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The role of the public administration in combating trafficking in women in Iraq

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Abstract

The meaning of public administration is devoted to the group of public authorities and bodies present in the state that seek to achieve the public interest, and in this sense the role of the public administration in the issue of combating human trafficking in general and women in particular is devoted to the fact that they are more targets than men in this crime, whether in peace or war or during conflicts In Iraq, and despite the existence of a text to combat this crime in the Penal Code No. 111 of 1969, as amended in effect, as well as the existence of a text in the Constitution of the Republic of Iraq, No. 2005 in effect, no law was issued to combat this crime in 2012, when the law on combating this crime was issued. Human trafficking (No. 28 of 2012) is the result of Iraq's ratification of the International Convention to Combat Human Trafficking and in this law the role of the public administration in facing this crime has emerged, whether in prevention or treatment, as the law stipulates the mechanisms to combat this crime and the methods used by public authorities and the distribution of roles Combating between the federal and regional authorities, as well as imposing penalties on the perpetrators of this crime, both natural and moral persons who committed this crime. Key words: slavery, people smuggling, public authority, the region.

Introduction:

The international and internal community seeks to protect fundamental human rights from crimes that affect his physical freedom. Therefore, we find that many international conventions have provided for the protection of these rights and fall within those rights, the rights of women, as they are part of the universal human rights indivisible, and from that the guidelines indicated With regard to human rights, to the issue of human trafficking, and in addition to that, the international community has always paid special attention to trafficking in women and children for various reasons, as it poses a threat to the individual, family and society, and the waste of human dignity it entails (1) If we dealt with the international agreements concluded for this purpose, we find many It includes the following: The International Agreement for the Prohibition of Traffic in White Slaves of 1904. - The International Convention for the Prohibition of Traffic in White Slaves of 1910, the previous two conventions were amended according to the protocol approved by the United Nations General Assembly in 1948. - The International Convention for the

Prohibition of Traffic in Women and Children of 1921. - The International Convention for the Prohibition of Traffic in Adult Women of 1933. - The International Convention for the Prohibition of Trafficking in Persons for the Purpose of Prostitution of 1949 is considered the most important of all in the scope of the criminalization of trafficking in women - Security Council resolutions on combating trafficking in persons, the latest of which is Resolution 2462 (2019), which emphasized improving efforts and taking decisive measures to identify cases of trafficking in persons. In view of the increase in the crime of trafficking in human beings in general, and women and children in particular, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1986 stipulated that (States Parties shall take all appropriate measures, including legislative ones, to combat all forms of trafficking in women and the exploitation of prostitution of women, it is necessary. In addressing these problems, states should consider the root causes of prostitution of women, whether they result from backwardness, poverty, misuse of drugs, illiteracy, lack of training, education and work opportunities) States party to the convention must provide women with alternatives to prostitution by creating job opportunities for them through a response Consideration, job training, or job assignment programs. (2)

On the other hand, the United Nations General Assembly adopted in 2000 the Protocol supplementing the United Nations Convention against Transnational Organized Crime, or the so-called (Palermo) Protocol. It was specifically designated for women and children. This protocol included a definition of trafficking in persons as ((recruitment or transfer of persons Or transfer them, harbor them, or receive them by means of threat or use of force, or other forms of coercion, kidnapping, fraud, deception, abuse of power, exploitation of a state of vulnerability, or by giving or receiving sums of money or benefits to obtain the consent of a person who has control over another person and includes exploitation as a minimum Exploitation of the prostitution of others or other forms of sexual exploitation, forced labor, forced service, slavery, practices similar to slavery, servitude, or the removal of organs)) (3) On the national level, we find that Iraqi law has criminalized these acts since the issuance of the Iraqi Penal Code No. 111 of 1969, amended in force, which stipulates that ((The provisions of this law shall apply to everyone who was a partner in one of the following crimes sabotage or disruption Means of intelligence, international transportation, and trafficking in women, children, or slaves ...)) (4) Iraq also ratified the Covenant on Civil and Political Rights for the year 1966 by Law No. 193 of 1970, and thus Iraq became internationally obligated to combat this crime, as well as the text of the Constitution of the Republic of Iraq for the year 2005 in force in Chapter Two of it (freedoms) in Paragraph III of Article 37 of it that " Forced labor (forced labor), slavery and slave trade (0 slaves) are prohibited, trafficking in women and children and sex trafficking are prohibited. (5) On the other hand, Iraq ratified in 2007 the Protocol Concerning the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children of 2000 attached to the United Nations Convention against Crime through Patriotism, which greatly contributed to addressing the legislative deficiency, which included the absence of a law to combat human trafficking in addition to the increase in this crime affecting human life, freedom and dignity, so the Iraqi legislator initiated special legislation to combat it, and the Anti-Human Trafficking Law No. 28 of 2012 was actually issued, which was mentioned in its compelling reasons. "For the purpose of combating the crime of human trafficking, limiting its spread and its effects, and punishing the perpetrators of this dangerous act that insults human dignity, and with

the aim of establishing the mechanisms that It guarantees assistance to victims of human trafficking, "and this matter prompted us to discuss the importance of the role placed on the public administration in combating this crime, and through this research we tried to shed light on that by dividing the topic into two topics: The first topic will deal with the strategy of the public administration in combating trafficking in women from With two requests, the first requirement we will address the role of the federal authorities in combating trafficking in women, and the second requirement we will address the role of the Kurdistan Regional Government and the governorates that are not organized in a region to combat this crime.

As for the second topic: We will deal with the punishments imposed by the public administration on the perpetrators of this crime from permissible two requirements: the first requirement we will deal with the penalties imposed by the public administration on a natural person, as for the second requirement we will deal with: the penalties imposed by the public administration on the legal person Then the conclusion with the most important recommendations. research importance // The importance of research is embodied in the issuance of Law No. 28 of 2012, which highlighted the administration's role in combating this crime through the mechanisms contained therein, which highlight the importance of concerted national and international efforts in combating this crime, especially after the terrorist organization ISIS trafficked in Yazidi women and girls and other women and exploited them for various purposes. Research problem // The problem lies in the search for the lack of resources on trafficking in women, as the available resources mostly spoke of human trafficking in general, in addition to the existence of another problem related to criticism of the law for not paying special attention to women and children if they were exposed to trafficking with the weak treatments and penalties contained in it to combat this crime.

The first topic: the strategy of the public administration in combating trafficking in women The Anti-Human Trafficking Law No. 28 of 2012 specified the mechanisms that public authorities and state agencies must use for the purpose of combating that crime. Therefore, we will address this topic in two requests, the first: we will address the role of the federal authorities in combating the crime of trafficking in women. And the provinces that are not organized in a region in combating this crime. The first requirement: the role of the federal authorities in combating the crime of trafficking in women Law No. 28 of 2012 did not contain a specific provision in combating the crime of trafficking in women. Rather, the law provided a general definition of the crime and stipulated that "human trafficking is intended for the purposes of this law to recruit, transport, harbor or receive people, by means of threat or use of force or other forms. Coercion, kidnapping, fraud, deception, abuse of power, giving or receiving sums of money or benefits to obtain the consent of a person who has authority or jurisdiction over another person with the aim of selling them or exploiting them in acts of prostitution, sexual exploitation, forced labor, forced labor, slavery, begging or trading in their organs For human or medical experimental purposes. Second: - The victim means a natural person who has suffered material or moral harm resulting from one of the crimes stipulated in this law. It is noticed on the text that the law included in the definition a natural person and did not mention a specific definition of trafficking in women, as it is a repetition of most of what was mentioned in the definition of human trafficking in the convention. Therefore, we find that the legislator contained a general text that includes the crimes of human trafficking,

including the crime of trafficking in women and girls in the different methods used to attract them. Whether the solicitation is due to threat, kidnapping, coercion, force, or the use of money, and often the solicitation is through the solicitation of honorable work opportunities and high wages, or to work as maids, nannies, dancers, workers in factories, or as models (6) With reference to the role of the federal authorities in Iraq, we find that the constitution of the Republic of Iraq of 2005 in force stipulates in Chapter Three of it that “the federal authorities are both legislative, executive, and judicial authorities, and they exercise their competencies and tasks on the basis of the principle of separation of powers” (7) As for their duties, they are It undertakes the tasks entrusted to it and its role in combating human trafficking is highlighted by seeking through the committee formed under the law for this purpose. The most prominent role here is for the executive authority as it is obligated to form a committee called (the Central Committee to Combat Human Trafficking) and this committee is formed in conjunction with representatives of the regions and governorates Not organized in a region, as well as the ministries and relevant authorities that undertake the achievement of the objectives of the law (8)

It is the responsibility of this committee to implement the tasks stipulated by the law, which include setting up plans and programs to combat the phenomenon of human trafficking and reduce it, while submitting the necessary recommendations to combat human trafficking and following up on their implementation in coordination with the relevant authorities, preparing reports on human trafficking in accordance with relevant international agreements and submitting them to the relevant authorities. Cooperation and coordination with the concerned authorities to assist victims, exchange information and experiences with neighboring countries and specialized international organizations, and propose appropriate measures to assist victims of human trafficking in cooperation with civil society organizations, academic and religious institutions and research centers, with the issuance of an annual report regarding cases of human trafficking and the government's efforts to combat it and seek to join Iraq to International conventions on combating human trafficking (9) It is noted from what was stated in the tasks of the committee that it did not shed light on the issue of combating trafficking in women and did not grant it a specific privacy. It was more appropriate for the legislature to intensify the tasks entrusted to the committee in the event that the victims are women and young girls. On the other hand, we find the limited role assigned to the federal authorities. Emphasis is placed on involving all authorities in dealing with this issue, and the role of the authorities in protecting the rights of trafficked individuals has not been stipulated, as well as protecting them, providing assistance and fairness to them, and taking into account not to arrest them in the event of their entry into the country, transit or residence due to their involvement in illegal activities due to their status as persons. Were trafficked. As for the meetings of the Central Committee to Prevent Human Trafficking, it held a number of meetings and drafted executive instructions that explain the law to facilitate its implementation. The meeting was chaired by the Governor of Baghdad for the purpose of developing a strategy to activate the tasks of the committee formed by the Ministry of Foreign Affairs, Human Rights, Justice, Finance, Social Affairs and Immigration as well as the Human Rights Commission and the government Kurdistan Region (10) It should be noted that no instructions have yet been issued to facilitate the implementation of the law as well as to dissolve the Ministry of Human Rights in Iraq. The second requirement: the role of the Kurdistan Regional Government and the governorates that are not organized in a region in combating this crime. The federal system in the Republic of Iraq consists of a

decentralized capital, regions, governorates, and local administrations (11). The region, according to the constitution of the Republic of Iraq of the year 2005 in force, has the right to exercise legislative, executive, and judicial powers, except for the terms of reference mentioned in it Exclusivity of federal authorities (12)

The role of the Kurdistan Region and the governorates that are not organized in a region is evident in the necessity of forming a subcommittee for combating human trafficking headed by the governor and comprising a representative of the Ministry of Interior with representatives of the ministries from the Ministry of Interior and the rest of the representatives of the ministries and relevant authorities in charge of achieving the objectives of the law and these committees shall submit their proposals and recommendations to the central committee formed according to The provisions of the law are determined by instructions for the dates of the meetings of the Central Committee and the sub-committees in the regions and governorates that are not organized in a region, their quorum and workflow in them. The Kurdistan Regional Government made clear in response to the report issued by the US State Department on human trafficking, noting that it is working seriously to combat any kind of violence practiced Against women and trafficking in women and children, and strict penalties are imposed with regard to the perpetrators of these crimes (13). The regional government has formed, according to the Ministerial Order No. (9386) issued on 5/31/2016, several sub-committees specialized in combating the crime of human trafficking in the governorates of Erbil, Dohuk and Sulaymaniyah as decided upon Judicial Council No. 1748 book on December 15, 2016 Creating a judiciary specialized in human trafficking crimes, please A. The establishment of several divisions to investigate human trafficking cases in the Ministry of the Interior of the region. International organizations of the United Nations also held training courses for community policing in Baghdad and the region to address the crime of trafficking in women. The training took place in Erbil and included senior community police officers, judges, investigators, the director of combating human trafficking and the director Combating violence against women in the Kurdistan Region of Iraq to enhance cooperation in the field of combating human trafficking across borders and calls have been directed towards implementing regional law to exchange best practices throughout the Middle East and North Africa (14) On the other hand, the Parliament in the Kurdistan Region approved the Anti-Human Trafficking Law No. 28 of 2012 on 12/17/2017 (15). As for the unorganized governorates in a region, a project has been implemented that included providing legal representation and social services to victims of trafficking in Baghdad, Basra and the Kurdistan region by the Heartland Alliance, which confirmed through its project that women and girls working in prostitution are exposed to great risks, including Trafficking in them, which requires planning

To protect them and maintain confidentiality and a secure and stable life to ensure that they do not fall victim to trafficking in addition to emphasizing the role of organizations in providing the necessary expertise to deal with women victims of human trafficking and to protect gender-based violence (16) Women victims of trafficking have lost the ability to make their own decisions. In addition to the previous role of the federal authorities and the regional and provincial government, we find that the state departments concerned with helping the victims of human trafficking, taking into account the special needs of children, offer the victims to a specialist doctor to reveal their health condition while providing language assistance and legal advice to them and to non-Iraqi victims and to secure contact

with their families and the necessary protection for them with Maintaining the confidentiality of information related to them, respecting their privacy and preserving their dignity, as well as providing job and training opportunities while providing diplomatic support to non-Iraqi victims to facilitate their return to their countries (17)

The second topic: the penalties imposed on the perpetrators of the crime of human trafficking The law specified the penalties imposed by the public administration on the perpetrators of the crime of trafficking in women, whether these penalties were imposed on natural persons or were imposed on legal persons. Therefore, we will address this topic in two requests:

The first requirement: the penalties imposed on natural persons, while the second requirement we will deal with the penalties imposed on Moral persons. The first requirement: the penalties imposed on natural persons. Most of the criminal jurisprudence holds that the crime of human trafficking is the same in terms of the elements of trade in its traditional form, as it is realized in the presence of trafficked persons (the subject of the crime) and human traffickers (the merchant) and the state in which people are transferred for the purpose of trading (the market) (18) The person responsible for committing this crime is the person who trafficked with women or the mediator, and in most cases he is not alone, but works within organized criminal groups or gangs that fully carry out their work that includes human trafficking, starting from the recruitment, transportation, transportation, harboring, or reception of people from their country of origin to another country. Exchange for money (19) The anti-trafficking law in force listed the penalties imposed on a natural person, including the following:

First: Temporary imprisonment and a fine. As the law stipulated in its fifth article that "First - he shall be punished with temporary imprisonment and a fine of no less than (5,000,000) five million dinars and not exceeding (10,000,000) ten million dinars, whoever commits one of the acts stipulated in Article (20).

Second: - The penalty shall be imprisonment for a period not exceeding (15) fifteen years and a fine not exceeding (10,000,000) ten million dinars for whoever commits the crime of trafficking using one of the following means: _ A- Using any form of coercion, such as extortion, threats, or seizure of travel documents or official documents. B - Using fraudulent methods to deceive or deceive the victims. C- Giving or receiving sums of money or benefits to obtain the approval of those who have authority or guardianship over them. Second: Life imprisonment and a fine. This penalty is mentioned in the text of Article 6 of the law which states, "Anyone who commits the crime of human trafficking shall be punished with life imprisonment and a fine of not less than (15,000,000) fifteen million dinars and not exceeding (25,000,000) twenty five million dinars.

First - If the victim was not (18) eighteen years old.

Second - If the victim is a female or someone with a disability.

Third - If the crime was committed by an organized criminal group or was of an international character.

Fourth - If the crime was committed through kidnapping or torture.

Fifth - If the perpetrator is one of the ascendants of the victim, his descendants, someone who has guardianship over him, or his spouse. **Sixth** - If the victim becomes ill with an incurable disease or permanent disability as a result of trafficking in him. **Seventh** - If the trafficking occurred on several persons or multiple times. **Eighth** - If the trafficking occurred by an employee or person charged with a public service **Ninth** - Exploiting influence or exploiting victims' vulnerabilities or needs. It is noted from the text of the

above article that the legislator equated the punishment imposed on the perpetrator if it occurred on a female or on people with disabilities, and thus equality between the woman and the person with disabilities, as he may be unaware or lose his mind or will, while it was more appropriate for the legislator to surround women with more attention and individuals Of her own, as well as underage girls who are subjected to trafficking.

Third: The penalty of imprisonment with a fine the law has stipulated the penalty of imprisonment with a fine in Article Six, which stipulates that “he shall be punished with imprisonment for a period of no less than (3) three years and a fine of no less than (10,000,000) ten million dinars and not exceeding (20,000,000) twenty million dinars, or one of them: _ First - Establishing or managing an information website for the purpose of human trafficking. Second - Contract a deal related to human trafficking or facilitate that using the information network. Article 8 is the death penalty if the act leads to the death of the victim. Here, we find that the punishment is not proportional to the act, since the legislator in the first part of the article referred to imprisonment with a fine without stipulating that there is an aggravation in the penalty, as the legislator satisfied the penalty of imprisonment with a fine, and it was more appropriate for the legislator to tighten the punishment in the event that the traffickers were women or girls who were minors It requires that the circumstance be aggravating, also we find that the legislator then returned in the second paragraph of it and stipulated the death penalty for the perpetrator if the act led to the death of the victim, and this is a great discrepancy between the two paragraphs of the legal text as it started with a reduced sentence and then it was tightened to death as well. The text did not refer to the state that the crime led to a permanent disability in the trafficker, and it was more appropriate for the legislature to take this into account, and we believe that the death penalty is applied in the event that the victim is women and underage girls or in the event of permanent disability in addition to death. On the other hand, we find that the Iraqi legislator has stipulated the death penalty for the crime of human trafficking after it was suspended due to the issuance of the (dissolved) Coalition Provisional Authority Order No. 7 of 2003 as it was re-enforced with the issuance of Resolution No. 3 of 2004 regarding the reinstatement of the death penalty (21) As well as the issuance of many subsequent penal laws issued after 2003, which stipulated that the death penalty must be enforceable, not suspended, and must be applied. (22)

The second requirement:

the penalties imposed on the legal person The process of drug trafficking is a complex process, as it is carried out outside the eyes of the government, humanitarian organizations or the media by a legal person or a group of brokers who are professing this profession. You do not know that it has been sold and traded until after a period of (23) has passed, and this case is done by a legal person in the body of a company or an organized project that carries out a commercial or economic operation in an integrated manner in all respects. Through organized criminal networks, they choose trafficked victims from countries through which intermediaries operate by offering trafficked human beings. Crime includes the presence of intermediaries whose mission is to receive individuals, receive them and distribute them to various activities. Therefore, we find that the legal person who manages the criminal network (24) works on exploitation since trafficking is a term. It is broader than the smuggling of migrants, although it approaches the same concept, but what distinguishes the two from each other is that trafficking depends on the element of exploitation of trafficked individuals (the commodity), while smuggling is for

migrants It is through global brokers and smuggling networks that have experience in immigration, nationality and residence laws, workers in travel and tourism agencies, and land and sea transport networks. These smugglers do not provide migrants with any security or health guarantees or protection in case they are exposed to danger and their mission ends once the smuggled persons are delivered to the country in which they are. They seek it without continuing to shelter or exploit them, although in some cases the smuggling situation of migrants turns into human trafficking, especially if the migrants are women and children (25) As for the penalties imposed against the legal person when committing the crime of human trafficking, the law stipulated in its ninth article that "First - a fine not less than (5,000,000) five million dinars and not exceeding (25,000,000) twenty five million dinars every legal person who is proven His participation in the crime or he committed the crime in his name or for his account or for his benefit. This does not prejudice the penalty imposed against the authorized director or the person responsible for managing the legal person if it is proven that he participated in the crime. Second - The court may dissolve the legal person, stop its activities permanently or temporarily, or close its headquarters if it is proven that he committed any of the acts stipulated in this law. It is noted that the Iraqi legislator has stipulated the imposition of a financial fine against the legal person, and that this fine does not prevent the imposition of punishment on the authorized director or the person responsible for managing the legal person who is proven to have participated in the crime (26) However, we believe that it was more appropriate for the legislator to raise the passport granted to the judge and included It is permissible to dissolve a legal person, stop his activity permanently or temporarily, or close his headquarters.

Conclusion

At the conclusion of this research we came up with a number of recommendations, as follows:

The need for national and regional cooperation to be implemented in accordance with international conventions, including preparing a legal framework to prevent and combat human trafficking in general, and women and girls in particular, and to stop exploitation resulting from it.

2- Amending the Iraqi Anti-Human Trafficking Law No. 28 of 2012 by stipulating severe penalties for that crime, as the penalties contained therein must be severe and proportionate to the seriousness of the crime.

3- The necessity of amending the text on women and girls, as it is contained within the strict conditions, and the legislator has not devoted a special text to it, such as the text on child protection.

4- The necessity of amending the text on penalties for the legal person from the obligatory to the obligatory, with an emphasis on confiscating the movable and immovable funds to him, as well as imposing the same penalties on the authorized director, and that the punishment is severe if the crime is related to women and children.

5- It is necessary to emphasize the provision of protection to trafficked persons through the guarantee of the law to protect them, as women in all cases of trafficking in them are victims, so it is necessary to prevent their detention or punish them and protect them against deportation in the event the victim is a foreigner, especially if the deportation causes a danger to the security of the trafficked woman Or her family.

6- Providing legal protection for trafficked women who collaborate voluntarily with the competent authorities for the purpose of uncovering brokers or companies that work on human trafficking.

7 - The need to stipulate in Iraqi law the civil rights of trafficked persons, especially women, by ensuring that they receive compensation, as well as the existence of legal provisions to protect witnesses in these crimes.

8- The need to provide a database related to trafficked women on the basis of age, ethnicity, and all other relevant features, especially after the attacks carried out by ISIS.

9- Supporting research on the crime of human trafficking and emphasizing the increase in research on crimes that women are exposed to through trafficking.

10- Emphasizing the role of civil society organizations in combating trafficking in women, which includes standing side by side with the administrative authorities in Iraq.

11- The need to provide job opportunities and guarantee the right to a decent life for individuals and women, especially at all levels of education, as eliminating unemployment is the most important government treatment for eliminating this crime that drives an individual to seek work to ensure a decent life, regardless of the different ways to achieve this.

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