

## Problems of Legal Confrontation with Crime of Human Trafficking In Iraq In Light of Anti-Human Trafficking Law No. (28) of (2012)

By

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### Abstract

The research deals with the legal confrontation with the crime of human trafficking in the Anti-Human Trafficking Law No. (28) of 2012, as the crime of human trafficking, is one of the most prominent manifestations of the grave violation of human rights and fundamental freedoms. Where this crime involves a waste of the humanity of the person and an insult to his dignity from multiple angles, including the right to life, health, work, and not to be subjected to torture, and wastes his right to have a legal personality. Moreover, acts of human trafficking carry with it all forms of attacks on human humanity, and return people to the time of slavery. Whereas the crime of human trafficking is one of the most prominent forms of transnational organized crime, in addition to the modern information and communications revolution that has led to the globalization of methods of committing crimes. Consequently, the traditional criminal legislation became deficient in confronting national and non-national crimes, especially with regard to the crime of human trafficking which is mostly committed by gangs or organized criminal groups. Therefore, legislation of the Anti-Human Trafficking Law No. (28) of 2012 represented a necessity and importance at the same time to confront this dangerous criminal model that threatens and wastes human humanity. On the other hand, the legislation of this law comes in response to the international obligations that Iraq has to implement, which are contained in the relevant agreements prohibiting and criminalizing acts of human trafficking and the protocols attached thereto. In this research, we tried to identify the most important obstacles and problems of the legal confrontation with this criminal model and the mechanisms for its activation, whether it is related to the legislative or judicial aspect. Or which related to other law enforcement aspects. The most important flaws in the legislative drafting of the law were explained, which would weaken the criminal protection of the interests protected by criminalizing acts of human trafficking, and the dignity and nature of mankind. We have also clarified the most important amendments that must be made to the law in order for it to be in line with the international criminal confrontation. In order to achieve an effective confrontation that would reduce the crime of trafficking in human beings and be more capable of achieving criminal justice.

**Keywords:** Crime of Human Trafficking, Recruitment of Persons, Harboring of Persons, Slavery, Trade of Human Organs, Forced labor.

### Introduction

#### *The importance of the research topic*

The research addresses a very important topic which is the issue of legal confrontation with the crime of human trafficking at the level of the Iraqi penal legislation, as this crime is one of the most important and most serious transnational organized. Which worries the international community in general and not the internal societies at the level of countries only. The crime of human trafficking, although has been known since ancient times. However, in

recent years, with the tremendous development in the means of transportation and communications, the development of modern information technology means, and the process of integration and harmonization between means of communication and information systems, the crime of human trafficking has become more dangerous and widespread because the enormous developments in the mentioned means have made the world a small village. In addition, the main financier of this criminal model is poverty and immigration of both types, legal and illegal, political crises, and armed and bloody conflicts in many countries. Which made gangs and organized crime groups take advantage of those fleeing the ravages of wars, to be victims of human trafficking operations, as wars and armed conflicts have revived human trafficking, especially since the main aim of the crime of human trafficking is material gain. There are organizations operating in some countries, and they have contacts with other countries through specialized brokers in the source countries. Where Iraq was not far from the danger of the crime of human trafficking, but rather that Iraq for certain periods of time was one of the countries of origin. In the 1990s, in light of a tyrannical, authoritarian, bloody regime, and its absurd wars, and the loss of the state's capabilities and resources in these wars. Also in light of a painful siege imposed on Iraq, hundreds of thousands of Iraqis emigrated, some of them died drowning on their way to the country of diaspora and those who arrived became vulnerable to the exploitation of human traffickers. In addition to that, the situation was repeated after the attack of terrorist organizations on Mosul which practiced human trafficking. Based on all of the foregoing, the importance of the topic of research emerges, as it sheds light on one of the most serious crimes that threaten the human nature of persons and dignity. Also, it has shown the effectiveness of the legal confrontation response to this crime at the level of national criminal legislation and whether this confrontation is capable of reducing this crime.

### ***Research problem***

Despite the efforts made at the national and international levels to combat the crime of human trafficking, there are dozens of international and regional conventions related to the prohibition and criminalization of human trafficking, most of them ratified by Iraq and joined. However, the crime of human trafficking still represents a real threat to the entire human community, and statistics still confirm its occurrence on a large scale. At the national level, despite Iraq's ratification and accession to the international conventions related to the prohibition and criminalization of acts of human trafficking, in addition to Iraq's legislation for the Anti-Human Trafficking Law No. (28) for the year (2012) and the constitutional rules contained in the Iraqi Constitution, and criminal constitutional rules prohibiting forms of human trafficking. However, the crime of human trafficking in Iraq still raises a lot of concern, both at the level of committing this crime within the geographical borders of the country or at the level of considering Iraq as the source country. This indicates that there are problems and obstacles that limit the effectiveness of the legal confrontation with this criminal model. These problems are the same as the problems of research, including that the legal confrontation in order to be effective in limiting crime, the legislation must be clear and precise and not be tainted by ambiguity or deficiency, or one of the defects of the legislative drafting of criminal texts. In addition, the objective and punitive confrontation must be reinforced by a legal and procedural confrontation, in order to achieve complementarity between them. In addition, the legal confrontation to the crime of human trafficking must be based on a developmental criminal standard, and this requires standing by the victims of human trafficking in Iraq. Also, this requires legislative intervention that enhances the legal confrontation and procedural of the crime of human trafficking. In addition to the above, criminalization and punishment must include all forms of the crime of human trafficking stipulated in international criminal law. This is in order to achieve harmonization between criminal protection at the national and

international levels so that the perpetrators find that they are in front of a fence that prevents them from committing the crime of human trafficking (Abulela & Davenport Jr, 2020; Abulela & Harwell, 2020; Akpur, 2020).

### ***Research objectives and questions***

This research seeks to shed light on the seriousness of the crime of human trafficking and on the legal confrontation with it, and attempts to answer the following questions:

1. What is the concept of the crime of human trafficking?
2. What is the legal nature of the crime of human trafficking?
3. What is the legal structures of the crime of human trafficking in the Iraqi criminal legislation?
4. What are the penalties for the crime of human trafficking?
5. How good is the legislative drafting of the provisions of the Anti-Human Trafficking Law No. (28) of (2012)?
6. What are the legislative defects mentioned in the Anti-Human Trafficking Law No. (28) of (2012)?
7. What are the amendments to be made to the Anti-Human Trafficking Law No. (28) of (2012) and other legislation related to the prohibition and criminalization of acts of human trafficking?
8. What is required of law enforcement and enforcement agencies, led by the judiciary, the public prosecution, investigators, police officers, and lawyers?
9. What should the High Commission for Human Rights in Iraq do in this regard?
10. What role should the United Nations Mission play to curb the crime of human trafficking in Iraq?

### ***Research Methodology***

The research depends on the descriptive-analytical method, given the suitability of this method with the nature of the research. As the crime of human trafficking will be studied in the Anti-Human Trafficking Law No. (28) of 2012 and the legal texts contained in this law will be analyzed. In addition to an accurate description of the concept of crime, its nature and its pillars, and the substantive and procedural rules contained in the law that would reduce the crime of human trafficking in Iraq.

### ***Research plan***

The research will be divided into two topics. We dedicate the first topic to the definition of the crime of human trafficking in the Iraqi criminal legislation and in the second topic, we will discuss the legal architecture of the crime of human trafficking and the penalties prescribed for it. Then we conclude this research with the most important results and recommendations reached, which we consider necessary to be adopted by the criminal legislator and by law enforcement and applied in Iraq.

### ***The first topic: The definition of the crime of human trafficking in the Iraqi criminal legislation***

To discuss the definition of the crime of human trafficking in Iraq, we divide this topic into two requirements. We dedicate the first requirement to studying the concept of the crime of human trafficking, while the second requirement will deal with the crime of human trafficking in light of the constitutional rules and the criminal constitutional rules.

### ***First requirement: Concept of the crime of human trafficking***

The Anti-Human Trafficking Law No. (28) of 2012 defines human trafficking in Clause

(First) of Article (1) as ((Human trafficking in beings for the purposes of this Law means the recruitment or transfer of persons by means of the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power, or giving or receiving sums of money or advantages of obtaining the consent of a person with authority or jurisdiction over another person in order to sell them, exploit them in prostitution or sexual exploitation, forced labor, slavery, begging, trafficking in their human organs or for medical experimentation)).

It appears through this definition that the crime of trafficking in human beings is realized by the actions specified in the aforementioned text, which are:

1. Recruitment of people.
2. Transporting, harboring or receiving persons.

The above-mentioned acts were carried out or accompanied by one of the following:

1. The threat or use of force.
2. Any form of coercion.
3. kidnapping.
4. Fraud.
5. Deception.
6. Abuse of power.
7. Give or receive funds, and benefits for the consent of a person with authority or jurisdiction over another person.

The text also sets out the objectives pursued by the perpetrators of human trafficking:

1. Salling people.
2. Exploitation in prostitution or sexual exploitation.
3. Forced labor or coercive labor.
4. Slavery.
5. Begging.
6. Trade in human organs, or for the medical experiments.

From this legal definition of the crime of trafficking in human beings, it is clear to us that acts of recruiting, transporting, harboring, or receiving persons, coupled with the means and descriptions set out in the text, must be committed in pursuit of one of the objectives outlined in the text, the meaning of which we are trying to set out in succession:

### ***First: Selling people***

This is intended to make persons who have been victims of human trafficking a place of sale, purchase and trading goods in the market of slavery, which constitutes an infringement of man's humanity and dignity. This act is attributable to mankind's time of slavery and slavery<sup>(1)</sup>.

We believe that this act of human trafficking is widespread among other acts of human trafficking, and who claim that the time of slavery and servitude has ended since 1834 when Britain denied it, or when Russia's tsar liberated slaves in the 1960s, the American President

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<sup>1</sup> The Almighty said: ((And We have honored the Children of Adam and carried them on land and sea and provided them with good things and preferred them over many of those We created with a preference)) Surah Al-Isra - verse 70.

And the Almighty's saying: "We created man in the best of stature." Surat Al-Tin - verse 4.

Perhaps the best evidence of human trafficking is found in the Noble Qur'an, after he (the Prophet of God Yusuf), peace be upon him, was thrown into the well by his brothers ((and a car came and they sent and brought them back and he gave his bucket. Verse 19.

And the Almighty said: ((And they sold it for a cheap price, a few dirhams, and they were among the ascetics of it)) Surah Yusuf - verse 20.

And the Almighty said: "And he who bought him from Egypt said to his wife: Honor his abode, perhaps he will benefit us, or we may adopt him as a son. Likewise, We empowered Joseph in the land, and that we might teach him the interpretation of hadiths, and God is predominant over His affair, but most people do not know." Surah Yusuf - Verse 21.

(Abraham Lincoln) liberated slaves in his country, and It is the most important<sup>(1)</sup>.

***Second: Exploitation of prostitution and sexual exploitation.***

It includes acts of sex trafficking, exploitation of children and women in their portrayal of them engaging in sexual activities, or portrayal of their sexual organs with a view to satisfying others' sexual desire.

***Third: Forced labor or coercive labor.***

Forced labor acts include acts imposed on a person under threat of punishment, without that person having volunteered to do so on his or her own initiative or of his or her own choosing, while the coercive acts are carried out by forcing others to perform services, for the benefit of another person or persons, including coercive service, domestic service, or forcing a person to serve forcibly to pay a debt he owes.

***Fourth: Slavery***

Bullying (slavery): Against exploitation, the night: the most has passed, the water: is almost depleted, and the slave belongs to him<sup>(2)</sup>. The term is the exercise of any or all of the powers associated with the right of ownership over a person, including the exercise of such powers for trafficking in persons, especially in women and children.

***Fifthly: Begging***

The amended Iraqi Penal Code, No. 111 of 1969, defines begging as begging and gaining people's charity. According to the law, the begging person is the person found in a public place, on a public road, or who entered without permission a house or a place attached to it for the purpose of begging<sup>(3)</sup>.

***Sixth: Trade in human organs, or for the medical experiments***

It makes organs of the human body goods for sale and purchase and transforms the bodies of the poor into human spare parts provided to the rich. It is similar to the sale of people and the difference is that trading in human organs leads to the fragmentation of the organs of the victim's body into materials and parts for others<sup>(4)</sup>.

***Second requirement: The offense of human trafficking in the light of the constitutional and criminal rules of the 2005 Constitution of Iraq***

The preamble to the constitution of the Republic of Iraq opened with the verse ((We have honored the children of Adam))<sup>(5)</sup>.

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<sup>1</sup> Criminals of human traffickers belonging to terrorist organizations ISIS and others have exploited the tragedy of the displaced and refugees, after the occupation of Mosul, and the Human Rights Office in "Karmian", an administration located south of the city of Sulaymaniyah, revealed the sale of 31 kidneys and indicated "Tafeka Omar" (Director-General of the Legal Department of the Human Rights Commission) There are other types of human trafficking, as the operations of selling girls for sums of money are practiced under the cover of marriage, in addition to child trafficking.

See website: <http://www.niqash.org/ar>.

In addition to the exploitation to which immigrants from countries of armed conflict Syria, Libya and Yemen, and immigrants from the African continent, are subjected, many drowned, and whoever was saved had no choice but to work as slaves, or for sexual exploitation.

<sup>2</sup> Al-Munajjid Al-Abjadi, Dar Al-Mashreq, Beirut, 1967, pg. 494.

<sup>3</sup> See Article (390) of the amended Iraqi Law No. (111) of 1969.

<sup>4</sup> Looking at the details of human organ trafficking, Hamdi Abdel Rahman, the infallibility of the body, a study of the problems of medical responsibility and organ transplantation, 1987, p. 230. Also, Tariq Al-Bishri, Organ Transfer in the Light of Sharia and Law, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 301. Muhammad Salah al-Din Khalil also looks at the ruling on transferring and transplanting human organs between legalization and criminalization, a comparative study between Islamic jurisprudence and positive law, Dar al-Nahda al-Arabiya, Cairo, 2001, p. 197. Muhammad Salah al-Azza also looks at the criminal protection of the human body in light of modern medical trends, New University House, Alexandria, 2002, p. 351. Ahmed Abdullah Al-Kandari, organ transplantation and transfer, a comparative study between civil law and Islamic jurisprudence, Ph.D. thesis, Faculty of Law, Ain Shams University, 1997, p. 240. Also, Dr. Tariq Sorour, Transferring Human Organs Between Lives, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 361.

<sup>5</sup> The preamble to the Constitution of the Republic of Iraq for the year 2005 mentioned verse No. (20) of Surat Al-Isra.

Thereafter, the Constitutional Legislature cited several articles affirming these noble meanings. the right to a free and dignified life, free from slavery, coercion, and arbitrariness, is described in succession:

**First:** Clause (First) of Article (7) of the Constitution guarantees that “it is prohibited for any entity or approach that adopts racism, terrorism, infidels, or sectarian cleansing, or incites, facilitates, glorifies or justifies it... )

**Second:** Clause (Third) of Article (29) of the Constitution guarantees that ((the economic exploitation of children in all its forms is prohibited, and the state takes measures to protect them).

**Third:** Clause (Fourth) of Article (29) of the Constitution stipulates that ((All forms of violence and abuse in the family, school, and society shall be prohibited)).

**Fourth:** Paragraph (C) of Clause (First) of Article (37) stipulates that ((All types of psychological and physical torture and inhumane treatment are prohibited)).

**Fifth:** - Paragraph (C) of Item (First) of Article 37 of the Constitution stipulates that “forced labor, slavery, and the slave trade are prohibited, and trafficking in women, children, and gender trafficking is prohibited.”

It is evident from the aforementioned constitutional texts that the Iraqi Constitution prohibits all forms of human trafficking and all forms of acts that violate human dignity, human worship, and fundamental rights.

It should be noted that Iraq has ratified several international conventions relating to the prohibition and criminalization of human trafficking. including the International Covenant on Economic, Social, and Cultural Rights<sup>(1)</sup>, the International Covenant on Civil and Political Rights<sup>(2)</sup>, the International Convention on Slavery, signed in Geneva on 25/9/1926 when it entered into force on 9/3/1927, was amended in 1953 and the amended Convention entered into force in 7/7/1955<sup>(3)</sup>, supplementary Convention on the Abolition of Slavery, the Slave Trade and Customs and Practices Similar to Slavery<sup>(4)</sup>, and International Convention for the Suppression of Trafficking in Adult Women of 1933<sup>(5)</sup>. Protocol to the Amendment to the Slavery Convention of 1926, which entered into force on 7/12/1953<sup>(6)</sup>, the International Convention against the Taking of Hostages, which was signed on 14/10/1980 and entered into force on 3/6/1983<sup>(7)</sup>, the Hague Convention on the Civil Aspects of International Child Abduction, which was adopted on 25/10/1980 and entered into force on 1/12/1983<sup>(8)</sup>, and the Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on 23/9/1989<sup>(9)</sup>.

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<sup>1</sup> Ratified by Law No. 193 of 1970, joining date 25/1/1971. The ratification was published in Al-Waqa'a Al-Iraqiya No. (1927) on October 7, 1970 and republished in Al-Waqa'a Al-Iraqiya No. (3387) on 6/1/1992.

<sup>2</sup> It was ratified by Law No. (193) of 1970, the date of accession 25/1/1971. The ratification was published in Al-Waqa'a Al-Iraqiya No. (1927) on October 7, 1970 and republished in Al-Waqa'a Al-Iraqiya No. (3387) on 6/1/1992.

<sup>3</sup> Ratified by Law No. (8) for the year 1928. The ratification was published in Al-Waqa'a Al-Iraqiya No. (615) on 16/1/1928 and republished in Al-Waqa'a Al-Iraqiya No. (3387) on 6/1/1992.

<sup>4</sup> Ratified by Law No. (72) of 1966. The ratification was published in Al-Waqa'a Al-Iraqiya No. (832) on 25/7/1966 and republished in Al-Waqa'a Al-Iraqiya No. (3378) on 6/1/1992.

<sup>5</sup> Ratified by Law No. (74) for the year 1955. The ratification was published in Al-Waqa'a Al-Iraqiya No. (2644) on 06/25/1955 and republished in Al-Waqa'a Al-Iraqiya No. (3387) on 6/1/1992.

<sup>6</sup> Ratified by Law No. 25 of 1955 and publishing the ratification in the Iraqi Gazette No. (3582) issued on March 24, 1955, and re-published in the Iraqi Gazette No. (3387) on 1/6/1992.

<sup>7</sup> Iraq ratified it by Law No. (26) of 2012 published in the Iraqi Gazette No. (4277) on 05/20/2013.

<sup>8</sup> Iraq ratified it by Law No. (48) of 2013 published in the Iraqi Gazette No. (4305) on 7/1/2014.

<sup>9</sup> Iraq ratified it according to Law No. (3) of 1994 published in Al-Waqa'a Al-Iraqiya No. (3500) on 3/7/1994.

## ***Second Topic: Legal architecture and penalties for the crime of human trafficking by the Anti-Human Trafficking in Law No. 28 of 2012***

To examine the legal structure of the crime of human trafficking by the Anti-Trafficking in Human Beings Law No. 28 of 2012 and the penalties prescribed therefrom, this study shall be divided into two requirements, the first to study the legal structure of the crime, and the second to deal with the penalties established for the crime of human trafficking.

### ***First requirement: Legal structure of the crime of human trafficking.***

By the provisions of the Anti-Trafficking in Human Beings Law No. 28 of 2012, the legal structure of the crime of trafficking in human beings requires the availability of the general elements of the crime, namely the physical and moral elements <sup>(1)</sup>. Therefore, to examine the elements of the crime of trafficking in human beings, this requirement is divided into two sections. Section I is devoted to the study of the physical element of the crime. Section II will be devoted to the study of the moral element of the crime.

### ***Section One: The physical element of the crime of Human Trafficking***

The material element of the offense is ((criminal conduct by the commission of an offense committed by law or omission of an act ordered by law))<sup>(2)</sup>, and criminal jurisprudence defines it as human conduct that results in a legally punishable result, whether the conduct is by doing or refraining from it, and each of them is subject to punishment if it results in a criminal consequence and there is a causal link between the behavior and the result <sup>(3)</sup>, and the behavior in criminal law is limited to external activity that takes on an external appearance, whether it is an act or omission <sup>(4)</sup> and the material element of the crime is consist of three elements (behavior, result, and the causal relationship between behavior and the result)).

Therefore, we will successively address the elements of the material element of the crime of human trafficking as follows:

### ***First. Criminal behavior in the crime of human trafficking.***

The criminal behavior constituting the physical element of the offense of trafficking in humans is the following acts ((recruitment, transportation, accommodation, or receiving persons)).

The criminal behavior of the crime of human trafficking by clause (First) of Article (1) of the Anti-Human Trafficking Law No. (28) of 2012 can only be achieved by one of these

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<sup>1</sup> Criminal jurisprudence in Iraq is divided into two directions regarding the pillars of crime, one of which sees that the crime has three elements, which are the material element, the moral element, and the legal element, and the second trend sees that the crime has a material element and a moral element, and we support the second trend for the relevance of the argument of those who say it, as the legal element. It is the legal text that creates the crime, and the Creator cannot be considered an element in the creature.

From the supporters of the first trend: Dr. Ali Hussein Al-Khalaf and Dr. Sultan Al-Shawi, General Principles in the Penal Code, Al-Atek for the book industry, Cairo, 2010, p. 138.

Abbas Al-Hasani, Explanation of the New Iraqi Penal Code, General Section, 2nd Edition, Al-Irshad Press, Baghdad, 1972, p. 72; Dr. Muhammad Maarouf Abdullah, Punishment for Murder by Taking Revenge in Iraq, Research published in the Journal of Comparative Law, p. 14, p. 9, 1982, p. 12, - Dr. Dhari Khalil, Explanation of the Penal Code, General Section, Dar Al-Qadisiyah Printing House, Baghdad, without Sunnah Reprint, p. 65, - Dr. Akram Nashaat Ibrahim, General Rules in the Comparative Penal Code, Fityan Press, Baghdad, 1998, p. 47. Dr. Ghaleb Al-Daoudi, Explanation of the Iraqi Penal Code, General Section, Dar Al-Qadisiyah Printing House, Baghdad, 1968, p. 177. Dr. Mustafa Kamel, Explanation of the Iraqi Penal Code, General Section, Al-Maaref Press, Baghdad, 1949, p. 73.

As for the supporters of the second trend:

Dr. Jamal Ibrahim Al-Haidari, Al-Wafi in explaining the provisions of the general section of the Penal Code, Publisher Al-Sanhoury Library, Baghdad, 2012, p. 261 - Dr. Maher Abd Shawish Al-Durra, General provisions in the Penal Code, Dar Al-Hikma Press for Printing and Publishing, Mosul, 1990, p. 180 - Dr. Fakhri Abdul Razzaq Al-Hadithi, Explanation of the Penal Code, General Section, Al-Zaman Press, Baghdad, 1992, p. 177 - Dr. Wathba Al-Saadi, Penal Code, Special Section, Baghdad, 1989, p. General provisions, part 1, Al-Nahda Al-Arabiya Press, 1977, p. 91.

<sup>2</sup> Article (28) of the amended Iraqi Penal Code No. (111) of 1969.

<sup>3</sup> Dr. Mahmoud Najib Hosni, Explanation of the Penal Code, General Section, 5<sup>th</sup> Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1984, p. 123. Also, Dr. Mamoun Muhammad Salama, Penal Code, General Section, Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 124.

<sup>4</sup> Dr. Ramses Bahnam, The General Theory of Criminal Law, Al Maaref Press, Alexandria, 1976, p. 15.

three acts, provided that the act of ((recruitment, transportation, accommodation or receiving persons)) is accompanied by one of the means contained in the text and these means are, threatening or using force, or other forms of coercion, kidnapping, fraud, deception, abuse of authority, or giving or receiving sums of money or benefits to obtain the consent of a person with authority or jurisdiction over another person. The legislator specified the forms of the act and investigator of criminal behavior and the means by which the act is committed, that is, the criminal legislator has specified (the act and its means). This means that the legislator requires that an act ((recruitment, transportation, accommodation, or receiving persons)) be carried out by one of the said means, to achieve the investigative criminal behavior of the physical element of the crime of trafficking in human beings, and the criminal behavior alone, the material pillar of the crime of trafficking in human beings is that the text thereafter represents the aims and objectives of the perpetrator of the criminal behavior. It is, according to the legislator's words, ((to sell them or exploit them in prostitution, sexual exploitation, forced labor, forced labor, slavery, begging, or trading in their human organs, or for medical experiments)) these are all targets of the offender.

They are therefore outside the material of the crime and thus outside the legal structure of the physical element of the crime, and do not exceed its elements or requirements, but rather come outside the materiality to represent the special intent that is required to achieve the moral element in the crime of human trafficking.

In the light of the foregoing, anyone who commits the act of recruitment, transfer, accommodation, or receiving persons by any of the means mentioned in the Law to achieve one of the purposes specified in the Act ((sale, exploitation of victims in prostitution, sexual exploitation, forced labor, slavery, begging, trafficking of victims in their human organs or for medical experimentation)).

He is considered to have committed the criminal behavior that achieves the material element of the crime of human trafficking, and the legislator has done well in terms of criminalizing the act of recruitment, transportation, harboring, or receiving persons, whenever it is committed by the offender by one of the means specified in the law and to achieve one of the objectives outlined in the text with the presence of intent to achieve the legally defined goal, it is sufficient to hold the perpetrator accountable, whether his intent from the act of ((recruitment, transportation, accommodation, or receiving persons)) was realized or not. The crime of trafficking human beings goes through several stages and is committed by several persons, each of whom is involved in the stages of the crime. The Iraqi legislator, as well as the international legislator, has promised in previous investigations that each stage is a separate crime in itself. Persons who commit operations and acts ((recruitment, transfer, accommodation, or receiving persons)) are considered perpetrators of the crime of trafficking in humans and persons who exploit the victims ((victims of trafficking in humans)) by trading and exploiting them in any manner specified by law are considered perpetrators of the crime of human trafficking, and is the predominant form of the crime of trafficking in human, or the perpetrators of acts ((recruitment, transfer, shelter or receiving persons)) have committed their acts in a given country and the exploitation of victims takes place in another country and by other persons.

Before concluding the discussion on the criminal behavior of the investigation of the physical element of the crime of human trafficking, we note that we find it very important to the legal wording of the text since the legislator has elaborated a lot on the definition and number of means of committing the act. ((by threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, or the giving or receiving of money or benefits



for the consent of a person with authority or jurisdiction over another person). This raises the question of whether the act of recruitment, transfer, accommodation or reception took place without such means but to achieve one of the objectives set out in the text, namely, to exploit victims, is the criminal behavior constituting the physical element of the crime of trafficking in human beings achieved or not?

In fact, it cannot be said that the crime of trafficking in human beings is not achieved in the aforementioned case, despite the absence of any means specified by law, i.e., although the act of recruitment, transfer, accommodation, or reception is not associated with any of the means specified in the law, and the reason for this lies in the fact that the act is not accompanied by one of the means specified in the text, with the intention of exploitation to one of the purposes set out in the text, which results in the crime. We consider that the legislature expressly stipulates in article 10 of the Law that the consent of victims of the crime of trafficking human beings shall not be invoked in any case. Consequently, the means enumerated by the legislator requiring the act to be accompanied are irrelevant to the inherent criminalization of the act because all the means specified in the text are its decision to protect the voluntary express expression of the victims and where the law does not invoke such a voluntary expression, those means are irrelevant in our view to criminalization. This, of course, is much better than being considered an element of the act, being the means of the act. Thus, it must be proven in addition to establishing the act, so that it can be said that the crime of trafficking in human beings is difficult to do, so we believe that the criminalization text should be redrafted, and that acts (recruitment, transfer, accommodation or reception) should be criminalized, whatever the perpetrator's means of committing such acts.

What we have to say is that the text of article 5 of the Act, clause I, only guarantees the severity of the punishment, referring the incrimination to article 1 of the Act, That is, the criminal rule has been fragmented by the incision of commissioning and criminalization in the article (1) and the incision of punishment is reflected in article (5) clause (I) and with careful consideration of the content of article (5) clause (I), which provides for the punishment of anyone who commits an act provided for in article (1). By reverting to article 1 of the Act, we find it to be an act, a means, and a purpose, and therefore it is not logical to separate the act and the means and the objective as well as the objective as we will see (the mental element) of the moral element of the crime as the special intent required by the legislature to criminalize and punish. Similarly, according to the text of the article (1), the act cannot be viewed in isolation from its means or from the description to which it relates, whether the description relates to the means or how the action takes place, and the statement to the contrary is not based on the express text of the law.

For the foregoing indication, we believe that the effect of the means coupled with or how the perpetrator falls and relies on the commission of the act should be limited to the amount of the action without having the slightest effect on the criminalization of the act, this is, I believe, safer for the proper drafting of legislation in penal texts, and given the flagrant violation of human rights and human dignity by the crime of trafficking in human beings.

### ***Second: Criminal result***

The criminal result is that change that occurs in the outside world with the effect of criminal behavior<sup>(1)</sup>, and the result has material and legal connotations<sup>(2)</sup>. The material

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<sup>1</sup> Dr. Jamal Ibrahim Al-Haidari, previous reference, p. 273 - also Dr. Muhammad Subhi Najm, Penal Code, General Section, General Theory of Crime, Library of Culture House for Publishing and Distribution, Amman, 1996, p. 201.

<sup>2</sup> Dr. Omar Al-Saeed Ramadan, The Idea of Result in the Penal Code, research published in the Journal of Law and Economics, Vol. 1, No. 13, 1961, p. 104.

significance of the result is the change that occurs in the outside world as an impact of criminal behavior<sup>(1)</sup>, and the legal meaning of the result, is represented in the aggression, which affects an interest protected by criminal law<sup>(2)</sup>, which is a legal adaptation of the meaning of the material result<sup>(3)</sup>. There are offenses sufficient to constitute the material element of the offender's criminal conduct without requiring the law to achieve a criminal result of such conduct and to exclude the criminal result from such offenses makes sense that the causation is not necessitated<sup>(4)</sup>.

The crime of trafficking in human beings is a crime of abstract conduct in all its forms since the criminal legislature did not require a specific criminal result, but only the mere occurrence of criminal conduct consisting of recruitment, transfer, harboring, or reception sufficient to occur.

It is the importance of the interests under criminal protection that led the legislature to intervene by criminalizing acts of trafficking in human beings at a stage before the realization of the damage. The legislator criminalized criminal conduct (by recruitment, transfer, accommodation, or reception) before exploitation took place in one of the forms specified in the text, considering that such criminal conduct posed a risk to the interests under criminal protection. In the light of the legal concept of a criminal result, both risk and injury constitute the unlawful result. Therefore, the unlawful consequence of the crime of human trafficking is to endanger the interests under criminal protection, It is the potential harm that may be caused to the protected interest, and this risk exists once the criminal conduct has taken place, which leads to the attainment of the result in a legal sense since the criminal consequence in the light of this meaning is the situation arising from the behavior in relation to the subject matter of the crime, which is in the protected interest<sup>(5)</sup>.

Victims' exploitation of the sale and exploitation of prostitution or sexual exploitation forced labor, forced labor, slavery or begging human organs, or for medical experimentation, all of which are outside the material of the crime. It is not considered a result required by the criminal legislator in criminalizing the behavior, but the legislator is satisfied with criminalizing the behavior for its own sake and that the acts of exploitation referred to constitute manifestations of criminal conduct for those who engage in it.

Accordingly, talking about the material element of the offense of human trafficking does not necessitate research into the causal link between criminal conduct and criminal outcome or result, since criminal behavior is itself the legally prohibited result, and in other words, the criminal result is embedded in criminal behavior which is at the same time the criminal result. As a result, this situation arises from the behavior which constitutes a risk to and potential harm to, the interests under criminal protection.

Article 12 of the Anti-Trafficking in Human Beings Law stipulates that the provisions of the Penal Code No. 111 of 1969, as amended, shall apply in all cases where no specific provision is contained in the Law and that the provisions of the General Rules shall apply concerning the attempt and criminal contribution to the crime of trafficking in human beings.

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<sup>1</sup> Dr. Jamal Ibrahim Al-Haidari, previous reference, p. 273.

<sup>2</sup> Dr. Sameh Al-Saeed Gad, Explanation of the Penal Code, General Section, General Theory of Crime, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 213.

<sup>3</sup> Dr. Fakhri Abdul Razzaq Al-Hadithi, previous reference, p. 188.

<sup>4</sup> Dr. Mansour Al-Saeed Satour, Al-Wajeez in Explanation of the Penal Code, General Section, Part 1, The General Theory of Crime, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 224.

<sup>5</sup> Dr. Mamoon Muhammad Salama, previous reference, p. 155.

A special form of the offense of human trafficking as provided for in article 7 of the Law, which stipulates that: ((A term of up to 3 years' imprisonment shall be imposed and a fine of at least (10000000) million dinars, and not more than (20000000) 20 million dinars or one of them)):

**First:** Creates or manages a website with the intent of human trafficking.

**Second:** Contracting or facilitating a transaction related to human trafficking by using the information network.

This text shows that criminal behavior in this image of the crime of trafficking in human beings represents one of two cases: first, the perpetrator establishes or manages a website for trafficking in human beings, whereby criminal behavior is achieved by creating or managing the site with the intention of using the web site for trafficking in human beings, and the second case is criminal conduct and thus the crime if the perpetrator contracts or facilitates a transaction relating to human trafficking using the information network in this special form of the crime of human trafficking provided for by law taking into account the unjustified mitigation of the perpetrator's sentence, especially as the reduction of the punishment weakens the force of deterrence targeted by the punishment. It appears that the legislator considered the commission or facilitation of the crime of human trafficking using the information network to be less dangerous than traditional methods of belief and misdirection, but on the contrary, the continuous development and integration of means of communication and information systems and their use in the commission of the transnational organized crime by perpetrators, in particular the use of means of communication and the information network in the commission of the crime of trafficking in human beings, has recently shown a marked increase due to given the many advantages these means give to perpetrators that facilitate the commission of the crime and conceal its effects and evidence.

Therefore, we see the need to reformulate the text in a way that makes it more in line with reality and in a way that ensures the imposition of appropriate punishment on the perpetrators.

### ***Section two: The moral element in the crime of human trafficking***

The moral element of the offense of human trafficking does not suffice to provide for general criminal intent but must be special criminal intent. General criminal intent is defined as knowledge of the elements of the offense and the will to achieve and accept these elements<sup>(1)</sup>. This definition ratifies all kinds of criminal intent directly or indirectly. The special criminal intent is when the legislator makes the purpose an element of the intent because he considers that the real danger to protected interests lies in the perpetrator's wishes to the end and not merely in the direction of his will to the result<sup>(2)</sup>. Applying this to the crime of human trafficking, we say that the origin is that the criminal outcome represents the purpose of the crime and it is a direct purpose, and here as the criminal result in the crime of human trafficking is integrated with the criminal behavior represented by the act of ((recruiting, transporting, harboring or receiving)) associated with one of the means mentioned in In the text, these actions represent the direct goal - the criminal result combined with the criminal behavior - while the end is the distant goal of the will so that its attainment is the fulfillment of a specific need<sup>(3)</sup>, as for the motive, it is the very mental perception and the motive to satisfy a specific need, and

<sup>1</sup> Dr. Maher Abed Shawish Al-Durra, previous reference, pg. 364.

<sup>2</sup> Dr. Mahmoud Najib Hosni, The General Theory of Criminal Intent, a comparative study of the moral pillar in intentional crimes, Dar Al-Nahda Al-Arabiya, Cairo, 1974, p. 261.

<sup>3</sup> Dr. Fakhri Abdul Razzaq Al-Hadithi, previous reference, p. 289.

then it is an activity related to the goal and has nothing to do with the purpose<sup>(1)</sup>. When the law considers the motive, then the motive, as the mental perception of the goal that the offender wants to achieve, becomes an element in the legal construction of the crime, as the psychological element extends beyond the materiality of the crime and is called the special criminal intent. In the crime of human trafficking, it is represented by the offender's intent to achieve the purpose of the crime, which is the exploitation of the victims in the crime of experimenting with human beings in sales or exploiting them in prostitution, sexual exploitation, forced labor, forced labor, enslavement, or beggary Or trading in human organs, or for medical experiments.

***Second requirement: Penalties for the crime of human trafficking***

Through extrapolation of the provisions of the Anti- Human Trafficking Law, it is clear to us that criminal legislation is punishable by the following penalties:

***First: The death penalty***<sup>(2)</sup>.

The offense shall be punishable by death if the act of trafficking in human beings results in the victim's death.

***Second: Life imprisonment and fine***

The Act punishes life imprisonment and a fine of not less than 15 million dinars (15000000) and not more than 25 million dinars (25000000) who commit a human trafficking offense under one of the following circumstances:

- a. If the victim has not completed (18) eighteen years of age.
- b. If the victim was a female.
- c. If the crime was committed by an organized criminal group, or if it was international.
- d. If the crime was committed by kidnapping or torture.
- e. If the offender is one of the victim's ascendants, descendants, guardians, or spouse.
- f. If the victim suffers from an incurable disease or permanent disability as a result of trafficking.
- g. If the crime of human trafficking occurred on several persons or multiple occasions.
- h. If the crime of human trafficking is committed by an employee or by a public servant.
- i. If the crime occurred through abuse of influence.
- j. If the crime occurred by exploiting the weakness of the victims, or their needs.
- k. If the victim has a disability.

***Third: Punishment of temporary imprisonment and fine***<sup>(3)</sup>.

1. The offense of human trafficking shall be punishable by temporary imprisonment and a fine of not less than (5000000) 5 million dinars and not more than (10000000) 10 million dinars if one of the acts of human trafficking provided for in article (1) of the Law is committed and such acts are (recruitment, transportation, accommodation or reception of persons).
2. The penalty shall be a term of up to 15 years imprisonment (15) and a fine of up to 10 million dinars (10000000) if the offense of trafficking in human beings is committed by one of the following means<sup>(4)</sup>:
  - a. sing any form of coercion, such as blackmail, threats, or withholding travel documents or official documents.

<sup>1</sup> Dr. Mahmoud Najib Hosni, previous reference, p. 273

<sup>2</sup> Article (8) of the law.

<sup>3</sup> Clause (First) of Article (5) of the Law.

<sup>4</sup> Clause (Second) of Article (5) of the law.

- b. Using fraudulent methods to deceive the victims, or lure them.
- c. Giving or receiving sums of money or benefits to obtain the consent of someone who has authority or jurisdiction over the trafficked persons.

**Fourth: The penalty of imprisonment and a fine or one of them<sup>(1)</sup>.**

The criminal legislator punished the penalty of imprisonment for a period of no less than (3) three years and a fine of no less than (10,000,000) ten million dinars and not more than (20,000,000) twenty million dinars, or one of the two penalties:

- a. If the accused created or managed a website with the intention of human trafficking.
- b. Or the accused contracted a transaction related to human trafficking or facilitated it by using the information network.

**Fifth: The penalty of a fine**

Clause (First) of Article (9) of the Anti-Human Trafficking Law stipulates the penalty of a fine of no less than ((5000000)) five million dinars and not more than (25000000)) twenty-five million dinars for each legal person whose participation in the crime is proven, or committed the crime in his name, for his account, or his benefit, and this penalty imposed on the responsibility of the authorized director or the person responsible for managing the legal person is not prejudiced if his participation in the crime is proven.

**Sixth:** The penalty for the dissolution of a moral person, the suspension of his activities on a final or temporary basis, or the closure of his premises<sup>(2)</sup>, if it is established that one of the acts provided for in the said Act has been committed in addition to the penalty for the fine prescribed in the article (9) of the Law.

## Conclusion

Through this research tagged (legal confrontation of human trafficking crimes in the light of the Anti-Human Trafficking Law No. (28) of 2012), we reached many results and recommendations, which are listed below:

### First: Results

The most important results can be summarized as follows:

1. The Iraqi Constitutional Legislature, before the legislation of the Anti-Trafficking in Human Beings Act No. 28 of 2012, contained in the Constitution of the Republic of Iraq of 2005 several constitutional and constitutional criminal rules guaranteeing constitutional protection against acts of trafficking in human beings.
2. Iraq has ratified and acceded to most international conventions and instruments relating to the prohibition and criminalization of trafficking in human beings.
3. The legislation of the Anti- Human Trafficking Law No (28) of 2012 complies with Iraq's international obligations. The legislation of this Act also responds to an urgent need to protect the interests under criminal protection by criminalizing acts of trafficking in human beings, especially since such acts violate human rights and undermine human dignity and human dignity.
4. Despite the legal importance of the Anti- Human Trafficking in Law legislation, however, there are many deficiencies in the legislative formulation of this Law, the

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<sup>1</sup> Article (7) of the law.

<sup>2</sup> Clause (7) of Article (9) of the law.

most important is the substantive aspect - criminalization and punishment - contained therein, such as the enlargement of the criminal legislation in the enumeration of the means associated with acts of trafficking in human beings and their consideration as a component of the material element. offenses ", which represented the means of committing the act and which the criminal legislator subsequently returned to consider some of the aggravating circumstances of the offense.

5. The penalty of imprisonment and/or fine provided for in article 7 of the Law is, in our view, light and disproportionate to the seriousness of the crime of trafficking in human beings occurring through information network sites, although these means are now more widespread and used in the commission of a transnational organized crime because of the many advantages they offer to perpetrators.

## **Second: Recommendations**

The most important recommendations that we believe should be adopted by the Iraqi criminal legislature and law enforcement agencies can be summarized as follows:

1. We call on the legislature to amend article (1) of the Anti-Trafficking in Human Beings Law by not referring to the means or manner in which acts of trafficking occur. The criminalization of acts of trafficking in human beings in any manner and by any means adopted by the perpetrators in the commission of human trafficking offenses, provided that, the means of action or how it affects the degree and amount of punishment, without having any effect on the criminalization of acts of trafficking in human beings. In particular, the Penal Code has adopted a policy of criminalization and punishment based on the fragmentation of the criminal rule (in its two-aspect- both the criminalization and the punishment) between the provisions of the Act. Upon further consideration of article (5) clause (I) of the Law, we find it punishable for the acts provided for in article (1) of the Law and by reverting to the article (1) of the Law. Since the act cannot be considered in isolation from the means and purpose of the act, Thus, the punishment set out in section (5) clause (I) requires the perpetrator to commit any of the acts outlined in section (1) of the Law in conjunction with the means defined by law and for the very fulfillment of the provision. This requires punishment for acts irrespective of the means or manner in which they occurred, and this explicitly requires the penal text and clarity.
2. We call on the Iraqi Criminal Legislature to amend the provisions of article (7) of the Law on Combating the Crime of Trafficking in Human Beings by stiffening ((the penalty of imprisonment and/or fine)) contained in the said text given that, the Information Network is now one of the most serious means of committing the transnational organized crime, notably the crime of trafficking in human beings because of its advantages to perpetrators that facilitate their criminal acts of trafficking in human beings and enable them to conceal their identities and escape legal prosecution, as well as its impact on individuals who are victims of trafficking in human beings, through broadcasts by perpetrators and organized criminal gangs.
3. We call upon Iraq's criminal legislation to add a new article to the law whereby customs and practices similar to slavery are considered forms of exploitation constituting the crime of human trafficking.
4. We call on the Criminal Code to provide for the confiscation of funds derived from human trafficking.
5. We call on the Criminal Legislator to provide in the law that victims of human trafficking are exempt from legal accountability for crimes of entering Iraq, crossing

- the border illegally or when staying illegally.
6. The right of victims to fair compensation is provided in the law, which the State is obliged to pay to them if it cannot be obtained from the perpetrator.
  7. To request the High Commission for Human Rights of Iraq to monitor and report on the phenomenon of human trafficking.
  8. Increase the capacity of the judiciary, investigators, police officers, and lawyers to deal effectively with human trafficking offenses through training courses and workshops, and participate in conferences and scientific seminars held inside and outside Iraq on the formulation of criminal policy or the identification of the best measures to combat the crime of human trafficking.
  9. We call on the UN mission to play a greater role in assisting law enforcement agencies in Iraq to confront this criminal model.
  10. Enhanced cooperation with international police agencies (INTERPOL) to facilitate the arrest of perpetrators.
  11. Conclude and conclude bilateral conventions on extradition for human trafficking offenses.

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