

The impact of criminal punishment on the public employee in the crime of bribery in Iraqi law and Algerian law (Comparative study)

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Abstract: This research examines the impact of criminal punishment on public employees who commit bribery, comparing Iraqi and Algerian legal systems. The study highlights the responsibilities of public employees and how criminal penalties, whether original, subsidiary, or precautionary, affect their legal and professional status. Iraqi and Algerian laws emphasize the importance of maintaining job integrity and public trust. The study explores penalties like imprisonment, fines, and confiscation alongside precautionary measures that limit employees' rights or restrict their duties. The comparative analysis reveals legislative gaps, particularly in addressing precautionary measures tailored for public employees. While Algerian law focuses on preventing criminal danger through general precautionary measures, Iraqi law adopts a more structured approach to employee misconduct and subsequent disciplinary actions. The research concludes with recommendations to enhance accountability, prevent bribery, and protect public office integrity. Proposals include increasing employee awareness, improving salaries to reduce corruption incentives, and strengthening legislative frameworks to address preventive and rehabilitative measures. This study underscores the necessity of balancing legal punishment with precautionary mechanisms to combat bribery effectively and safeguard public administration's efficiency and reputation.

Keywords: Algerian law, Bribery, Comparative analysis, Corruption, Criminal punishment, Disciplinary responsibility, Iraqi law, Legal status, Precautionary measures, Public employee.

1. Introduction

The laws regulating the public service have given great importance to the public employee, and the reason for that is that the success of the administration in carrying out its duties towards the public depends on the efficiency of its employees and their sense of responsibility and the necessity of achieving the public interest. The public employee, as is known, is responsible for his actions from all criminal, civil and administrative aspects. If we want to know the extent of the legitimacy of the actions issued by him, we would refer to the Penal Code, which operates according to the rule (no crime and no punishment except by text), as for the functional errors issued by him, they are not limited to the legal text regulating the public service, but rather the matter is referred to the relevant bodies that determine the actions that violate the duties of the public service or violate public order under the supervision of the administrative judiciary.

1.1. The Importance of the Research

This topic is of great importance through the employee or through the public job and the job objective, as the responsibilities of the public employee are multiple after assuming his job duties. In addition to his civil and criminal responsibility, his disciplinary responsibility is also established when he deviates from the requirements of his job duties. If this deviant behavior affects the interests of society that the legislator was keen to protect, then he is also criminally responsible and falls under the penalty of criminal punishment. Criminal punishment of the employee does not prevent him from being held accountable disciplinarily, since disciplinary penalties are often caused by a criminal judgment.

Since the public job is one of the most important legal means of preserving the rights and interests of the individual and society, because it is based on serving people and providing them with means of comfort, security and well-being, those who perform it must possess the most important qualities of good conduct and behavior. Therefore, it is affected by the criminal judgment issued convicting the employee, and since the conviction and the criminal penalty that follows it are evidence of the failure of this condition and cast doubt on the person's eligibility to hold public office, therefore, modern criminal policy has begun to expand the impact of the criminal penalty imposed on the employee so that it extends to his legal position as an employee in general, and to his job service in particular, in order to ensure everything that would correct the employee's behavior, improve his reputation, and preserve the honor and dignity of the job. We chose the research topic because the follower of practical reality diagnoses a dangerous phenomenon, which is the phenomenon of the expansion of the scope of crimes committed by employees, especially in countries where employees constitute a large segment of society (as is the case in Iraq). On the other hand, we find that the legislative texts that govern the extension of the impact of the criminal penalty to the job service are not collected by one law, but rather are scattered among several legislations, including the Penal Code, the Military Penal Code, the State Employees Discipline Law, the Civil Service Law, the Judicial Organization Law, and the Public Prosecution Law. Therefore, we decided to conduct a study that gathers and analyzes the scattered texts, with a statement of their judicial applications and the opinions of jurists on them, with a balance of what is available from legislation, and then expressing an opinion and proposing amendments in the places that deserve it.

1.2. Defining the Scope of the Research

The scope of this research focuses on the legal status of the employee, including the imposition of a criminal penalty on him, as it affects his job service and how it is calculated in a fundamental way, and affects his financial rights that the legislator has decided in return for performing his job, such as salary, incentives and allowances, and its impact may extend to include the non-financial rights of the employee against whom a criminal judgment has been issued, such as its impact on promotion and eligibility for nomination for some positions.

Since studying all the effects requires an in-depth study, we will limit our research to studying the impact of the criminal penalty on the public employee and his legal status.

We see that the methodology most consistent with the nature of our research topic is a comparative analytical study, through which we seek to review the most important legal rules related to our research topic, and we will also address what Iraqi and Algerian law have concluded, in an effort to reach the sound legal idea that can lead to an acceptable level within the framework of scientific research. It is worth noting that some of these effects have been stipulated in criminal legislation, and others have been stipulated in administrative laws. On this basis, we will divide the research into two sections: the first section on penalties and the second section on precautionary measures.

1.3. Section One

1.3.1. Penalties Imposed on a Public Employee When Committing the Crime of Bribery in Iraqi and Algerian Law

It is well known and required by law that when a public employee commits any act that violates the duties of the job or the honor of the job, this entails disciplinary penalties imposed by the administration if this act is not considered one of the criminal offenses stipulated in the Penal Code, or if the employee's act is one of the crimes stipulated in the Penal Code, then the employee's act entails criminal penalties and other penalties imposed by the administration known as supplementary and disciplinary penalties in addition to the original penalty.

The original penalty is the penalty imposed on a public employee based on the criminal judgment stipulated in the Penal Code, while the subsidiary penalties are the penalties that follow an original penalty by force of law, so the competent authority is obligated to implement them without the need for a ruling issued by the judge, while the supplementary penalties are those imposed by the judge, obligatorily or permissibly, in addition to the original penalty, so they are not ruled on alone.

1.3.1.1. Original Penalties

The Iraqi legislator has specified in Article (307) in its first paragraph the penalty for the briber, which is imprisonment for a period not exceeding ten years or detention and a fine, provided that it is not less than what was requested, given or promised and does not exceed in any case ten thousand dinars. The penalty is also life imprisonment with confiscation of movable and immovable property if this crime occurred during war. However, if the work or abstention from work is not included in the duties of the employee or the person assigned to the service, but he claimed or believed it by mistake, the penalty is imprisonment for a period not exceeding seven years or imprisonment for five years (Article 308) of the Iraqi Penal Code. As for the original penalty in the Algerian Penal Code, the Algerian Penal Code stipulated the original penalties for the crime of bribery in the second section on the crime of bribery and influence peddling in each of Articles (126, 128, 131), each of which stipulated:

1. Any employee who takes or receives, either explicitly or through a fictitious contract or through a third party, some benefits from contracts, auctions, tenders, contracts or institutions that he has the management or supervision of all or some of them at the time of committing the act shall be punished with imprisonment from one to five years and a fine from 500 to 5,000 DZD.

2. Any employee who takes a benefit from a transaction in which he is charged with issuing payment orders or undertaking its liquidation shall be punished with imprisonment from one to five years.

3. Whoever requests or accepts a gift or promise, or requests or receives a donation, gift or any other benefit, shall be considered a bribe-taker and shall be punished with imprisonment from two to ten years and a fine from 500 to 5,000 dinars, for the following:

- A. To perform, in his capacity as a judge, public employee or representative, an act of his job for which no remuneration is due, whether lawful or unlawful, or to refrain from performing it, or to perform an act, even if it is outside his personal jurisdiction, but which his job facilitates or could facilitate.
- B. To issue, in his capacity as an arbitrator or expert appointed by the administrative or judicial authority or by the parties, a decision or express an opinion in the interest of a person.
- C. To make, in his capacity as a judge, juror or member of a judicial body, a decision, whether in favor of or against one of the parties.
- D. To falsely report, in his capacity as a physician, surgeon, dentist or midwife, the existence or concealment of a disease, disability or pregnancy or to give false information about the source of a disease or disability or the cause of death. ⁽¹⁾

4. Any public employee who directly or indirectly accepts or requests an advantage for himself or for another person or entity in order to perform an act or refrain from performing an act of his duties shall be punished by imprisonment from two to ten years, and a fine from 200,000 DZD to 1,000,000 DZD. ⁽²⁾

5. Anyone who promises, offers or grants an undue advantage to a public employee, directly or indirectly, whether for the benefit of the employee himself or for the benefit of another person or entity in order for him to perform an act or refrain from performing an act of his duties, shall be punished by imprisonment from two to ten years, and a fine from 200,000 DZD to 1,000,000 DZD. ⁽³⁾

6. Anyone who promises, offers or grants an undue advantage to a foreign public official or an official of a public international organization, directly or indirectly, whether for the benefit of the official himself or for the benefit of another person or entity, in order for that official to perform an act or refrain from performing an act of his duties, for the purpose of obtaining or maintaining a deal or any undue privilege related to international trade or otherwise, shall be punished by imprisonment from two to ten years, and a fine from 200,000 DZD to 1,000,000 DZD." ⁽⁴⁾

¹ - Algerian Penal Code, Article 162\2, previous source.

² Iraqi Penal Code, Article 40\2 of Order No. 66-156 containing the amended and supplemented Penal Code.

³ Article 25\2 of Law 06\01 on the prevention and fight against corruption (amended and supplemented), previous source.

⁴ Article 25\2 of Law 06\01 on the prevention and fight against corruption (amended and supplemented), previous source.

7. Any person who promises, offers or grants, directly or indirectly, an undue advantage to any person managing a private sector entity, or working for it in any capacity, whether for the benefit of the person himself or for another person, in order for that person to perform an act or refrain from performing an act, which constitutes a breach of his duties, shall be punished by imprisonment from six months to five years or a fine from 50,000 DZD to 500,000 DZD. ⁽⁵⁾

1.3.1.2. *Additional Penalties*

The law imposed two complementary penalties in addition to the original penalty, which are the fine and confiscation.

1. Proportional fine: Article 307 stipulates in its first paragraphs that the penalty of a proportional fine shall not be less than what the employee requested, gave, or promised, and shall not exceed in any case five hundred dinars. ⁽⁶⁾ 2. Confiscation: Article 314 of the Iraqi Penal Code stipulates (In addition to the penalties set forth, the gift accepted by the employee or the person charged with a public service and offered to him shall be confiscated), and shall be disposed of as money and as any gift given by the briber or intermediary to the employee or the person charged with a public service, regardless of its nature. Confiscation is a supplementary penalty that is imposed if the original penalty is imposed on the bribed person. The gift must be confiscated even if the briber or intermediary is not criminally responsible, and the briber may not demand the return of the gift, and confiscation. Therefore, it is not permissible to rule on confiscation if it is not seized or if the gift or benefit is not material. ⁽⁷⁾

1.3.1.3. *Auxiliary Penalties*

These are the penalties that are imposed on the convict by virtue of the law without the need to stipulate it in the ruling (Article 95) of the Iraqi Penal Code. The ruling on the original penalty for the crime of bribery (imprisonment) entails the penalties stipulated in Articles (97, 99) of the Penal Code, which are the deprivation of some rights and benefits, and the deprivation of the convict from managing his money or disposing of it without a will or endowment except with the permission of the Personal Status Court or the Personal Matters Court, as the case may be, within the region of which his place of residence is located. The aforementioned court shall appoint, upon his request or upon the request of the public prosecution or any interested party, a guardian to manage his funds. A fee must be estimated for him and the guardian shall be subordinate. The convict's funds shall be returned to him upon the expiry of the sentence or its expiry for any other reason. The guardian shall submit to him an account of his management. The penalty of police surveillance shall also be imposed on him by force of law, which is placing the convict in the crime of bribery under police surveillance for a period equal to the period of the sentence, provided that it does not exceed five years. ⁽⁸⁾ As for the subsidiary and

complementary penalties in Algerian law, the Algerian legislator has explained them as penalties that cannot be imposed independently of the original penalty unless the law stipulates that they be mandatory or optional, which the Algerian Penal Code stipulates in Article 9 thereof, which is:

1.3.1.3.1. *Determination of Residence*

According to the text of Article 11 of the Penal Code, the convict is obligated to reside in the area specified by law in the ruling and not to leave this area for a period not exceeding 5 years, starting from the date of expiry of the sentence or the release of the convict.

1.3.1.3.2. *Prohibition of Residence*

According to the text of Article 12 of the Penal Code, the convict is prohibited or banned from being in specific places, for a period of at least one year and at most 5 years, starting from the date of the release of the convict, and after notifying him of the decision to prohibit residence.

⁵ The same source, Article 40\2.

Iraqi Penal Code No. 111 of 1969 as amended, previous source.⁶
Al-Durra, Maher Abdul Shweesh, "Explanation of the Penal Code, General Section" (B.S.) p. 76.⁷
Decision published in the Iraqi Gazette, Issue 3446 on 22\2\1993.⁸

1.3.1.3.3. *Deprivation of Exercising Some Rights*

And stipulated in Article 14 of the Penal Code, which are the national rights that Article 8 has limited, namely:

- Dismissal of the convict and his expulsion from all senior positions in the state as well as services related to the crime.
- Deprivation of political rights such as the right to vote, run for office and wear medals.
- Knowledge of the eligibility to assume the duties of a juror, expert or witness before the judiciary.
- Knowledge of the capacity to assume the duties of a guardian, unless the guardianship is over his children.
- Deprivation of the right to bear arms and to assume duties in the education sector, and the deprivation shall be for a period not exceeding 5 years.⁽⁹⁾

1.3.1.3.4. *Penal Confiscation of Funds*

This confiscation is represented by the funds obtained by the employee or person charged with a public service as a result of the crime, with the exception of the residence necessary to accommodate the spouse, ascendants and descendants of the first degree of the convict, provided that it is not acquired illegally, and the income necessary for the livelihood of the spouse and children of the convict, as well as the ascendants who live under his guardianship. In all cases, if the third party is of good faith, his funds cannot be confiscated.⁽¹⁰⁾

1.4. *Section Two*

1.4.1. *Precautionary Measures Against the Crime of Bribery Committed by A Public Employee in Iraqi and Algerian Law*

As some call them, preventive measures, a type of procedure taken against persons whose dangerous condition indicates the possibility of their committing a crime, such as an employee or a person charged with a public service, as in the case of mentally deviant persons, homeless persons, drug and alcohol addicts, and professional criminals. These measures are either deprivation of freedom or restriction of it, such as detention in a therapeutic shelter (Article 105 of the Iraqi Penal Code) or deprivation of rights, such as the revocation of guardianship, trusteeship, and custody (Article 111 of the Iraqi Penal Code) or material, such as a pledge of good behavior (Article 118 of the Iraqi Penal Code).

The Iraqi Penal Code stipulates that precautionary measures are subject to all provisions governing punishment. Article 1 states that (precautionary measures not provided for by law may not be imposed). In Algerian law, prevention of the criminal phenomenon is comprehensive and does not concern a specific criminal or a specific crime, but rather is an ongoing attempt to confront the criminal phenomenon itself by preventing the occurrence of the crime before it occurs or is repeated.

This is done by reducing the causes, factors and circumstances that lead to its spread in society, which include criminal behavior and the criminal with the criminal danger available to him on the one hand and applying the necessary procedures for each case that occurs on the other hand. We can conclude from the text of Iraqi law on precautionary measures that they are a set of measures stipulated in the law imposed on the convict after it is proven that he committed the crime or before he committed the crime when it is considered a dangerous situation for the safety of society. Accordingly, it can be said that the purpose of the precautionary measure is to protect society from the danger of the criminal and the possibility of him committing another crime. In this section, we will discuss the characteristics, types and conditions of precautionary measures. Precautionary measures are also characterized by several characteristics stipulated by the Iraqi legislator, including:

1. Article 5 of the Iraqi Penal Code indicates that precautionary measures are subject to the principle of legality, as they are not imposed except in the cases stipulated by law.
2. Precautionary measures are not of a specific duration, unlike punishment, which is of a specific duration.

- Algerian Penal Code, Articles 9-11-12, previous source.⁹
Fafa, Hussein, previous reference, p. 35.¹⁰

3. Also, the element of pain in precautionary measures is not intended, and here the measure differs from the punishment, which is considered one of its most important elements, and the punishment is directed to the past, and therefore the precautionary measure does not share it. ⁽¹¹⁾

1.4.2. Types of Precautionary Measures

The Iraqi Penal Code stipulates the types of precautionary measures. Article 14 of the Iraqi Penal Code stipulates the types of precautionary measures, which are either deprivation of liberty, restriction of liberty, deprivation of rights, or material.

Therefore, there are three types of precautionary measures stipulated by the Iraqi legislator:

1. Precautionary measures that deprive or restrict liberty: These include confinement in a therapeutic shelter in a hospital or mental health facility for people suffering from mental illnesses (Article 105 of the Iraqi Penal Code), or a ban on visiting bars for alcoholics (Article 106 of the Iraqi Penal Code), and a residence ban, which is the deprivation of the convict from visiting a specific place or specific places for a period of not less than one year and not more than five years (Article 107 of the Iraqi Penal Code), and finally police monitoring, which is monitoring the behavior of the convict after his release from the social reform institution to verify the good condition of the convict and the integrity of his conduct (Article 108 of the Iraqi Penal Code).

2. Precautionary measures that deprive rights, including the loss of guardianship and trusteeship and fine (Articles 111, 112 of the Iraqi Penal Code), prohibition of practicing work (Articles 113, 114 of the Iraqi Penal Code), and withdrawal of the driving license, which is the termination of the license issued to the convict and depriving him of obtaining a new license during the period specified in the ruling (Article 115 of the Iraqi Penal Code).

3. Material precautionary measures, including confiscation and a pledge of good behavior (Article 118 of the Iraqi Penal Code), closing the shop (Article 121 of the Iraqi Penal Code), and suspending and dissolving the legal entity (Article 122 of the Iraqi Penal Code). ⁽¹²⁾

Precautionary measures are also divided into two sections:-

1. Precautionary measures in terms of the subject

Precautionary measures are divided in terms of their subject into personal measures and material measures.

Precautionary measures are personal when they are imposed on the person convicted, and they are in turn divided into personal measures that affect freedom, such as placement in social reform institutions or a mental hospital. Personal measures may restrict freedom, such as placement under police guard or prohibition of visiting certain places, or personal measures may deprive some rights, including deprivation from practicing certain professions or prohibition from carrying weapons. Precautionary measures are in kind if they are directed at things used by the criminal in committing a crime, including confiscation and closing the shop. 2. Precautionary measures in terms of subject matter

They are either rehabilitative, disabling or deportation measures. Rehabilitative measures work to treat the criminal if he is sick or teach him a trade if he is unemployed. Disabling measures are to strip the criminal of some of the material means that he may use to commit the crime. Deportation measures are those that separate the criminal from the place where the crime is likely to be committed, such as deporting a foreigner and prohibiting residence in a place where a person practices his crime. ⁽¹³⁾

It is clear to us from the above that there are measures prior to the crime and other measures subsequent to the occurrence of the crime. Thus, precautionary measures can also be divided in terms of time into precautionary measures prior and precautionary measures subsequent.

Jassim, Ziad Nazem, "The Sixth Lecture: Punishment and Criminology" (University of Anbar, College of Law and Political Science, 2011), p. ¹¹

85.

Iraqi Penal Code, previous source. ¹²

Jassim, Ziad Nazim, previous source, p. 43. ¹³

1.4.3. Conditions For Precautionary Measures

1. The previous crime requires that the person commits an act that is considered a crime, and it is the same whether this person is responsible for it or not, as the moral element is not required for the state of criminal danger to arise, and therefore the measure can be imposed on the insane.

Accordingly, the judge may not impose precautionary measures on a person who has not committed a crime, and this is due to the judge not being arbitrary and in order to respect the individual freedom of the citizen.

2 Criminal danger There are two trends in determining criminal danger, the first is social, and the second is psychological, and this has led to the existence of many definitions of criminal danger, and it can be defined as the possibility of the perpetrator committing another crime in the future. ⁽¹⁴⁾

The theory of criminal danger has also shown through its scientific basis that the crime occurs due to factors, and these factors may be internal factors, i.e. there is a physical, mental or psychological defect. Or to external factors represented by social and environmental conditions. And the criminal danger, if it is a psychological condition, can be detected through the signs that appear outwardly based on what the Iraqi legislator stipulated in the Penal Code that the criminal's condition poses a danger to society if his past is reviewed and through the signs that appear on him at the present time, where it becomes clear that there is a criminal danger lurking within him, and based on that possibility, precautionary measures are taken ⁽¹⁵⁾. The Iraqi Penal Code stipulated several types of precautionary measures through which the criminal danger is prevented, and what concerns us are the measures that are applied to the public employee, through which the criminal danger that exists with the employee when he commits the crime of bribery or even before committing that crime can be averted, and we conclude from the precautionary measures stipulated by the legislator and can be applied to the employee, they are:

1- Measures that deprive the employee of rights: They include a group of measures that may be imposed on the person after committing the crime or even before it if the criminal danger exists, including: -

A. Dismissal from the job, cancellation of the assigned work if he was previously assigned work, such as dropping guardianship and trusteeship and fine (Articles 111, 112 of the Iraqi Penal Code).

B. Prohibition of practicing work (Articles 113, 114 of the Iraqi Penal Code).

C. Withdrawal of the driving license, which is the termination of the effect of the license issued to the convict and depriving him of obtaining a new license during the period specified in the ruling (Article 115 of the Iraqi Penal Code).

2- Material precautionary measures, which are:-

A. Confiscation

B. Suspension and dissolution of the legal person (Article 122 of the Iraqi Penal Code).

3- Pledge of good behavior (Article 118 of the Iraqi Penal Code).

Measures are also divided in terms of the subject into personal and material, and both may be applied to a public employee or a person assigned to a public service if he commits one of the crimes committed during the work of the job or through the job. The personal measures are:-

A. They may restrict freedom, such as placing under police guard.

B. Prohibition of visiting certain places.

C. Or personal measures may be depriving of some rights, including deprivation from practicing some professions.

D. Prohibition from carrying weapons.

Precautionary measures are in kind if they are directed at things used by the criminal in committing a crime, including confiscation, i.e. confiscation of the money he embezzled or obtained in a bribery crime, for example.

In addition, there are dimensional measures that separate the criminal from the place where the crime is likely to be committed, such as removing the employee from the work assigned to him or from

- Sultan Al-Shawi, Iraqi Penal Code, previous source, p. 438.¹⁴
Previous source, 439.¹⁵

the public office if there is a clear criminal risk on his part by committing one of the crimes stipulated in the Penal Code and committed by the employee⁽¹⁶⁾

The Algerian legislator considers precautionary measures to be a preventive measure, the purpose of which is to confront and stop the criminal risk that may appear in one of the perpetrators, in order to preserve the security and safety of society. In this section, we will explain all the characteristics, types, conditions and legal description of precautionary measures.

1.4.4. Characteristics of Precautionary Measures

1. Precautionary measures are free of moral content

The penal code has made the deterrence of the offender through the penalty prescribed for him, but in return it has put in place precautionary measures that are considered preventive according to the text of Article 4 of the Penal Code, and the measures specified in this article must be carried out with prior monitoring. This precaution is only applied to those who have committed a crime. The occurrence of precautionary measures does not require the moral element to be present, but the material element is sufficient, as in the case of the partially legal and the insane⁽¹⁷⁾.

Here we find that the moral content is absent when the material element and the will of the person are not taken into account, and this does not mean that society despises him or makes him feel the sin.

2. Not specific in duration

Precautionary measures are not specific in duration in positive law because they are designed to confront the criminal danger, and since the criminal danger does not have a specific time for its occurrence, the precautionary measure is associated with it and is not linked to a specific time.

3. It must be issued by a judicial court

Since the precautionary measure is a criminal penalty, it must be issued by a judicial ruling. This is what distinguishes it from the security measures taken by the administrative authorities, because the latter is not issued by a judicial ruling, but rather the administration takes, on its own initiative, all necessary measures to avert the danger.

4. Exclusion of the limitation of blame in the measures

Since the precautionary measures are devoid of moral content, the precautionary measure cannot be rejected during its implementation, no matter what, even if it affects the dignity and freedom of the person. It is not intended in itself, but is achieved incidentally due to the impossibility of implementing the measure in a way that is completely devoid of pain, unlike the pain that is achieved during the implementation of the punishment, which is intended to inflict it on the offender's psyche.⁽¹⁸⁾

5. It does not affect the social status of the criminal

The person who is subject to precautionary measures is a normal person and is not viewed badly, and these measures are not considered a bad social stigma, but rather he is taken as a sick or miserable person in need of treatment, and he is excused for that because his will is not controlled.

6. The direction of the measure towards the future:

Precautionary measures are put in place to confront a crime that may occur in the future, i.e. it is likely to occur in the future and not in the past, and the crime that occurred in the past does not constitute that importance in precautionary measures because it has occurred and its danger has disappeared, but the measures are related to crimes that occur in the past through their occurrence on the same offender sometimes.

7. The individual nature of the precautionary measure

That is, it is imposed on a specific person who meets the conditions for applying the precautionary measures, as precautionary measures, as a general rule, are only imposed when there is a specific person who has committed a criminal act or a person who is about to commit a criminal act.⁽¹⁹⁾

8. Continuous review of the measure

¹⁶ - Algerian Penal Code, Articles 111, 112, 113, 114, 122, previous source.

¹⁷ Jassim, Ziad Nazim, previous source, p. 45.

¹⁸ Karima, Balouahri, "Precautionary Measures in the Algerian Penal Code" (Master's Thesis: Akli Mohand Oulhadj University - Bouira - Faculty of Law and Sciences, Department of Public Law, 2016) p. 11.

-Bahnam, Ramses, "The General Theory of Criminal Law" (Egypt: Mansha'at Al-Maaref, 1968, Second Edition) p. 991.¹⁹

The last paragraph of Article 19 of the Algerian Penal Code before its amendment in 2006 stipulated that the judicial authority that approved the precautionary measures shall continue to monitor them on a permanent basis and monitor the development of the convict, and it may replace them over time with other measures that are appropriate to the condition of the convict or others who are required to take the precautionary measures.

9. Subject to the principle of legality

Society sees precautionary measures as a sin and reprehensible by society because they violate morals and the privacy of individuals, but from a legal perspective, they are a matter stipulated by law after the punishment is imposed on the person and sometimes before committing the crime and before the punishment is inflicted on the person, and the subjection of measures to the principle of legality is explained by the keenness to protect individual freedom, and the Algerian legislator has acknowledged the application of the principle of legality in the field of precautionary measures, and the Algerian Penal Code stipulated in its first article ((No crime, no punishment, and no security measures without the law)).⁽²⁰⁾

The Algerian legislator distinguished himself from other legislations in that he codified precautionary measures in the Penal Code, as the first article of the Algerian Penal Code equated precautionary measures with security measures in terms of the subjection of both to the principle of legality.

1.4.5. Types of Precautionary Measures

It was previously stated that the Algerian Penal Code has adopted the security measures system with the penal system, as stipulated in Article 4 thereof, and it has organized them in Articles 19-21-22 concerning adult criminals, which are:

1. Judicial detention in a hospital institution: This is placing a person in this institution due to a defect in his mental faculties after proving it through a medical examination, and this defect must be contemporary with the commission of the crime, whether it is related to conviction or pardon. However, in the event of the absence of a reason for the lawsuit, the participation of this person in the facts must be proven materially.

2. Placement under supervision in a treatment facility for those suffering from habitual addiction resulting from taking drugs or alcohol, and this can only be done based on a judicial order or decision, as is the case in the first case.

3. As for the measures directed at minors, Article 444 of the Penal Code stipulates that they may only be taken in felony and misdemeanor cases by imposing one or more protection and rehabilitation measures, including, for example:

A- Handing him over to his parents or to a trustworthy person.

B- Placing him in a medical or educational institution prepared for this purpose.

C- Placing him in a boarding school suitable for housing juvenile criminals of school age, and other procedures specified in the aforementioned article. The ruling on these measures must not exceed the date on which the minor reaches the age of civil majority.⁽²¹⁾

1.4.6. Conditions for Precautionary Measures

There are conditions set by the legislator that must be met in order for precautionary measures to be imposed on the person legally, and these conditions are:

1- Previous crime: Article 21 of the Penal Code stipulates that the convicted person must be The insane person has committed a crime in order to be placed in judicial custody in a psychiatric institution, as it requires that the mental disorder be present at the time of committing the crime. There must be a

- Nouridine Manani, "The Role of Precautionary Measures in Detering the Criminal and Protecting Society, A Comparative Study between²⁰ Islamic Jurisprudence and Algerian Law" (Thesis Submitted for a Master's Degree: Hadj Lakhdar University, Algeria, 2010-2011) p. 10, 09. Balouahri Karima, previous source, p. 66.²¹

relationship between the illness of the person suffering from a mental disorder and the crime committed, as confirmed by the practical application of the Algerian judiciary. ⁽²²⁾

2 - Criminal danger: The measure of judicial custody in a psychiatric institution shall not be imposed on a mentally ill criminal unless he has a criminal danger. The custody does not aim to treat the criminal in order to eliminate his illness except within the limits of confronting his danger and nullifying the effect. ⁽²³⁾ The Algerian legislator has stipulated in Article 311 of the Criminal Procedures, which states: "If the accused is exempted from punishment or acquitted, he shall be released immediately unless he is imprisoned for another reason, without prejudice to the application of any appropriate security measure decided by the court." ⁽²⁴⁾

So if a person is exempted by the court or acquitted of something. However, the precautionary measure is applied to that person, as that person represents a criminal risk, despite his innocence or pardon for any reason.

1.4.7. Legal Adaptation of Precautionary Measures

Jurists differed among themselves in adapting the precautionary measure, some of them said that it is a criminal penalty and some of them do not consider it a criminal penalty, and to clarify whether it is a criminal penalty or not, we must clarify this as follows:

1. Not considering the precautionary measure a criminal penalty

The proponents of this opinion claim that the penalty is a reaction stipulated in the law, the purpose of which is to stop the violation of the law and expresses voluntary behavior directly, so the danger for them is not a reality, but rather the danger is a characteristic, and it is possible that the will is present in one way or another indirectly, and the precautionary measure does not take the form of a deterrent because it is a preventive measure and does not express the idea of pain, and based on this, the precautionary measure is considered far from the penalty in the view of this group.

2. The precautionary measure is a criminal penalty

The other group of jurists criticized the first group by saying that the previous opinion came with a narrow concept of the precautionary measure because it considers the criminal penalty to be nothing more than a punishment imposed on the offender.

As for the new concept in criminal law, it has expanded its concept of the penalty because it divided the penalty into two parts: the penalty that deters the offender, and the other penalty that reforms the offender, and also the protective penalty that accompanies the offender. With this concept, it becomes clear that the penalty is either a penalty or a measure. The legal penalty is not limited to the idea of deterrent penalty, but rather it is expandable to include, in addition to that, the idea of preventive or precautionary penalty, which is a penalty that only results from a mistake or sin, but rather based on a criminal danger in order to treat it according to what the state's policy requires in combating crime, and therefore it is necessary to accept the precautionary measure as a form of criminal penalty. ⁽²⁵⁾

The Algerian legislator has adopted this in Article 4 of the Penal Code, which states that "the penalty for crimes is by applying penalties and prevention from them is by taking security measures" ⁽²⁶⁾.

In conclusion, we see that the opinion that considers the precautionary measure as a criminal penalty is the most likely opinion.

1.4.8. As For the Precautionary Measures Specific to the Perpetrator of the Crime of Bribery

The precautionary measures that concern us in this research are the measures that fall on the public employee because he is considered a criminal risk in itself because he is liable at any moment to commit one of the crimes committed during the job and by virtue of the work assigned to him, and it becomes

Constantine Judicial Council, Constantine Court, Office of the Investigating Judge, Fourth Chamber, Public Prosecution No. 242, ²² Investigation No. 69, unpublished (see the research appendix).

Suleiman, Abdullah, "Explanation of the Penal Code, General Section" (Part 2, Criminal Penalty), previous reference, p. 570²³

²⁴ Article 311 of the Algerian Code of Criminal Procedure.

Muhammad, Amin Mustafa, "Criminal Penology, Between Theory and Application" (Dar Al-Jamia Al-Jadida, for Publishing, 1995), p. 20.²⁵ Algerian Penal Code, Article 4, previous source.²⁶

clear to us from the above and after searching all types of precautionary measures stipulated by the Algerian legislator that the Algerian legislator did not stipulate in either the Penal Code or the Law on the Prevention and Combating of Corruption a type of precautionary measures that apply to the public employee, and it is supposed to be considered one of the most important precautionary measures that are legislated because the public employee, by the nature of his work, carries a criminal risk towards crimes committed during the public job such as the crime of bribery and other crimes. Since the precautionary measures are stipulated and specified by law, we cannot fabricate measures and impose them on the public employee or the person charged with a public service unless the law stipulates them.

2. Conclusion

All laws sought to clarify the employee's responsibility and the impact of the criminal judgment on the public employee for the crime of bribery and other crimes. Despite the legal protection of the public employee, this does not mean that he does not bear criminal responsibility when he commits one of the crimes stipulated by law. Disciplinary responsibility also entails disciplinary penalties imposed on him as a result of the criminal judgment. Through this research, I reached several results and recommendations, including:-

3. Results

1. There is a clear similarity in some of the precautionary measures stipulated by the Iraqi and Algerian legislator.
2. The precautionary measures in Algerian law are nothing but a therapeutic means established by the legislator to treat some persons who pose a criminal risk, whether on an ongoing or temporary basis.
3. Confronting the risk must be done in multiple ways because the criminal risk does not have a special form, but rather the forms of criminal risk are multiple.
4. The legislator in the Iraqi and Algerian penal codes established general precautionary measures and did not allocate each crime with a specific measure.

4. Recommendations

1. Criminal liability is one of the most important responsibilities that fall on the public employee or the person charged with a public service. Therefore, there should be no leniency or tolerance with the employee who is subject to that responsibility when he commits any of the crimes stipulated by the Penal Code to preserve public money on the one hand and the honor of the job on the other hand.
2. Spread cultural awareness in the civil service as well as among ordinary individuals.
3. Work on the financial sufficiency of the employee and meeting his living needs through reasonable income so that he does not resort to an illegal way to earn money.
4. In addition to the precautionary measures stipulated in the Iraqi and Algerian Penal Code, focus should be placed on and support for self-control, administrative and popular control.

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