

CRIMINAL RESPONSIBILITY FOR THE FERRY OF MOSUL SINKING

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ABSTRACT

The Importance of Research and the Reasons for Its Choice

The city of Mosul witnessed a painful disaster on March 21, 2019 that shocked all Iraqis, which is the sinking of a ferry that transports people from the tourist island or the city of games opposite the forest area across the River Tigris, where the number of victims was more than 200; half of this number was rescued and the rest drowned. Most of the victims were women and children.

It has been decided to bring the remiss to justice to receive their punishment for their criminal responsibility for this tragic disaster, which is negligence, recklessness and failure to take the necessary precautions to avoid disaster, since there was an official warning a day before issued by the Ministry of Water Resources that it would release an excessive batch of water from the Mosul Dam and restrict river traffic during the period of rising river levels and the tremendous speed of the flow of its water; and where families were celebrating spring vacation and spending time for fun and excursion with their children on the tourist island.

The tourist city administration has ignored the official warnings and carried four times the number of passengers allowed for the ferry, which is set at a maximum of 50 people, but rod more than 200 people, causing the ferry to overturn and drown more than 100 people.

Keywords: Criminal Responsibility, Ferry, Mosul, Sinking, Crime

INTRODUCTION

The Problem in Question

On March 21, 2019 The famous Iraqi city Mosul witnessed a painful disaster that shocked all Iraqis is the sinking of a ferry that transports people from the tourist island or the city of games off the forest area across the Tigris River, where the number of victims more than 200 was rescued half of this number and the rest drowned, and most of the victims were from The kids got sick.

The Supreme Judicial Council decided to open an urgent investigation regarding this horrific incident, and the Council submitted the investigation of the persons accused of charges of negligence that caused the loss of innocent lives for trial. Subsequently, people demanded the maximum penalties against the remiss who caused this disaster and they considered their crime as 'intentional killing'; while some found that the legal adaptation of this crime in the first place falls within the framework of (manslaughter by negligence, recklessness, lack of precaution; and failure to observe the laws and regulations, official instructions and administrative warnings issued by the competent authorities. Another trend demanded that the incident be adapted in accordance with the provisions of articles 349 and 350 of the Penal Code for drowning crimes as special provisions.

The appeals focused on the need to speed up the investigation and uncover the circumstances of the incident, especially when some influential parties were accused of deliberately cutting the wires of the ferry.

In the light of these different trends in the development of a careful adaptation of this horrific incident and the dispersal of opinions on it while investigations are continuing and no final results have been issued, the problem of research stems from the statement of the closest and most applicable legal adaptation to the facts of the case.

The Purpose of the Research

The research aims to identify the legal details of the sinking of the ferry, to state the opinions that have been expressed regarding the adaptation of the crime, and to link the details of the incident to the legal model that applies to it.

Research Methodology

In this paper we will follow the analytical approach of texts by identifying and analyzing legal texts, and by indicating the legal opinions that have been expressed in connection with them, linking the texts to the practical reality of the incident in order to reach the most likely opinion in adapting this incident.

Adapting the Incident as a Murder of Mistake

Killing is the life-taking of another human being, and by this crime the victim is only a living human being. When the law protects human life, it protects humanity as a whole, no matter if he/she is a national or foreign citizen or a male or female, the mistake is not to take care of the precautionary aspect of committing dangerous types of behavior and not to prevent them from becoming a criminal result. It is not different from premeditated murder, except in the moral side. When the moral element of murder takes the form of criminal intent, it takes form the form of wrong killing the image of wrong- doing.

We will clarify the legal concept of error, the elements of the wrong murder, the images of error, and the extent to which the wrong murder applies to the drowning of the ferry.

The Concept of Error

Criminal legislations differ in principle regarding the principle of putting a legislative definition of error, and in this respect we can distinguish between two doctrines.

Doctrine 1: It overlooked the definition of error. This was left to the interpretative judgment of the jurisprudence and the judiciary. This doctrine did not define the identity of error.

Doctrine 2: It put a definition of error, and perhaps the most recent definition is that set up in the Romanian Penal Code of 1968 in article 19/1, 2, in which it was decided that an act is considered a murder as follows:

1. If he/she had expected his/her action without being met, believed—without any basis – that the result did not happen.
2. If he/she had not expected a result of what he/she while he/she had to and could expect it.

There are other definitions of error, including Garo's definition of being inconsistent with the care that social life requires. As stated in another definition, "any act or willpower that results directly or indirectly from a perpetrator who could avoid it". There is no doubt that error may be a negative act if the abstention has a legal or contractual obligation to intervene and refrain from it, due to negligence or squandering as it could be by a positive act.

Error can be defined as a failure of human conduct when acting with or without willful action that has harmful consequences, and the perpetrator does his/her act willfully, without the intention of achieving the harmful result that occurred, and the lawmaker holds the perpetrator accountable for his/her willful act which involved a wrongful action, without whom the damage would not have been done (Mostafa, 1983).

We can define unintentional criminal error as the trend of will to dangerous behavior, without accepting the criminal result of such behavior while taking care to avoid it. In the past, in most Arab and foreign countries, the jurisprudence and the judiciary defined the mistake as that which the average man would not have made if he/she were in the same place as the perpetrator.

In actual fact, the basis of criminal responsibility for unintended crimes (most likely in jurisprudence) is the protection of rights and funds for which the public interest requires that they be highly protected, whether from waste or liability to waste, without the existence of aesthetic and moral responsibility on the part of the offenders. On the basis that the essence of the error is the fault of the offender recognize the effects of his/ her unilateral act; this insufficiency may take the form of negligence, lack of precaution or violation of the rules and regulations (Najm, 2000).

Elements of the Wrong Murder

Murder requires the existence of the object of the crime, a supposed element- that is a living human being- as well as the physical and moral foundations, which we will explain in turn.

The Object of the Crime

The law protects the human right to life, and there is no difference between life at the beginning and life at the end, nor a term for the situation in which the victim is, whether known or unknown, is a male or female, is happy with his or her life, or a desperate one, regardless of their age, sex, social or vocational status, is a national or a foreign citizen (Husni, 1992).

Human life is therefore the legal interest- that is the criminal protection or *lex loci delictus* of murder. And when the law protects human life, it protects all humanity in an abstract manner in which there is no attack without having the character of a living person.

The Physical Element

The concept the crime's material like criminal conduct, criminal consequence, and the relation of causality between conduct and result.

The Criminal Conduct

There is no difference in activity between targeted killing and abuse, and unintentional killing and abuse. Just as the intentional killing can occur positively with passive behavior, unintentional killing can occur with both. Nor does the means - the instrument of execution - be as material as weapons and tools, may also be moral - although the causal link between moral means and death from an unintentional killing cannot be established, but the difference lies in the moral element (Al- said, 1981).

Murder is governed by three characteristics, and we will clarify each of these characteristics, bearing in mind that the criterion of error is an objective one consisting in the usual person, that is, the person who commits to his actions with an average degree of caution, namely, the absence of criminal intent, and that the fault is solely that of the perpetrator, however scanty the fault is (Khalil, 2000).

Occurrence of Criminal Result

The criminal result is the change that occurs as a result of the criminal conduct, which is represented in this crime by killing a living human being.

Causation between Error and Murder

Causality means that a criminal result can be attributed to a person in material terms, and causation is a fundamental element in all crimes, whether they are intentional or an intentional, and that the punishment of the person must be the result of the perpetrator's conduct. So, there must be a causal link between the perpetrator's conduct and the death of victim, without which there is no reason for punishing the accused. Hence, the proof of this link must be existent to show that the perpetrator's conduct had the effect of the criminal result. The causal relationship is an essential element in the non-intentional killing and the wrong injury, without which he/she is not responsible for either of these crimes. The Egyptian Court of Cassation has expressed the importance of causality, saying that the causation association is considered an element in the wrong murder; the mistake should be related to killing as that between the cause and the effect, so that it is not thought that killing should happen without this mistake, so there must be a causal relationship between the perpetrator's mistake and the death of the victim, then the perpetrators can be held accountable for his/her deed; without this relationship the perpetrator is not held accountable or punished. And for determining the accused's responsibility for unintentional killing, the causal relationship between the wrongdoing and the criminal consequence must be established, in this respect, the death (Obaid, 1983).

It is not enough for the offense of murder or accidental injury to prove that a wrong activity has occurred on the part of the accused, and that this activity is followed by the death, injury or harm of a human being as mentioned earlier; rather there must be a causal relationship between the wrong act and the result. The wrong doer's activity must be the cause of the result (it is the main factor driving other factors that have ended up with death or injury) (Al-Mirsafawi).

It should be noted that the Iraqi judiciary's position on the crimes of error is that the trial court must prove its fault attributed to the accused as the conviction for a crime (wrong killing) is correct, since the mistake is its moral concern, and the mistake that the court deduces does not require that it be described in one of the descriptions in article 35 of the punishment law. It is sufficient that the sentence contain a statement of wrongdoing by the accused.

For example: "It suffices that the verdict state that if the accused leaves his/her car on the street side overnight without putting the backlights of the car on, or doesn't put a signal behind the car indicating its existence, he/she will be responsible for the wrong murder resulting from the collision of another car passing on the street with his/her car and the death of its driver."

It should therefore be noted that the description of the accused's act as a mistake is a legal adaptation. It follows from this that the Iraqi Court of Arbitration has the control of the court of law in terms of extracting and stating of the elements of the mistake illustrated

The Moral Element

The wrong murder is a non-intentional crime in the sense that the general criminal intent required for intentional crimes is not met, and the general criminal intent is the will to commit the crime knowing its legally required elements. The will of the perpetrator to commit the material act goes without the intention of achieving any specific criminal status or arrangement to harm prohibited and punished by law. The perpetrator wants to commit the act without result, while perpetrators of intentional crimes want to commit the act and achieve its prohibited result. In other words, the moral element of this type of crime is the will of the act, which is unintentionally set out in a general or special criminal way (Obaid, 1985).

Images of an Error

Legislators stated that certain forms of error, which are not required to occur in a combination, but only one of them can meet all the elements of error, as the Iraqi legislator mentioned the wrong images in article 35, which defines the unintentional crime as: "The offense is nonintentional if the criminal result is caused by the wrongdoing whether it is negligence, recklessness, inattention, unpreparedness or non-observance of laws, regulations and orders."

The view was expressed that these images were included, but not limited to the fact that, in his/her conviction, a judge was required to prove the existence of one of the forms of error provided for by the law (Ismael, 1950).

The most likely view is that the legislator did not mention all the wrong images but his/her statement of the images were mentioned for the sake of clarification and mentioned the most verified of them in the work (Sorour, 1991). Anyhow, the dispute between the legislators has no practical value, as the images mentioned by the legislator are general and comprehensive, encompassing all the wrong images.

Although the statements used by the legislator to express error differ, they are all meant to show an error in one of its images. And no matter how many images of error there are, they are always a unified idea with the same elements or components. The crux of the error is that the will of moral activity is at risk of occurring a result that the law will punish, either due to the perpetrator's carelessness that prevented him from realizing this danger, or his/her insensitiveness to what he had to do to prevent the risk of becoming a *fait accompli* (Abu-Amer & Abdul-Moneim, 1998). It follows from this that it is sufficient to convict the accused to show the court that a misstatement was made on his/her side, as long as that image is sufficient in itself to cause the crime to occur.

The Extent to which the Provisions of the Wrong Murder Apply to the Drowning Incident of the Ferry

There are many provisions of the wrong murder that may apply to the drowning incident of the ferry. Some of these include:

1. One idea "war, indicated that the provision of article 411 of the Penal Code can be applied to the drowning of the ferry, which states that anyone who has killed a person wrongly or unintentionally caused his/her death due to negligence, recklessness, inattention, incautiousness', or failure to observe laws, regulations and orders, shall be punished by imprisonment and fine or by one of these penalties."
2. The penalty of imprisonment shall be for a term of not less than one year and a fine not less than 250000 dinars and not more than one million dinars, or one of these penalties. If the offense is committed as a result of the offender's serious breach of his/her duties, fundamentalities of his/her job, profession or trade, or was under the influence of alcohol or a anesthetic at the time of the fault that resulted in the accident, or shirked form helping the casualty at the time of the incident, or refrained from seeking assistance while he/she was able to.
3. The penalty shall be imprisonment for a term of not less than three years if the death of three or more persons arises from the offense. If, however, another circumstance were available besides those mentioned in the preceding paragraph, the penalty shall be imprisonment for a term not exceeding seven years.

According to legislators, the last part of article (3) above should apply since the criminal conduct has resulted in the death of more than 100 persons, and that the crime was the result of a serious breach; the criminal conduct in the event, in their view, is negligence, recklessness and failure to take the necessary precautions to avoid such a disaster. It is worth mentioning that the Ministry of Water Resources had a day before issued an official warning that it would released an extra batch of water from the Mosul dam and restrict river traffic during that period due to the rise of the river levels and the huge speed in the flow of water. As

families were celebrating the spring holiday and spending time with their children on the island, the City of Tourism Administration ignored the official warnings and had ridden four times the permitted number which was fifty persons' as maximum. However, it had ridden more than 200 persons, causing the ferry to overturn and drowning more than 100 people. Tremendous carelessness was certain in using the ferry despite the official warning issued by the Ministry of Water Resources against river navigation during the period of water release from Mosul Dam towards river Tigris and loading the ferry four times its planned carrying capacity of 50 people, as well as with the lack of rescue precautions and endangering the lives of people.

The jurists affirm that criminal offenses due to carelessness and recklessness fall into two types: Intentional crimes with criminal intent (knowledge) and (will), non-intentional crimes (killing by mistake) without the existence of the moral element (knowledge) and (will), since the will of the offender had no role in the crime. This was beyond the will of the perpetrator (or the perpetrators) and was indirectly caused by negligence, indifference, carelessness and recklessness. Thus it takes the character of (misdemeanor) and not (felony).

There are those who demand to increase the punishment if the death of more than three persons arises from negligence and carelessness, as happened in Egypt and other Arab countries. And the collision of trains, drowning of ferries, collapse of buildings and other catastrophic events, appeals and demands were intensified for amendment of the penal codes to tighten penalties against offenders whose flagrant carelessness and negligence cause catastrophes causing the death of large numbers of innocent people.

In our view, supposing that the crime was not intentional and that there was no possible intent as would be decided by the judiciary as a result of criminal investigations, the provisions of article 411 apply to all murders except for those whose provisions are set out in a special provision, and since the offenses of drowning are special provisions, the provisions of article 411 could not be applied in all three items in accordance with the legal rule known as that the special text restricts the general text.

Adaptation of the Incident as a Drowning Crime

In addition to the provisions on murder and manslaughter contained in articles 405, 406 and 411 of the Penal Code contains other provisions that apply to special forms of murder and manslaughter, the Penal Code and in case their provisions apply to the case in question, they will be the plausible legal adaptation to the case of the ferry because the special text restricts the general one. Of these crimes the articles 349 and 350 of the Penal Code apply to crimes of drowning.

We will try in this regard to identify the legal significance of the crimes of drowning and then point out the applicability of drowning crimes to the incident of the drowning of the ferry.

The Meaning of the Offense of Drowning

The Iraqi legislator dealt with this crime in its intentional and wrong forms in articles 349 and 350; article 349 of which stipulates that: "Anyone who deliberately creates a drowning that endangers the lives or property of people shall be punished by imprisonment for a term not exceeding 15 years. The penalty is capital punishment of life imprisonment if the drowning caused death of a person. The penalty shall be life imprisonment or a term of imprisonment if drowning led serious damage to the funds."

Hence, the crime of drowning is done in its deliberate image, which some believe is true that the last part of it applies, as drowning has led to the drowning of hundreds of people.

The offense in its unintentional form is set forth in article 350 of the Penal Code, which stipulates that:

- (1) "Anyone who, by mistake causes a drowning that endangers the lives or property of people shall be punished by imprisonment and a fine or by one of these penalties.
- (2) The penalty shall be imprisonment for a term not exceeding seven years or imprisonment if the drowning results in getting a public utility out of order, or it caused damage to the funds.
- (3) The penalty shall be imprisonment for a term not exceeding ten years if the crime results in the death of a human being.

Some consider that article (3) above applies to the incident in question regarding that it was a crime of drowning and was not intentional, but it is linked to an aggravating circumstance represented in the death of human beings.

The Extent to which the Provisions of the Offense of Drowning Apply to the Drowning of the Ferry

Some argued that the legal adaptation of the incident was a crime of drowning according to article 349 and that the penalty for drowning the ferry in the waters of the River Tigris in Mosul, would be between capital punishment and life imprisonment. The punishment would be capital punishment if there were terrorist motives behind the incident. They confirmed that the Iraqi Penal Code in article 349 and 350 made a difference between whether the drowning had led to death deliberately or not; and if the perpetrator was deliberate, his/her sentence would be between life imprisonment and capital punishment.

If the perpetrator is not intentional according to Article 350, the penalty will be 10 years imprisonment. And "those who are responsible for the ferry drowning are the manager of the island, the ticket seller, and the investor. The investigation will reveal the circumstances of the accident, as the head of the Council of Justice opened an investigation into the subject. This will prove the incident's responsibility in addition to the ticket seller's knowledge about the number of people allowed to mount the ferry, and the knowledge of those responsible for the ferry about the ferry serviceability and safety." Besides, "the will court delegate a boat and ferry expert to reveal will if the ferry was competent to carry the number of people who have drowned in the River Tigris, and the nature of the technical issues regarding disorders". But, it should be emphasized that this adaptation applies to the current incident. But, if the court finds that the act is masterfully motivated by terrorism, the legal adaptation will be replaced by the capital punishment (4) Terrorism Act.

Some asserted that "if the court finds that there are outside partners in the incident, they will be charged alike and will get the same punishment as that of the original perpetrator, in accordance with articles 47, 48, and 49 of the Penal Code."

In our view, the present data and preliminary results show that what is invariable in the current case includes negligence, unwariness, disregard for the laws and regulations, all of which are wrong acts. But we shouldn't neglect article 34 (B) of the Penal Code that stipulates that: "the crime is intentional if the criminal intent is available to its perpetrators". The crime is also intentional: ... B- "if the perpetrator expects criminal consequences when doing so, but he/she risked their occurrence." And since there was an official warning issued one day ago by the Ministry of Water rebase Resources that it would release an extra batch of water from Mosul Dam and would restrict the river traffic during the period of the rise of the river levels and the huge speed of the flow of water; yet the tourism city administration had ignored the official warnings and did not restrict river navigation and went on operating the ferry.

The administration of the tourism city had even quadrupled the allowed number to rid the ferry which was only 50 people. Yet it rode more than 200 people which led to the ferry overturn and drowning of more than 100 people. In the light of the aforementioned information, according to the parameters established, the ferry operators should have expected the result and sinking of the ferry. They nevertheless continued and accepted the risk of operating the ferry at a time of high water levels. They risked the lives of people and rode the ferry many times as many, so the possible intent is achieved, which is equal to the direct intent of the last part of the article 349 of the Penal Code, which states that: "The penalty is the capital punishment or

life imprisonment if it results in death of a human being", being an intentional crime not a crime of mistake, for the possible intent to exist, and because it has claimed the lives of more than 100 people.

If the story of willful wire-cutting is proved during the investigation, the direct intent of committing the crime provided in article 349 of the Iraqi Penal Code is available, and if the claim is proved to be true, the motive behind this crime is terrorist. The provisions of article 4 of the Anti-Terrorism Act will apply to this incident, and this is left to the Court of Cassation in the light of the results of investigations that we hope will be completed quickly, accurately and impartially and will reveal the truth to the public opinion, in a way that would lead to redress for victims and their relatives from all the perpetrators.

FINAL

After we finished our research on the legal adaptation of the accident of the sinking of the Mosul ferry, the tragic accident in which more than 100 martyrs were drowned and the injured were rescued. We have reached a series of conclusions and recommendations.

CONCLUSIONS

The legal opinions differed on the incident of the drowning of the ferry, as some jurists called for the necessity of punishing the remiss according to the provisions of article 411 of the Penal Code as a murder of mistake.

As earlier mentioned, on the supposition that the crime was not intentional and that there was no possible intent according to what the judiciary might decide as a result of criminal investigations, the provisions of article 411 applied to all murders except for those whose provisions were set forth in a special provision. And since the offenses of drowning had special provisions, the provisions of article 411 could not be applied in all three paragraphs, in accordance with the legal rule that states that the special text restricts the general rule. Some other jurists called for the application of the provisions of the Penal Code relating to offenses of drowning in accordance with articles 349 and 350 of it. Some argued that it was article 350, paragraph (3) that applied.

According to some other jurists' view, which we support, they believe that the last part of article 349 of the Penal Code applies, since drowning has led to hundreds of deaths. The provisions of Article 4 of the Anti-Terrorism Act no. 13 of 2005 may be applied if criminal investigations prove that the cause of the incident is terrorist.

RECOMMENDATIONS

We recommend that precision, honesty, neutrality, and audacity be followed in investigations and declaring results and setting them forth to the public opinion as soon as possible and never submit to the influential parties, disclosing all who are involved in the incident. It is as well recommended that penalties be imposed that would match the tremendousness of the crime, taking the civil and criminal claims together. Proper compensations should be paid for victims and their relatives. If the money of those who are found to be involved is insufficient, we call for giving the suitable compensations from the state like those who are harmed by the military mistakes and terrorist crimes.

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