the law. Rather, the legislator stipulated in addition that the foreigner prove his ignorance of the criminal law and that the crime is not punishable by the law of his place of residence. The Iraqi with regard to the crime he committed, so stipulating that means that the criminal act, committed in Iraq, is permissible in the punitive laws of the state in which this foreigner resides and not the state to which he belongs by his nationality. The excuse is used if he committed it in Iraq. As for the requirement that the foreigner prove his ignorance of the law, we see that it is an unnecessary condition as long as the legislator has stipulated that he commit the crime within a period of seven days from the date of his arrival to Iraq and that the law of his place of residence does not punish the crime. If these two conditions are met, his ignorance of the law is proven.

Conclusion

First: the results

²⁹ Article 1 / first of the Law No. 76 of 2017 in force on the residence of foreigners.

³⁰ Article 18/ Fourth of Iraq's Permanent Constitution of 2005: (It is permissible to have multiple Iraqi nationalities...).

³¹ Dr. Mahmoud Najib Hosni, Explanation of the Lebanese Penal Code, General Section, Volume One, Third Edition, Al-Halabi Human Rights Publications, Beirut - Lebanon, 1998, pp. 543-544.

The rule that it is not permissible to apologize for ignorance of the law carries with it an explicit violation of the constitution by violating the principle of separation of powers contained in Article 47 of it, since the legislator in this case imposed on the judicial authority a prejudgment, before starting the investigation to reach the availability of evidence to prove the validity of the accused's claim that he was ignorant of the law or not, assuming everyone knows the laws, and this represents interference in the work of the judicial authority.

The rule that it is not permissible to apologize for ignorance of the law represents a direct assault on the constitutional principle contained in Article 19/V of the Permanent Constitution of Iraq of 2005 that "the accused is innocent until proven guilty in a fair legal trial..." because the legislator is in Article 37 of the Law The Iraqi penalties, through which the rule was adopted by stipulating that "no one can invoke his ignorance of the provisions of this law or any other penal law" deprived the accused of fair trial procedures that could prove his actual ignorance of the law, and deprived him of the defense guarantees assigned to him.

The rule of the inadmissibility of apologies for ignorance of the law contradicts the text of Article 213 of the Code of Criminal Procedure, that article that clarifies the way in which the court rules in the case before it through the specific evidence it stipulated, and assuming knowledge of the law implied by this rule represents a waste of all This evidence even if it is available and proves the validity of the accused's ignorance of the law "except for force

Majeure and the case of the foreigner."

Second: the suggestions

The Iraqi legislator's call to abolish the first part of the text of Article 37 of the Iraqi Penal Code, given that it violates the text of Article 19/Fifth and Article 47 of the Constitution.

With regard to the situation of the foreigner, and because criminal legislation differs from one country to another depending on the policy followed by the legislator, in order to preserve that policy in the face of the foreigner, the article is supposed to be amended to become as follows:

The ignorance of the foreigner in this law or any other punitive text is considered an excuse exempt from punishment, if he committed the crime within seven days from the date of his arrival to Iraq, and the law of his place of residence is not punishable. With this formula, we avoid the contradiction contained in the text of Article 37 in that it made excuses permissive for the court, although in the text of Article 129 it stipulated that they are mandatory.

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