

Right of the accused to be tried within a reasonable period in the Iraqi and comparative criminal legislation

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Abstract

The accused is a person who has the right to describe the accusation. The status of the accused entails that the criminal proceedings shall be taken in the face of the accused person and such proceedings involve an infringement of the freedoms of the accused person by arrest, arrest or search. The longer the time taken for criminal proceedings, the higher the burden on the accused, Reconciliation, whether at the personal level, has been affected by freedom and security, their health at the family and social level, or the professional level. And since criminal procedures aim to reach evidence that would reveal the truth to achieve criminal justice, then it is the state's means to implement its right to punish the perpetrator. However, these criminal procedures should be as necessary to achieve that goal, and these procedures should not take long, because late justice is unfair. On this basis, the accused's right to trial is presented within a reasonable period, and if this right is apparently and primarily determined in the interest of the accused. In reality, however, it fulfills, in addition to the interests of the accused, the interest of society in reaching the truth and achieving justice as quickly as possible without undue delay or delay in a way that harms the accused, society, and criminal justice.

Keywords: Trial within a reasonable time, Right to defense, Criminal justice, Interest of the accused, Criminal procedures, and Rights of the accused.

INTRODUCTION

Importance of the study:

If the law of procedure is concerned with the art of regulating criminal litigation procedures in the interests of the application of the Penal Law, it should not be overlooked an important and fundamental fact that the constitutional legitimacy of the Criminal Procedure Act is based on the protection provided by this law for the rights and freedoms guaranteed by the Constitution, and the Code of Criminal Procedure is of great importance since without it the Penal Code will not apply, so the Code of Criminal Procedure contains a regulation for the constitutional protection of rights and freedoms and within the framework of legality. Constitutionality is based on both the

innocence of the accused and the judicial guarantee in the conduct of criminal proceedings and a fair trial in all its elements.

And if this is the case and it is so, and since the character of the accusation inflicted on the person - at the stage of accusation - which is an intermediate stage between innocence and conviction, it is necessary to take criminal measures against the accused, these procedures require the necessary prejudice to the rights and freedoms of the accused, as is the case in arrest, detention, or Inspection and others, so it becomes important and necessary not to infringe on the rights and freedoms of the accused of a long period - as a human being to the right to describe the accusation - hence the importance of this topic, as it deals with the

study of a right of the accused, which has become today one of the standards of international criminal justice, as access to the truth to achieve Criminal justice should be in a reasonable time and promptly, not in the sense of haste, but in the sense of reasonable and sufficient time without unjustified delay, because delayed justice is closer to injustice.

Research problem

The problem of the study is the lack of explicit constitutional and criminal provisions in some countries, including Iraq, to stipulate the right of the accused to be tried within a reasonable period, and the legislation that provides for this right explicitly or implicitly, the judicial and practical application by the investigation authorities still contradicts the right of the accused In the trial within a reasonable period until we started to have this right in some cases as if it had not been, so the problem of the research is represented on the theoretical level in the legislative aspect, in the absence of an explicit text on this right. At the practical level in the judicial applications of this right, the problem appears to be problematic in practice when there is no legal provision expressly providing for this right, as well as the wide range between the extent to which this right is respected in practice and legally stipulated, i.e. the problem is complex, as the lack of provision on the right of the accused to try within a reasonable period means that the criminal legislator denies a fundamental right of the accused, but if the provision of this right appears to be The problems of its practical application remain, some of which relate to the time range of the right, others to the personal scope when to calculate the reasonable duration and how it is calculated.

Research objectives

The study aims to achieve three main objectives:

First: - The legislator's statement on the need to include an explicit provision in the Law of Criminal Procedure that includes the right of

the accused to stand trial within a reasonable period.

Second: Identify the sanctions arising from violating this right and identify the persons responsible for violating this right.

Third: Support the criminal judiciary and support it in moving forward towards resolving criminal cases within a reasonable period.

Fourth: Determining the nature and subjective nature of the accused's right to trial within a reasonable period.

Fifth: Activating the application of the applicable legal provisions contained in the Iraqi Code of Criminal Procedure No. (23) of 1971 relating to this right.

Research Methodology

The descriptive-analytical approach will be adopted in addition to the comparative approach because the descriptive-analytical approach is consistent with the nature of the subject, as the nature of this right will be described and the relevant legal texts analyzed, as well as extrapolation and analysis of judgments of judicial rulings. The comparative approach between Iraqi criminal legislation and comparative penal legislation will be adopted, To find out the best legislative options available to the Iraqi criminal legislator.

Research Plan

This research will be divided into topics. The first topic is identifying the accused's right to a prompt trial. The second topic will address the scope of the right to a trial within a reasonable time and the penalty for breaching it.

First topic

Identification of the accused's right to be trial within a reasonable time

To examine and study the identification of the accused's right to be tried within a reasonable time, we shall divide this examination into two requirements.

We shall devote the first requirement to clarifying the concept of the accused's right to be trial within a reasonable time and his/her right. The second requirement shall be devoted to examining the interests protected by the right to be trial promptly.

First requirement

The concept of the accused's right to trial within a reasonable period and subjectivity

To clarify the concept of the accused's right to trial within a reasonable and subjective period, we divide this requirement into two sections. We dedicate the first section to studying the concept of the accused's right to trial within a reasonable period, and the second section will be devoted to a subjective study of the accused's right to trial within a reasonable period.

First section

The concept of the accused's right to trial within a reasonable time

The right of the accused to be tried within a reasonable period was defined as the right to have his case heard in a short time that does not cause any delay that would cause pain or damage to the accused, and that speed in resolving the criminal case does not mean haste, but rather the resolution of the criminal case and the trial of the accused within a reasonable period consistent with Or it is compatible with the nature of the criminal case and its procedures, and to the extent necessary and necessary to reach criminal justice without the accused being harmed by it .

As ((Every accused of a crime shall enjoy, during the examination of his case, on full equal, the following minimum guarantees... (C) to be tried without undue delay)) .

The right to be tried within a reasonable time, or to be tried expeditiously, does not mean that the trial is conducted expeditiously or those criminal proceedings are taken at any stage of the criminal proceedings hurriedly, because this harms criminal justice, violates society's rights to truth, and the right to defense of the accused. Criminal proceedings are intended to take place

at all stages of criminal proceedings, considering that these stages are complementary to each other - the investigation and trial stages - reasonably without undue delay, or excessive delay .

As for the period of time that is reasonable and when it begins to be calculated, the difficulty of establishing a specific time criterion covering all penal cases will be discussed later. When a person's moment of accusation is calculated, some consider that it is calculated when a criminal case is initiated by news or complaint, Others consider that the duration should be counted upon arrest and arrest .

In our view, this period should be calculated at the beginning of legal proceedings against the accused, whether such proceedings consist of arrest, stopping, search, or otherwise, as long as such criminal proceedings were taken against the person as an accused in a criminal case. The fact that this characteristic of accusation makes the accused vulnerable to actions that infringe personal freedoms, to the extent necessary in the society's interest in revealing the truth.

Second section

Subjective right of the accused to trial within a reasonable time

To examine the subjectivity of the accused's right to be tried within a reasonable time, we shall deal with the characteristics of this right and then examine the distinction between the accused's right to be tried within a reasonable time and the right to a fair trial, as follows:

First: Characteristics of the accused's right to be tried within a reasonable time.

The most important characteristics of the right to a fair trial are: -

1. It's a human right.

The accused right to be tried within a reasonable period is a human right and the international conventions referred to above have estimated that this right is a human right. Moreover, the constitutions of some States have incorporated this right into the section on rights and freedoms, as is the case in the United

States Constitution and some European constitutions . As long as this right shortens the period in which the person who has been accused is subjected to procedures that severe his freedom, it is also agreed that delayed or slow justice is a kind of injustice .

2. It's a legal right.

Since many international conventions have been enshrined, as well as in national legislation and constitutions, it is a legal right to give it international and national legal protection. However, the majority of Arab constitutions, including the Constitution of the Republic of Iraq in force in 2005, do not contain a provision to ensure this right. This is a shortcoming that must be addressed because it is unacceptable for Iraq to accede to the International Covenant on Civil and Political Rights. s right to be tried within a reasonable time or expeditiously and there is no explicit reference to this in Iraq's Constitution .

3. It is a right established in the accused's interest.

That the right to be tried within a reasonable period is determined by the accused person to whom the defendant is charged. Thus, it is not for the non-accused parties to the criminal proceedings to invoke this right or to invoke a violation. The reason for this is the sensitivity of the accused's position. The accusation stage is an intermediate stage between innocence and conviction, which should not be unduly prolonged or delayed, because the principle of innocence inherent in man necessitates that he be treated as innocent and that his stay in an intermediate stage between innocence and conviction should not belong .

4. It's a social right.

Although the right to be tried within a reasonable period is established in the interests of the accused, it is a social dimension. It provides the accused with the necessary protection of freedom, security, and fairness, while at the same time protecting the accused's family, reducing the impact of the indictment, preventing its dismantlement during the period of the indictment, thereby preventing society

from having an opportunity to achieve justice, deterrence, and reintegration .

Second: The accused right to a trial shall be distinguished within a reasonable time and shall be distinguished from the accused right to a fair trial and the right to self-defense.

The concept of a fair trial is governed by a set of rules of principle, the content of which reflects a fully-fledged system that envisages the basis for safeguarding human dignity and fundamental rights and prevents by guarantees the use of punishment for its purposes, based on the civilized nations' belief in the inviolability of privacy and the severity of restrictions on personal freedom which the Constitution considers inherent in the human person. The right to a fair trial cannot be interpreted narrowly and a fair trial is more necessary in criminal proceedings, regardless of the nature of the offense and irrespective of the gravity of the offense. On the other hand, the conviction of the accused of the crime has been subjected to the most serious restrictions on his liberty and the most serious threat to the right to life, which can only be prevented in the light of effective guarantees that balance the individual's right to liberty with the right of the group to defend its interests .

A fair or equitable trial is therefore one that guarantees the accused's rights and freedoms in accordance with the constitutional legality of the Code of Criminal Procedure as the law regulating constitutional protection of rights and freedoms, which protects the rights and freedoms guaranteed by the Constitution .

The defendant's right to be tried within a reasonable time is therefore not a part or element of a fair trial, but a self-contained right with its autonomy. On this basis, many constitutions and legislation have provided for this right as well as the right to a fair trial .

As for the distinction between the right to be tried within a reasonable time and the right to defense, it is that the right of the defense requires that the criminal case take sufficient time to discuss it, to enable the accused to defend himself by requiring the court to hear and hear the witnesses he presents to the court,

and to discuss aspects of his defense , This may sometimes be accompanied by the interruption or delay of criminal proceedings and it may seem prima facie that respect for all such proceedings is incompatible with the right to a speedy trial, but the truth is otherwise, there does not impede speeding up criminal proceedings and speedy completion of the trial, as well as ensuring respect for the fundamental principles of the right to defense.

If the right to a trial within a reasonable period is of its nature, it does not conflict or intersect with the accused's right to a fair trial and the right to defend himself but rather complements each other. If at the outset, the right to be tried within a reasonable period requires the prompt appearance of the accused before the competent judge, such habeas corpus achieves basic objectives, the foremost of which is to assess whether there is sufficient evidence to arrest the accused and to assess whether the continued arrest of the accused before trial is necessary or not, and to ensure the proper treatment of the accused, as well as to prevent the violation of the accused's fundamental rights, In addition, the right of habeas corpus before the competent judge usually provides his first opportunity to challenge the lawfulness of his detention and to secure his release if his arrest or detention has taken place in violation of rights. The American Commission on Human Rights has been of the view that failure to formally inform the court of a person's detention or delay in reporting it is incompatible with the right of the accused to be brought before the competent judge .

The Human Rights Committee also found that the fact that the accused was not brought before a judge for a full week after his arrest was incompatible with an article (9/3) of the International Covenant . and the European Court has also decided that the detention of a person for four days before a judge constitutes a violation of the accused's right to be brought promptly before the competent judge and the American Commission on Human Rights has determined that the person must appear before the competent judge as soon as practicable and the delay is inadmissible .

Second requirement

Interests are protected by the accused's right to be tried within a reasonable time

The essence of our study in this requirement is to answer the following question: What interests are protected by determining the accused's right to be tried within a reasonable time?

If the essence of the right is the interest protected by law, as the right is a legitimate interest protected by law , what interests are protected by the right of the accused to be tried within a reasonable time, it can be said that, through the principles established by the comparative criminal justice in this regard, there are several fundamental interests of the accused protected by the right to be tried within a reasonable time.

According to the United States Criminal Court, the right to be tried within a reasonable period protects, first and foremost, a person's right to liberty, and a right to security insofar as the right to liberty is intended to prevent a person's prolonged pretrial detention . On the other hand, the right to security refers to the prevention of all violations of the accused during the trial, including adverse effects on his security, employment, and exercise of his private affairs , as well as those effects on the accused's family as a result of the harassment to which he is subjected throughout the trial .

Perhaps the most important interest protected by the right to be tried within a reasonable time is the right to defense ", which constitutes the fundamental guarantee of the accused's full right to self-defense, The trial is prompt and within a reasonable time without undue delay. evidence, especially moral evidence such as testimony, Prolonged trial may affect or lose evidence as if witnesses were influenced or someone died.

The right to be tried within a reasonable time also prevents the accused from being arbitrarily detained for a prolonged period and reduces the accused's fear and anxiety, particularly at the most important stages of the criminal proceedings before and after the indictment.

Moreover, it does not significantly prejudice the accused's right to defend himself .

In this context, the Canadian Criminal Court affirmed that the right to be tried within a reasonable time is aimed at protecting the accused's freedom and security, The right to liberty of the accused is intended to prevent the accused's prolonged detention. The right to security shall protect the safety and privacy of the accused ". and the absence of disturbance in family, social and professional life, the judiciary having asserted that the length of proceedings cannot be prolonged, as this would deprive the accused of the ability to prove his innocence .

Moreover, this right reduces the damage caused to the accused by criminal proceedings and ensures that such proceedings are carried out within a reasonable period. This would lead to the preservation of evidence, enabling witnesses in the incident to recall details of the facts testified, all of which would promote the achievement of criminal justice while ensuring the effectiveness of the criminal system.

Second topic

The scope of the accused's right to be tried within a reasonable time and to be violated

To examine the scope of the accused's right to be tried within a reasonable time and the breach thereof, we divide this examination into two requirements. We devote the first requirement to examining the scope of the accused's right to be tried within a reasonable time. The second requirement will be to study the penalty for the violation of this right.

First requirement

Scope of the accused's right to be tried within a reasonable time

The question arises as to the scope of the accused's right to be tried within a reasonable period and in time. We will therefore address the scope of the right to be tried within a reasonable time in two sections devoting section I to the personal scope of this right. Section II will devote it to examining the scope

of the accused's right to be tried within a reasonable time.

First section

The personal scope of the accused's right to be tried within a reasonable time

Accused in criminal proceedings may be guaranteed during criminal proceedings pending referral to the trial court, and the accused may be detained during criminal proceedings at various stages of the criminal proceedings. the defendant may have already been sentenced in criminal proceedings for a previous offense, for the offense being investigated, i.e. he is being held in custody or imprisonment to serve his conviction for the previous sentence for the offense being investigated; Is the accused's right to be tried within a reasonable time established in the three cases mentioned above? s rights ", or there was a difference between these cases, and thus the accused would be subjected to trial within a reasonable period for one case but not another.

Through tracking and extrapolating jurisprudence in comparative criminal justice, there is a tendency to charge a person and to formally describe an accusation to benefit from this right. However, he considers the mere arrest of the accused during the investigation, whether the person is arrested in flagrante delicto, Or he was arrested after an arrest warrant was issued by a competent authority, in which context the U.S. Supreme Court ruled in a case (Dillingham) that the trial court erred when it excluded from the trial the period from the date of the accused's arrest, until the indictment .

The Canadian judiciary requires that a formal charge be brought in the form of the accused's notification of the charge or an investigation procedure that explicitly indicates the charge, such as the arrest of the accused, provided that the arrest was made based on a warrant of arrest .

The European Court of Human Rights has expanded the meaning of the accusation, not only by requiring the right to trial within a

reasonable period but also by implicit accusation. For example, the police take criminal proceedings relating to search and investigation that benefit a person (accused), arrest a person, ask questions, or take fingerprints.

The mere fact that a particular suspect has been identified as a suspect is sufficient for the right to a trial to arise within a reasonable time and, according to the European Court of Human Rights, the mere fact that the complainant's statements are recorded and witnesses are heard does not gain the status of accused .

It is clear from the foregoing that whether the accused is arrested or released from custody as long as the defendant is charged, in which cases there remains a threatened reconciliation, although the detainee's situation is worse and the longer his psychological, social, and professional condition is damaged . As for the accused arrested in another case, the same statement shall be certified. The convicted person who has been sentenced to imprisonment and imprisonment to serve his sentence appears to be the least at risk of harm, as his place of placement is the place of imprisonment or imprisonment in which he is serving his sentence.

One of the problems worth examining is the difference or change in a person's legal status during criminal proceedings since it happens that one person may be heard as an informant or witness, and after the conduct of criminal proceedings this qualification is changed On this basis, the person's legal status changes from informant or witness to defendant the criminal legislation has not addressed this problem except in article 105 of the French Code of Procedure, which states that no one may be heard as a witness if there is substantial evidence against him or her of the crime for which he or she is to be heard . The reason is to prevent the investigating authorities from deliberately delaying the matter of indictment and to maintain the person's hearing as an informant or witness to deprive him of the guarantees established in the Code of Criminal Procedure for the accused.

Second section

Scope of the accused's right to be tried within a reasonable time

The subject matter of the time frame of the accused's right to be tried within a reasonable period raises several problems, perhaps most notably the difficulty of specifying precisely a certain period as a time criterion if there is a right to respect for the accused's right to be tried within a reasonable time, and if the right is not said to have been violated. This appears to be why the International Covenant on Civil and Political Rights urgently describes prosecution. if so, and inevitably so. So it's difficult to limit a certain length of trial within a reasonable time, On this basis, criminal legislation does not set specific dates for prosecution in criminal proceedings. criminal proceedings ", as fixed dates during which judicial decisions ending in criminal proceedings must be handed down. And even some of the penal legislation that set the dates for indictment like some of the US states. or completion dates of certain criminal proceedings, as in the case of Italian criminal legislation In fact, as a matter of legal guidance, This is evidenced by the fact that these periods have often been exceeded, which has led the European Court to issue decisions rejecting such slowness and delay .

However, it can be said that not every delay in adjudicating a criminal case means a violation of the accused's right to be tried within a reasonable time and that the question is relative since criminal proceedings include summary proceedings, including non-summary proceedings . and this description of the criminal case relates to the offense investigated and for which criminal proceedings are instituted, in the context of the criminal case, whether the offense is a felony, a misdemeanor, and a misdemeanor whether the offense is minor or aggravated. Or if the crime is a violation, therefore, there are simple criminal proceedings in terms of their procedures. and evidence, and there is a criminal case according to its object and the crime being investigated is complex. and thus the circumstances of each criminal case may be said to vary from case to

case, In any event, the matter was subject to the discretion of the court, which had to determine whether or not the period was reasonable. In particular, the assessment of this relates to a legal and factual issue at the same time, The decision is, therefore, subject to the court's supervision of the appellants in terms of the correctness of the reasoning and the adequacy of the cause .

In Iraq's penal legislation, although there is no explicit provision for the right to be tried within a reasonable time, the articles of the Constitution of the Republic of Iraq of 2005 and the provisions of the Iraqi Code of Criminal Procedure No. (23) 1971, it was noted that the Constitutional and Criminal Legislature was careful not to prolong the period of time during which criminal proceedings were instituted, and therefore the article (19/13) The Constitution of Iraq of 2005 stipulates that: "The papers of the preliminary investigation shall be submitted to the competent judge within a period not exceeding 24 hours from the time of the accused's arrest and may be extended only once and for the same period."

It appears that the constitutional legislature in the foregoing text merely submitted the investigative papers to the competent judge within a period not exceeding 24 hours from the time of the accused's arrest. The accused must not be brought before the competent judge for interrogation during this period, which is very important, since the interrogation of the accused by the competent judge is at the forefront of the guarantees of the accused at the investigation stage.

Accordingly, article (123) of the Iraqi Code of Criminal Procedure, No. (23) of 1971, stipulates that: "The investigating judge or the investigator shall interrogate the accused within 24 hours of his presence after having ascertained his personality and informed him of the offense attributed to him. He shall write his statements on them, indicating the evidence he has which he denies, and may re-examine the accused as he deems necessary to bring the truth to light. "

It is clear from the foregoing that the Iraqi criminal legislator was careful to bring the accused and the investigative papers before the competent judge within 24 hours. This indicates that the Iraqi criminal legislator wanted to complete the criminal proceedings in the criminal proceedings at a reasonable time without undue delay or delay, thereby damaging the accused's interests.

This is corroborated by the fact that the Iraqi Criminal Code establishes fixed time limits for the arrest of the accused, which may not be exceeded every time the accused's arrest is extended, and by the fact that the period of detention of the accused cannot exceed one-quarter of the maximum sentence for the offense under investigation, following article (109) of the Code of Criminal Procedure.

The aforementioned text provides that the fate of the accused shall be determined. After the competent judge has been granted discretion to arrest or release the accused on or without his custody, the duration of the arrest shall be limited to fifteen days each time the arrest takes place. Under article 109 of the Code of Criminal Procedure, the accused is subject to a penalty of death and the competent judge does not have the right to release the accused on or without bail in such a case, taking into account the fact that the accused's detention is extended. (a) of the same article, namely, that the period of (15) days shall not be exceeded. Article (109), paragraph (c), of the Code of Criminal Procedure, dealt with the total length of detention, establishing a maximum duration of detention that could not be exceeded by the court, which was one-quarter of the maximum sentence for the offense being investigated, and that the duration of the detention, in any case, should not be increased by six months. If the detention is to be extended beyond the period prescribed by law, then the investigating judge must submit the order extending the accused's arrest to its Assize Court, The Criminal Court, upon receipt of a request for extension authorization to exceed the legally permitted limit, has two options: first, authorization to extend the accused's arrest for an appropriate period, but not exceeding one-quarter of the maximum sentence; and second, it may decide

to release the accused on or without bail. Of course, the criminal court, when examining the request for permission to extend the detention of the accused, must take into account what was stated in paragraph (b) of Article (109), which indicated that the accused may not be released for a crime punishable by death.

It is clear from the above-mentioned statement that the Iraqi criminal legislator aimed to provide for the obligation of the examining magistrate to introduce an order extending the accused's arrest if the period of detention exceeds six months. This objective is to give the criminal court the possibility of monitoring the lawfulness of the continued arrest of the accused and to verify the application of the guarantees of the arrested accused contained in the Constitution and the Code of Criminal Procedure. We, therefore, believe that the criminal court competent to arrest the accused must be authorized when the accused's arrest exceeds six months. Especially since the legislative reason is from the aforementioned and the Iraqi Criminal Legislature's affirmation that the period of detention must in no way exceed one-quarter of the maximum penalty for the offense under investigation is to prevent any undue delay or delay in criminal proceedings and to complete such proceedings within a reasonable time. This is the essence of the accused's right to be tried within a reasonable time.

In conclusion, the determination of the reasonable duration of the trial and the time taken for criminal proceedings depended on the circumstances of each case, and the European Court had established three criteria for assessing the reasonableness of the duration of the time, namely the complexity of the case, the conduct of the accused and the position of the judicial authorities.

As to the criterion of the complexity of the criminal case, the court found that the nature and gravity of the crime, the complexity of its circumstances, the multiple perpetrators, and the multiple charges against them were all reasons that increased the length of time taken by criminal proceedings. Transnational organized crime was more complex than others,

such as drug crimes, human trafficking, money laundering, and the financing of terrorism. In a case involving (723) accused persons charged with (607) charges, the European Court concluded that it was reasonable for criminal proceedings to take (8) years in such a case .

The conduct of the accused, such conduct may lead to prolongation of criminal proceedings, as if it were to repeat requests for postponement and repeated motions or to submit them for periods since the accused must cooperate with criminal justice without affecting his or her right to defense or contribute to his or her conviction .

As for judicial authorities; The European Court of Human Rights found that the Member States should set up their procedural systems in such a way as not to increase the number of cases before the courts the European Court concluded that the increase in criminal proceedings heard by the courts did not justify an infringement of the right to trial within a reasonable period. s mandate in a reasonable time" .

The second requirement

The penalty for breaching the right of the accused to be tried within a reasonable period

The Code of Criminal Procedure does not merely promote judicial regulation of the use of the State's right to punishment, since criminal proceedings are not strictly technical means; they are acts affecting personal liberty and other rights and freedoms in the face of the accused. Since the Code of Criminal Procedure is the reflective mirror of a State's freedoms. Therefore, the procedural organization aims to realize the State's interest in disclosing the truth to establish its right to punishment sacrificing the personal liberty of the accused. Criminal proceedings in the context of criminal litigation conflict with the accused's interest in the interest of the charging authority and one of them may conflict with the public interest in revealing the truth and achieving justice. The Code of Criminal Procedure aimed to balance these interests by proportioning the benefit to the protected interest. The harm to the disputed interest must be balanced between rights and freedoms, which must not be violated under the

pretext of accusation, and the public interest in finding the truth for the sake of justice .

Since the interests protected by the accused's right to be tried within a reasonable period are of paramount importance, it is, therefore, necessary to establish a penalty for the violation of this right, as its violation constitutes a grave breach of the required balance between the rights of the accused and the requirements of the public interest. Since there are no explicit and detailed legal provisions concerning the penalty for violation of this right, it is the judicial principles adopted by the Criminal Court that determine the type and nature of the punishment and which can be determined in two forms: procedural penalty and compensation, which we consider in two sections, as follows:

First section

The procedural punishment for violating the accused's right to trial within a reasonable period

We have already stated that the criminal provisions of the comparative penal legislation did not establish a procedural sanction for violating the accused's right to be tried within a reasonable time, except as provided in the article. (105) of the French Code of Criminal Procedure, which prohibits the investigating judge as well as the fact that, in the event of an investigation, judicial officers and prosecutors must take the statement of a person against whom there is strong evidence that he committed the crime as a witness to deprive him of his right to defense, The real problem with late accusations is to assume that a person is asked as a witness and that person's legal status then reverses to become an accused person. evidence against a person before questioning or investigating him, since he or she may not be requested or appeared as a witness" .

Apart from the provision in the French Code of Criminal Procedure, there are no explicit provisions establishing procedural sanction for violating the accused's right to trial within a reasonable time, but leaving it to the discretion of investigators or the court . In general, the

judiciary in Canada and the United States of America s right to be tried within a reasonable time consists of the loss of the indictment. This means the loss of the indictment, which was the basis for the commencement of the criminal proceedings. s acquittal, since a new indictment may be reissued if the criminal case does not cease for another reason .

A part of the jurisprudence supports this procedural sanction to counter the unwarranted slowness and delay in the proceedings. This is difficult to defend since the accused will be confronted with evidence that has been for a long period and may be difficult for him to confront prosecution witnesses, some of whom may have died or traveled, or to forget the facts that are the subject of the testimony, Which makes the verdict of conviction, if it is issued against the accused, was based on invalid evidence .

There is a trend in Al-Faqah that has criticized this procedural penalty, its promise is severe and maybe in the interest of some perpetrators despite their criminal seriousness.

In the view of the proponents of this trend, it is necessary to distinguish between the nature of the breach of the accused's right to trial within a reasonable time. If it is gross and substantial and affects the right of defense, the penalty for the dismissal of the indictment is appropriate, and if it only increases the length of the accused's arrest, he would prefer to be released as a procedural part of the violation of the accused's right to trial within a reasonable time .

Some United States courts have taken the view that the term of imprisonment upon sentencing should be reduced by a period contrary to the right to a trial within a reasonable period, but the United States Supreme Court has rejected this penalty, it justified her opinion that the idea of reducing the original sentence might call on the court to extend the duration of the original sentence before deducting the period of delay, thereby rendering the penalty in question to no avail .

One of the most significant penalties for the violation of the accused's right to be tried

within a reasonable time is in cases where the cause of the violation is the defense lawyer, the adversary's lawyer, the complainant, or the Public Prosecutor's Office. In the case of a lawyer, he may face deprivation of the profession for a period not exceeding three months, as well as the reduction of lawyer fees in the form of a fine up to (25%) The penalty imposed on the Public Prosecutor's Office is a fine of up to USD 250.

It should be noted that these sanctions are of a criminal nature and are classified as "hearing offenses". A violation of the defendant's right to a trial within a reasonable period by counsel would be to conceal the truth of a witness, to delay the adjudication of the case by making unserious motions, to lie in order to adjourn the proceedings or to perform any conduct that would delay the adjudication of the criminal case .

Second section

Compensation

The European Court of Human Rights went on to determine compensation as a penalty for breach of the accused's right to trial within a reasonable time. The European Court seems to have decided to do so out of respect for Member States' domestic laws The European Court has ruled that if decisions or actions taken by the judiciary or any other authority of the State Party to this Convention are found to be incompatible with its obligations arising from the Convention, and the internal law of that State permitted only partial compensation for the consequences of the decision or the contrary proceeding, The court must award full compensation to the injured party" .

The French Court of Cassation found that the penalty commensurate with the violation of Article (6/1) of the European Convention on Human Rights, was a claim for adequate compensation. In this regard, the French Court of Cassation ruled that if there was a violation of the accused's right to be tried within a reasonable time. Contrary to the reasonable duration of the adjudication of the case provided for in the European Convention on Human Rights, the length of criminal

proceedings does not give rise to invalidity but allows the victim to have recourse to the competent national jurisdiction to claim compensation, or, if necessary, to the European Commission on Human Rights .

Conclusion

Through this research, we reached several results and recommendations, which we mention in turn

First: the results.

The most important results of the search can be summarized as follows:

1. The Iraqi legislature has not explicitly addressed the accused's right to be tried within a reasonable time. s Constitution of 2005, and Iraq's criminal legislation have not explicitly enshrined this right in the Code of Criminal Procedure. International Covenant on Civil Rights and Politics, Iraq was one of the States that had long acceded to the Covenant.

2. Although the accused's right to be tried within a reasonable time is not explicitly stipulated in the Code of Criminal Procedure But there are many legal texts in their essence and substance that implicitly reflect this right, Protecting the interests of the accused, who are at the same time protected by determining the accused's right to be tried within a reasonable time as is the case in extending the detention periods, He extended the appeal against the decisions of the examining magistrate or the trial court, but this was insufficient and did not amount to an explicit provision for the accused's right to be tried within a reasonable time.

3. The accused's right to be tried within a reasonable period was manifestly self-evident, distinguishing him from other rights of the accused including the accused's right to self-defense and the right to a fair trial, However, the defendant's right to be tried within a reasonable time and his characteristics s rights ", does not preclude complementarity between this right and the other rights of the accused, Rather, the defendant's right to be tried within a

reasonable time is the fundamental guarantee of the defendant's full right to self-defense. Moreover, this right prevents the accused from being arbitrarily detained or arrested for a prolonged period. It reduces the fear and anxiety of the accused, prevents any damages to the accused at the psychological, professional, or family level, and prevents the violation of the accused's right to defend himself.

4. The laws expressly establishing the accused's right to be tried within a reasonable time do not explicitly specify the penalty for breach of this right, but judicial applications have established two types of sanctions, a procedural sanction and a delay in compensating for the damage suffered by the accused as a result of the violation of his right to be tried within a reasonable time.

5. The scope of the accused's right to be tried within a reasonable period in terms of persons includes the accused, whether guaranteed or arrested, although in the second case this right is more relevant and important than in the first.

6. All laws explicitly stipulating the accused's right to be tried within a reasonable period have not specified the length of time considered reasonable. However, we found that jurisprudence has established that each criminal case has its circumstances and circumstances, including complexity, including simple ones. Therefore, the reasonableness of the duration of the criminal proceedings. The determination of a criminal case shall be left to the court's discretion following the circumstances and realities of the criminal case.

Second: Recommendations.

The most important recommendations that we believe should be adopted at the level of criminal legislation by the Iraqi criminal legislator or at the practical application level by law enforcement agencies can be summarized as follows:-

1. We call upon the Iraqi Criminal Legislature to explicitly stipulate the accused's right to be tried within a reasonable time,

especially since Iraq has ratified and acceded to the International Covenant on Civil and Political Rights, which guarantees this right.

2. We call upon the Iraqi Criminal Legislator, together with the explicit provision in the Code of Criminal Procedure for the accused's right to be tried within a reasonable time. to determine the penalties for breach of this right. In our view, this penalty is dual, since a procedural penalty for violation of this right is the nullity of all criminal proceedings against the accused and the evidence produced. The latter is regarded as unlawfully obtained evidence, excluded, and not relied upon when sentencing the accused. s right to be tried within a reasonable time by claiming compensation for damage caused by the length of time of the criminal proceedings.

3. We call upon the Iraqi legislator when legislating or amending the new Law on Lawyers, to guarantee Tadibi sanctions against a lawyer who proves evidence of a violation of the defendant's right to trial within a reasonable time.

4. We call upon the Iraqi Criminal Court to hold accountable any of the parties to the criminal proceedings or their lawyers, if they cause a prolonged duration of the proceedings in the criminal proceedings, and at any stage thereof when the delay and delay are caused by misleading and incorrect motions or motions and delays the determination of the criminal proceedings if the lawyer intentionally does so.

5. We call on the Public Prosecutor's Office and the Criminal Courts to monitor the duration of detention, noting in practice that the length of detention in many cases exceeds the duration prescribed by law in the article (109) of the Code of Criminal Procedure, without the investigating judges requesting permission to extend the detention.

6. We call on the Supreme Council of the Judiciary to emphasize to the investigating judges the need to complete the investigation of at least the cases of detainees within the period of detention established by law.

7. We call upon the Federal Court of Cassation, as an appellate and supervisory body monitoring the validity of criminal sentences, to decide that the excess of the detention period to the legally prescribed limit is a serious error of the investigating judge if he does not request permission to extend it from its Assize Court, due to the failure or negligence of the competent judge.

8. Since the accused's request for leave to extend his arrest, submitted by the examining magistrate to its Assize Court for its purpose, is to enable the criminal court to monitor the legality of the criminal proceedings taken against the accused and the reasons for the delay in the investigation, thereby prolonging the length of the accused's arrest, so the request for permission must contain a precise identification of the reasons for the delay, Identification of persons or entities causing delays, whether the parties to the criminal proceedings or the enforcement and enforcement of the law legal action ", or any official or informal entity, to take legal action against it and determine its responsibility.

References

- [1] Ghannam Muhammad Ghannam, The Right of the Accused to a Speedy Trial, Dar Al-Nahda Al-Arabiya, Cairo, 2003.
- [2] Ibrahim Muhammad Al-Dani, The Right to a Fair Trial in the Light of the African Charter on Human and Peoples' Rights in comparison with other international documents, an article published in the Journal of Legal and Economic Sciences, Ain Shams University, first issue, for the year 1996.
- [3] Sherif Sayed Kamel, The Right to Speed of Criminal Procedures, A Comparative Study, Cairo, Dar Al-Nahda Al-Arabiya, 2005.
- [4] Mahmoud Najib Hosni, The Constitution and Criminal Law, Dar Al-Nahda Al-Arabiya, Cairo, 1992.
- [5] Yousry Mahmoud Siam, Judicial Protection of the Accused's Rights. Procedural principles of cassation and supreme constitutionality, Dar Al-Shorouk, Cairo.
- [6] Ahmed Abdul Majeed Al-Desouki, Substantive and procedural protection of human rights in the pre-trial stage, a comparative study, Dar Al-Nahda Al-Arabiya, i, 2007.
- [7] Ahmed Awad Bilal, The rule of excluding evidence obtained by illegal means in criminal procedures, a comparative study, Dar Al-Nahda Al-Arabiya, Cairo, 22nd edition, 2008.
- [8] Ahmed Fathi Sorour, Constitutional Legitimacy and Human Rights in Criminal Procedures, Dar Al-Nahda Al-Arabiya, Cairo, 1993.
- [9] Sana Khalil and others, Human rights in the stages of accusation, investigation and trial, an article published in the National Criminal Journal, Special Issue, Volume Forty, Issue One, Two and Three, 1997.
- [10] Fathia Muhammad Qorari, The Right of the Accused to Trial within a Reasonable Period, A Comparative Study in the Anglo-American and Latin Systems, Kuwaiti Law Journal, Issue Three, Year Thirtieth, 2006.
- [11] Youssef Walanda, Al-Wajeez in the Guarantees of a Fair Trial, Homa House for Printing, Distribution and Publishing, Algeria, 2005.
- [12] Alaa Zaki, The General Theory of Interpreting the Rules of Criminal Law - The Scientific Method - Knowledge Foundation, Alexandria.
- [13] Hossam El-Din Mohamed Ahmed, The Accused's Right to Silence, A Comparative Study, Dar Al-Nahda Al-Arabiya, 3rd Edition, Cairo, 2003.