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CRIMINAL POLICY IN THE FACE OF IMPEDING GOVERNMENT DEBT COLLECTION (A COMPARATIVE STUDY)

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ABSTRACT:
It is the area of government debt collection that demonstrates the importance of diversity in traditional and contemporary criminal policy concepts. The collection of these debts by debtors represents an effective model of restorative justice. The civil, criminal and administrative procedural means that the administration undertakes a large part of its procedures, such as settlement and reconciliation, have a great impact in facilitating debtors to face their actions and fulfill their debts with minimal resources and public expenditures, thus avoiding the penalties of deprivation of liberty.

Keywords: Government Debt, Fraud, Torts, Restorative Justice.

1. INTRODUCTION.

Government debt is an essential financial resource and part of a country's financial and economic policy and an important factor on which its public utilities depend to advance development and achieve economic and social development. It is the financial counterpart of the dealers with the State, which individuals are delayed to pay until it becomes a debt with which it must be fulfilled when it is satisfactory or compulsory, under the amended Iraqi Government Debt Collection Act No. 56 of 1977, which is not easily anticipated, leading them to employ quirky methods with a view to shedding the creditor's public authorities from having the material means to meet their debts, thereby increasing the collection burden, as a result of fraud and fraud. This requires a flexible and sophisticated criminal plan that will protect the supreme interest as an effective criminal policy, in line with the evolution of the criminal phenomenon and ways to combat it.

2. Study Importance.

The importance of the study is to highlight the importance of debt in promoting the State as an essential part of its fiscal policy, on the one hand, and the diversity of debtors' fraud on the State and debt evasion, as a result of weak non-criminal regulation in its collection. The study's importance is also to highlight the procedural system used to collect this debt in order to create an effective procedural system.

3. Study Problem.

The topic of the study raises a number of questions, most notably, the extent to which the Iraqi legislature pursues an objective and integrated criminal policy to counter the criminal behaviour of debtors of government debt, and what are the most significant criminal acts committed by such debtors in order to create a disruption to the collection of such debts? What is the impact of contemporary criminal procedural policy on public budget singing and impact?

4. Study Scope.

The scope and limits of our study are determined by the study of manifestations of the criminal conduct of debtors of the State religion, consisting of criminal dysfunction. The means to confront them at the level of all Iraqi legislation and any State can benefit from its legal regulation to build an effective Iraqi criminal policy.

5. Study Methodology.

In this study, we have followed the analytical approach to the study and analysis of various legal texts and court decisions in line with the objectives of traditional and contemporary criminal policy, and the comparative approach for the purpose of taking note of the study's topic in all its theoretical and applied aspects, and to make use of different experiences leading to an effective criminal policy and keeping pace with the developments and complexities of life.

6. Financial Fraud Offences to the Detriment of Creditors.

Offences of financial fraud against creditors are a term used by Jordanian criminal legislation for the debtor's range of criminal acts, with a view to depriving creditors of their debts. The Jordanian legislature did not confine itself to such an offence, but also criminalized acts of money smuggling caused by, or causing, the donation, discharge or encumbrance of funds, or the sale or transfer of any part of its funds, prior to its execution (Ashour, A.J., Wahab, H.A. 2016). Also, the Saudi legislator in the Implementation Bill for 2021 in article 50 and Bahraini legislator in article 58 of the Implementation Law in Civil and Commercial Resources No. 22 for 2021. In Iraq and Morocco, as follows:

6.1. Offences of Financial Fraud Detrimental to Creditors in Morocco.

The Moroccan legislator did not explicitly refer to the term "financial fraud" in the Public Debt Collection Code, but referred in article 84 to the insolvency act. However, by reference to the tax debt pot, the Moroccan legislator has regulated the offence of tax fraud and hardship offences through fraud and forgery in numerous legislation Morocco's jurisprudence and judiciary have led it to be interpreted broadly in accordance with its flexible nature as an effective tool to combat all manifestations of tax fraud (Amin Mustafa Muhammad, 2012).

This article demonstrated an effective weapon in regulating the provisions of the criminal liability of debtors and in the decisions of the Moroccan Court of Cassation, "The defendant did not, despite all the loving (consensual) endeavours, give effect but was surprised by the fraudulent act of the debtor in order to deprive the State treasury of its debts by losing its share in the king" (Ashour, A.J. 2021). This article finds its criminal basis in articles 525-526 of the Moroccan Criminal Code, giving priority in application to the Code of Collection of Criminal Law; Consistent with the trend of reducing punishment within the scope of economic crimes in line with contemporary substantive criminal policy (Fatima Al-Zahraa Ferm, 2022).

6.2. Financial Fraud Offences Detrimental to Creditors in Iraq.

The Iraqi legislator has not regulated any criminal policy on the protection of the Government against the debtor's manipulation and damage in the Collection Act, except as referred to in article 13 thereof, concerning the debtor's prolonged detention. However, by reference to the rest of the articles, article 8 contains the term "concealment" or "smuggling", without reference to any criminal regulation of the act of concealment, smuggling or criminal responsibility (Muhammad Saeed Namour, 2010).

However, as mentioned in the comparative laws, the legal model of debt protection financial fraud in accordance with the theory of such legislation is forgery and fraud committed by the debtor in order to conceal the debtor's assets and remove them from collection. Although the offences of forgery and fraud are different offences under the Criminal Code, each has its own elements and legal model; on the contrary, however, in the area of debt and financial right abuse (Belkacem Souiqat, 2020).

The two crimes share the element of changing the truth by using the means of deception, which consist of lying and changing the reality, in order to induce the victim to hand over the money as in the case of "the perpetrator to fill the advances' pledges in order to obtain a loan by making false statements using fraudulent methods" reflecting a state of interdependence and convergence between the two crimes. Taxes and duties reflect the most prominent example of fraud, criminal liability, contribution and declaration provisions, as in tax and customs laws (Ashour, A.J. 2018).

As well as cases of evasion of the merchant's tax and fee debts, by alleging fraudulent bankruptcy. Although the Iraqi legislature has regulated the provisions of fraud and fraud offences in the Penal Code, we find them to be inadequate and insufficient to protect the State's right to access its funds because they are a fraudulent criminal policy. The Iraqi legislator, at the very least, should have gone through comparative legislation to avoid obstructing administrative work (Ahmed Khalaf Hassan Al-Dakhil, 2023).

7. Effectiveness of Restorative Justice in the Collection of the Debtor's Government Debt.

The legislator's procedural means is to realize his criminal philosophy of criminal prosecution as a traditional procedural policy, which in practice has proved ineffective in providing the desired protection from criminal policy. The slow resolution of criminal proceedings is one of today's practical problems, which has prompted many States to find alternative means of speedy, easy and less complex proceedings, with the greatest interest in dealing with the damage caused by the crime (Abdul Mawla Al Maseed, 2021).

Until what is known as the idea of restorative justice adopted by the international community was reached. It is the most effective means of avoiding the complexities of civil "Compensation" and criminal "Criminal Deterrence" litigation resulting from the debtor's act. We are a strong proponent of traditional criminal justice for its great role in injustice and deterrence (Ashour, A.J. 2019). "The security of punishment is misrepresented", but this is very different from the scope of debt collection, where the procedural incidence of punishment is incompatible with the intent to collect government debt, and with the trend of maintaining the criminal character of conduct in terms of its need as a social reaction rather than a criminal one "Waving cruelty is preferable to its use" (Ashour, A.J., Mashaf, D.A. 2021). Debtors' offences of this scope and their impact on the public purse of public debt need to be prevented rather than punished in a criminal sense and to resort to administrative or civil punishment. Restorative justice is one of the most effective means of avoiding administrative insolvency owing to its expeditious and simple procedures (Jamal Ibrahim Al-Haidari, 2014). The legislation varies in its regulation as follows:

7.1. Effectiveness of Restorative Justice in Collecting Public Debt from the Debtor in Morocco.

Moroccan legislation regulates the provisions of restorative justice in a number of ways: penal reconciliation, the provisions of which are regulated by article 41 of the Code of Criminal Procedure as a means of consent in lieu of public prosecution, executive authority and judicial order for irregularities in articles 375-382 of the Code. Mediation is also an alternative to criminal proceedings aimed at preserving family and community ties between individuals. In the area of crimes against public administration, there were recent trends in Morocco regarding a new approach to restorative justice, namely restorative executive authority (Rajab Ali Hassan, 2019).

Aside from general procedures, the Moroccan legislator in the Collection Law granted the accountant the right to initiate criminal and civil lawsuits in the crime of financial hardship after the approval of his department. It would have been desirable for these procedures to be regulated by the law contained in Draft Alternative Penal Code No. 43.22 of 2024 (Belkacem Souiqat, 2020).

7.2. Effectiveness of Restorative Justice in Collecting Government Debt from the Debtor in Iraq.

In Iraq's legislation, restorative justice takes multiple forms, both in the area of penal and financial legislation. In Morocco's penal legislation, it was not much different from that regulated by Moroccan criminal legislation. The Code of Criminal Procedure defines the waiver of a complaint, a magistrate's system, criminal forgiveness and a criminal order, the provisions of which are regulated in articles 205-211 of the Law on Assets. This means is also a positive approach for achieving or instigating restorative justice, thus avoiding the negative penalties for deprivation of liberty. As for financial laws, although the Collection Act does not refer to any manifestations of restorative justice, the laws governing debt receptacles have regulated important aspects of them. One of the most prominent means included in these laws, such as the system of reconciliation or tax reconciliation (Haqqas Asmaa, 2017).

In the Income and Customs Tax Act, the Baghdad Rasafa Appeal Court held that the judge's power was limited to accepting or rejecting requests made by the executor of justice without the power to impose a settlement. The settlement system was not limited to these laws but also covered by the Enforcement Act in section 42, which allowed the executor to offer the settlement to the debtor, provided that it was compatible with the debtor's financial capacity. Notwithstanding this regulation of restorative justice in Iraqi legislation, we believe that it continues to be characterized by many shortcomings and uncertainties, particularly with Iraq's crisis situation (Abdelhak Kouriti, 2018).

This requires the Iraqi legislature to develop methods of restorative justice that are highly efficient in alleviating the overall criminal justice crisis and in collecting government debt in particular, following the implementation of the Second Amendment Act to the Amnesty Act No. 27 of 2016. In particular, the French legislature's system of criminal settlement is the same(Adel Al Shawi, 2015).

CONCLUSION

First: Results:

We find that there is no clear criminal policy in Iraq regarding the debtors' acts of fraud and fraud that demonstrate the appearance of insolvents that do not have the opportunity to meet their debts either in the laws on government debt or in the criminal laws. Unlike comparative States that have tended to regulate a policy of criminalization and punishment of such acts in the criminal and non-criminal codes. The rules contained in the body of the Penal Code could not confront the debtors' crimes that might occur, given the many problems they encountered.

Second: Recommendations:

1. Amend the text of article 9 of the Government Debt Collection Act No. 56 of 1977 to read: "Those authorized to apply this Act shall have the power to enter into a settlement contract in his favour after the matter has been brought before the Public Prosecutor, together with the debtor who for the first time committed minor offences that do not give rise to serious criminal danger, the damage of which may be remedied away from the penalties imposed for liberty and whose decisions shall be discriminated before the Court of the Financial Court Court."
2. The addition of an article in the Collection Act which reads: "Whoever has appointed a custodian of reserved money, whatever his character, shall commit deliberately and in bad faith whoever is liable to destroy, damage or waste the reserved money, which deprives the State of its debts of such

money or reduces its utility or value; shall be criminally responsible in accordance with the provisions of articles 453 to 459 of the Penal Code ".

3. Amend the text of article 14 of the Law on Collection to read: "The provisions of the Law on Implementation, the Law on Civil Procedure, the Penal Code and the Code of Criminal Procedure shall apply to all those which are not provided for in this Law".

A. Amend article 80 of the Penal Code, No. 111 of 1969 by adding a second paragraph to read: "A person's liquidator shall be liable to a penalty of imprisonment and a fine for offences of embezzlement of liquidation funds. The penalty shall be increased if the embezzlement is in exchange for the fulfilment of the State debt of the person concerned."

B. Amend article 295/1 of the Penal Code to read "The penalty shall be a term of up to five years' imprisonment or a fine of not less than IQD 5 million if these acts have focused on funds for which the State has financial rights."

C. Amend article 296 of the Penal Code and increase the penalty to read: "A term of up to three years' imprisonment and/or a fine of at least 5 million dinars shall be imposed on anyone who is legally responsible.

D. Amendment to the Code of Criminal Procedure No. 23 of 1971 amending the Code of Criminal Procedure by adding a chapter regulating the procedural provisions of the Criminal Settlement System at all levels of legal organization in Iraq along the lines of the French Criminal Settlement System No. 99-515 of 23 June 1999 amended.

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