



The legal nature of the crime of inciting civil war or sectarian conflict and protection from it

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ABSTRACT

The crime of inciting civil war or sectarian conflict is an independent crime that has its own concept, and the Iraqi law considers it in the Penal Code as one of the crimes against the inner security of the state. As for the Anti-Terrorism Law, it considers it a terrorist crime due to its extreme danger to the security of society because of what it entails of inciting terror and panic, and the emergence of a danger that threatens society, its institutions, and the lives of citizens. Protecting society from this lies in its criminalization by criminal protection for the internal security of the state and criminal protection for national unity and social peace, as the crime of provoking civil war or sectarian strife in its content represents an attack on higher interests in the state, as it disturbs the serenity of national unity and social peace among the various components of society and is described as a dangerous crime, as the legislators tend to criminalize the attack on the interest that he deems worthy of the protection of the criminal law and imposes punishment on the perpetrators, even if the actual harm to the protected interest is not achieved.

The criminal behavior in it is sometimes purely physical behavior, and at other times it is material behavior with psychological content. In armament and incitement to fighting and incitement to the criminal behavior it is a physical activity with psychological content, and it is one of the intentional crimes in which it is not sufficient for the moral element to be found as the presence of the general intent only, but rather the presence of the specific criminal intent must be present in addition to the general criminal intent, which is represented by the intention of provoking civil war or sectarian strife, and it is not sufficient by mere will of the action that may provoke the danger of civil war or sectarian strife. And that the legislator in the penal code in force distinguished between the original penalty for this crime between two cases, the case of civil war or sectarian fighting without it occurring, so the penalty is life imprisonment and the case of civil war or sectarian fighting, so the penalty is the death penalty, while the penalty is death in both cases in the applicable terrorism law.

Keywords:

(Incitement, civil war, sectarian fighting, legal nature, protected interest)

Introduction

Man is social by nature, and this nature is due to his presence within society, and he interacts with the manifestations and influences that

surround him, seeking survival and stability through the exercise of his rights and freedoms with the aim of satisfying his basic needs. But these rights and freedoms are not absolute, but

are determined by the rights and freedoms of others. Thus, it is the responsibility of each individual to take into account the common good with others. When he exercises his rights and freedoms without the interference of others; It has at the same time that he does not exceed the rights and freedoms of his own rights and freedoms of others.

Since human societies do not live in one fixed system, but rather vary according to their religious, sectarian or national beliefs, this may lead to the outbreak of civil war or sectarian strife, for reasons related to how to accept the other who differs in opinion or differs in religion, sect or nationalism, the matter. which makes peaceful coexistence unacceptable for them, the lives of many societies go through many difficulties, which may be political, economic or cultural, but the most difficult ones affect the entity or unity of these societies and the integrity of their connection and thus may lead to the destabilization of the security of the state, national unity, and social peace.

This is because the enemies always seek to divide the sons of one nation by creating any difference between them, whether it is religious, sectarian, ethnic, intellectual, cultural or political, as this difference leads them to create gaps and loopholes among them away from the national interest, which makes it easier for the enemies to provoke Civil war or sectarian strife, and since this agitation leads to compromising the state's internal security, national unity and social peace, which raises division and strife among the sons of one nation, we find that the Iraqi legislator in the Penal Code and the Anti-Terrorism Law has criminalized this act of incitement and stressed its punishment.

The protected interest lies in the criminalization of provoking civil war and sectarian strife by criminal protection for the internal security of the state and criminal protection for national unity and social peace. The importance of this study is reflected in the danger of provoking civil war or sectarian fighting to society and the groups targeted by this crime because of the dangers that threaten the internal security of the state, as well as splitting the national ranks among the people

of the same nation by provoking hatred and enmity among them and trying to divide them religiously or ethnically, and perhaps culturally, it may reach the point of civil war or sectarian fighting. Thus, the importance of this study lies in the importance of the protected interest in criminalization, which represents a higher interest in any country.

As the legitimacy of authority in the state, national unity and social peace represent a fundamental basis that is indispensable to any state, it has become important to clarify the scope of this interest and then protect it in a punitive text that provides the maximum levels of criminal protection for the protected interest, as the aim of this study is It is a statement of the concept of this crime, the legal nature of it, and the interest protected by its criminalization, in order to reach the knowledge of the legal ground laid by the legislator in its legal texts to confront its perpetrator.

And is it sufficient and adequate in covering and treating this crime and limiting it, or is it lacking in this field? Where we followed in this study the analytical approach to the legal texts of the Iraqi Penal Code and the fight against terrorism and the jurisprudential opinions about them. Therefore, we will talk in this study about the concept of the crime of provoking civil war or sectarian fighting as a first topic, then we will address the legal nature of the crime of provoking civil war or sectarian fighting and the interest protected by criminalization.

The first topic

The legal concept of the crime of inciting civil war or sectarian strife

In order to understand the concept of that crime, we must know what is meant by provoking civil war, as a first demand, and then knowing what is meant by sectarian fighting as a second requirement.

First requirement:

Defining the outbreak of civil war

In order to reach the definition of that crime, we must first know what is meant by excitement as it is the cause of the civil war or

sectarian fighting, and then we clarify the definition of civil war secondly.

First branch :

Definition of incitement

In legal terms, incitement means Agitation (1) that may be by speaking, spreading rumors, public or secret speeches, distributing paper clips or hostile pamphlets, and inciting a feeling of hatred and resentment against a certain group of people, which carries within itself the intent of spreading the seeds of hatred and feelings of hostility and conflict between different sects. threaten the cohesion of the National Front.(2)

Second branch

Defining civil war

Civil war is an armed conflict between the people of the same country.(3) It is defined politically as armed hostilities between two relatively large groups or more than one country that are politically organized and usually compete for power in the state, or one of the parties to the armed conflict wants to secede and the other refuses to do so.(4)

In criminal jurisprudence, civil war means armed conflict within the territory of the state on an ongoing basis for a purpose by the people of the state against another section or against the state's forces when they are supported to defend one of the two warring sections or to restore security and order(5). Or are those hostile processes that take place within the framework of one state when two opposing parties take up arms within the state in order to reach the reins of power in it, or when a large percentage of the masses in a state take up arms against the legitimate government.(6) There are those who defined it as an armed conflict in the form of a traditional war that takes place within the state and is between two parties, each of which represents a part of the people of the state, provided that the two warring parties have well-armed forces and are organized at a level that secures their commitment to the rules and laws of war. It should take place on a large scale and not be limited to A small part of the state and represents an assault on the authority, whether

the direct objective of the war is to seize power or it does not lead to an indirect violation of it by not submitting to the legitimate authority(7). Some divide civil wars according to the purpose that they are intended to achieve, and into two parts:

The first section: includes the conflict between two or more parties, each of which seeks for the purpose of controlling all the territory of the state.

The second section: includes the conflict from which the parties are trying to seize part of the state's territory for the purpose of establishing a new independent state.(8) Some believe that foreign elements should not participate in the internal war in order for it to be described as a civil war, whether these elements are individuals or states.(9) Except there are those who think otherwise, as the affiliation of foreigners to this or that party does not change the description of the civil war on that fighting, even in cases where one of the warring parties obtains the support and contribution of foreigners with it in a way that exceeds the foreign support and contribution with the other party as long as the foreign elements enter An organization for one of the two warring camps, and these elements do not enter the war as one of its parties.(10)

What the latter trend went for, according to our opinion, is closer to reality, especially if we know that there are those who see that the civil war is an internal reflection of an international conflict, as the nature of the conflicts the world is witnessing today is complex in its composition, and some allied countries have transferred their confrontations against other direct military confrontations to Supporting internal parties in countries that stand against their interests and on customary or religious grounds by fueling feelings of resentment and hostility to them and providing them with all assistance and for the sake of change and control over these countries who are their allies instead of incurring many losses in the peoples standing against them because of the fight against the invaders and occupiers.

As for the state's use of force to suppress rebellion, rebellion, or pursuit and suppression of armed gangs, it does not fall

within the scope of the civil war. In all of the above, we can define civil war as an armed conflict that occurs between two sects within the scope of one state or between the government of a state and groups revolting over it for control. The authority or independence of a part of the region and the establishment of a new state in it.

The Iraqi legislators considered provoking a civil war a crime against the internal security of the state and a terrorist crime. There is no civil war that does not destabilize the state's security, whether it is directly or indirectly, as the civil war, although it does not directly affect the state's authorities, but it attaches part of the authority and its exercise that must remain away from tendencies and conflicts, because the state is a coherent spiritual unit, so whoever tries to undermine the authority and prestige of the state, as well as destabilize the national bond and stir up hatred and make one part of the people against the other.(11)

The crime of civil war ultimately means the attack that takes place with the intent of provoking civil war, or it is the commission of any direct act to provoke civil war, and if it does not succeed in provoking it, in other words, carrying out activities aimed at provoking a section of citizens against another section, and therefore targeting to provoke civil war is the previous activity that paved the way for its occurrence even if it did not lead to the occurrence of this war, the legislator in this crime is satisfied with merely endangering the security of the state and citizens without actually requiring the occurrence of the danger.

Thus, the crime of provoking civil war is a stand-alone crime that has its own independent concept from many crimes that require the availability of criminal activity represented by arming citizens or making them arm themselves or inciting fighting with the intention of provoking civil war.

The second requirement

Definition of the crime of sectarian conflict

In order to know what is meant by that crime, it is necessary to know the definition of sedition, as it is the reason for the occurrence

of sectarian strife, then we explain the meaning of sectarian strife secondly, and then we go to clarifying the meaning of the crime of sectarian strife thirdly.

First branch

Definition of sedition

Some believe that the term sedition includes any action that would cause terror among the people, spread chaos, or promote wrong ideas attributed to sects to provoke a kind of hatred and anger among the people of the other sect, which leads to changing the basic principles of the constitution or the basic systems of the social body or to the construction of a social class over other classes, to abolish one social class, or to overthrow the basic social or economic systems of the state or to demolish any of the basic systems of the social body when the use of force or terrorism or any other illegal means and every incitement to overthrow the regime, hatred or contempt for it, or favoring or promoting what provokes sectarian or sectarian strife or inciting conflict between sects and races, or stir up a feeling of hatred and loathing among people.(12)

Likewise, strife is defined as a confrontation between two parties without reaching the point of civil war, or it is every attempt to disobey laws and resist their implementation, which is punishable by law, or it is every action that leads to chaos and instability of security or public peace, such as spreading places that provoke strife between different sects(13). It was also defined as the activity of the actor towards achieving a sectarian or ethnic conflict between the components of a single society, and he knows that.(14)

The Iraqi legislator has criminalized the act of inciting sectarian strife, according to Paragraph (4) of Article (2) of the Anti-Terrorism Law, and left jurisprudence to derive the meaning of strife through that, as jurisprudence defined strife as a confrontation between two or more conflicting elements of the people and may lead to its survival for a period of time led to the possibility of a civil war.(15) The reasons for the confrontation may be political, social, religious, or ethnic or

clan motives. Sedition may be intended to provoke feelings of hatred or contempt, or to awaken a feeling of resentment and hostility against the government, or to incite and provoke the public, or with the intent of provoking hatred or enmity between the different sects of the public.(16)

Through the previous definitions, it becomes clear to us that sedition indicates negative matters that may be represented by words or actions intended to provoke enmity and hatred between the sects of the people and to stir up disturbance or agitation or any act of violence that endangers social peace.

As for the term instigating sectarian strife, it was referred to in Paragraph (4) of Article (2) of the applicable Anti-Terrorism Law, it means everything that would stir up fear, terror, panic, chaos, instability, insecurity and tranquility among the people of the same people regardless of their genders, positions, religions, beliefs and sects. their origin, jobs and social positions with the intent of splitting the national rank.(17)

In many of its decisions, the Federal Court of Cassation referred to means of inciting sectarian strife, including kidnappings of people who belong to a certain sect.(18) House demolitions and forced deportation of citizens. And bombing religious shrines and mosques(19). Bombing mosques and houses of worship (20) And the indiscriminate bombing of areas with a majority of a certain sect. (21)And depriving citizens of goods and merchandise, or depriving them of practicing their businesses because they belong to a certain sect.(22)

Second branch:

Defining sectarian strife

To clarify the meaning of sectarian fighting, we must understand the meaning of sectarianism, and then build the meaning of sectarian fighting. For some, sectarianism is defined as a group of people whether this description is due to its origin, religion, social status, or the job it performs(23). It is also defined as an organized group of people who practice a religious belief by certain means and methods. It is a religious grouping in origin,

practice, and purpose. It acquires with time a socio-political dimension(24). Hence it becomes clear that a sect is based on several considerations, including religious, ethnic, political, or social status. There are those who view sectarianism as employing the issue of belonging to a sect or religion in a societal political project. This affiliation is one of the preludes to building the system and institutional formations that consolidate the social structure, or at least in the rights of a sect of sects(25). Some defined it as the intolerance of a membership group that aspires to achieve better political and social positions in the state through alliances. It adopts a political or partisan character that takes sectarian affiliation as a criterion for differentiation and eligibility to assume responsibilities and leaders regardless of competence.(26)

Or is it an authoritarian and factional tendency based on loyalty to the sect and the corresponding hatred, hatred and malice against the rest of the sects, as it is far from spiritual values, religious ideals and their tolerant teachings.(27) Based on the foregoing, we can define sectarianism as a set of ideas that fanaticism or favor a certain part at the expense of the whole for religious or sectarian reasons within the same religion, ethnic, national, political or social to achieve private or partial interests at the expense of the public interest.

Sectarianism does not pose a threat to society, but rather its natural presence in it. Society usually consists of several sects, and every person must belong to a sect of sects, whether religious, ethnic, political, social or other. In such a case, it cannot be considered a threat to society, but the danger lies in Or it emerges when it turns into intolerant sectarianism for one component and rejects sects or other components of society, which becomes a threat to the security of the state and provokes it and threatens the unity of its people. Therefore, the problem lies in the existence of sectarianism and not the existence of the sect itself.

And after we have clarified what is meant by sectarianism, then we know sectarian

fighting as acts of fighting that occur with sectarian motives, or as the fighting that erupts as a result of religious, sectarian, ethnic and tribal fanaticism, including all forms of fighting between the sects of society, whether it is ethnically, sectarian or racially based. Consider the reason for criminalization that was the goal and purpose of the legislator. This is because the citizen's devotion to a narrow sectarian or racist support can affect the security of the state and threaten it and deprive it of the loyalty of its citizens, and that the partial identity that is nourished by the culture of fanaticism in its various forms can lead to the disappearance or loss of the mother's national identity, which negatively affects the national unity.(28)

The General Penal Code considered the crime of inciting sectarian fighting to be a crime against the security of the state. As for the effective anti-terrorism law, it is considered a terrorist crime because of the impact of this crime on the fragmentation of the people's unity, the destabilization of the security and stability of the country, the absence of authority and the weakness of the law. The crime of provoking sectarian strife ultimately means that it is the attack that occurs with the intent of provoking sectarian strife, or is the commission of any direct act to provoke sectarian strife, even if it does not succeed in provoking sectarian strife. , as the Iraqi legislator in the Penal Code and the Anti-Terrorism Law did not stipulate the realization of the state of sectarian strife, but rather just agitation is sufficient to achieve it.(29)

Thus, the crime of sectarian fighting is a crime in its own right, with its own concept, independent of many crimes.

The second topic

The legal nature of the crime of inciting civil war or sectarian strife, and the interest protected by criminalization

In this topic, we will present the legal nature of the crime of provoking civil war and sectarian fighting through the view of the Iraqi legislator, in the first requirement and in the second requirement we will devote it to a

statement of the protected interest in this crime.

The first requirement

The legal nature of the crime of inciting civil war or sectarian strife

In order to clarify the legal nature of the crime of inciting civil war or sectarian fighting, we will discuss the statement of the legal nature in the light of Iraqi legislation first, and in the light of criminal jurisprudence secondly.

First branch

The legal nature of the crime in light of Iraqi legislation:

The Iraqi legislator, in the penal code in force, dealt with the crime of provoking civil war or sectarian fighting as one of the crimes affecting the internal security of the state, as stipulated in Article (195) of Part Two of Book Two by saying: "A person who aims to provoke a civil war or sectarian strife by arming citizens shall be punished by life imprisonment." Or by forcing them to arm one another against each other, or by inciting fighting, and the death penalty shall be the death penalty if the offender's goal is achieved.

Crimes affecting the internal security of the state are defined as those crimes that involve assaulting the internal system of the state and compromising the security and stability that people enjoy with the intention of overthrowing and replacing the rule of law, and replacing the political and social system with another system. (30) It was also defined as crimes that perpetrate the internal political system of the state, even if in reality they are directed against the rulers themselves or their political or social system with the intention of gaining power over others or overthrowing the ruling system. Shariah, usurping these authorities, provoking sedition, sectarian fighting, terrorist acts that disturb security, and undermine national unity or the state's financial standing.(31)

In order to find out whether the crime of inciting civil war or sectarian fighting is a political or ordinary crime, it should be referred to paragraph (a) of Article (21) of the penal code in force, which defines a political

crime as a crime committed with a political motive or on public or individual political rights. Other than that, the crime is considered ordinary, and in the same article, the Iraqi legislator made some exceptions to this rule in the definition of political crime and took some crimes out of the framework of political crimes even if they were committed with a political motive. These exceptions represent crimes that are committed with a vile selfish motive.

And crimes against the external security of the state, crimes of willful killing and attempted murder, crime of assaulting the life of the head of state, terrorist crimes, and crimes against honor.

From the analysis of this article, it becomes clear to us that the Iraqi legislator has adopted the personal and objective doctrines in determining the nature of the crime as he adopted the personal doctrine that is based on the motive, he said, "A political crime is a crime that you commit with a political motive." He adopted the objective doctrine that is based on the subject of the right that has been attacked by saying, "A political crime is a crime that perpetrates public or individual political rights."

Through the above, it is clear that crimes against the internal security of the state, including the crime of provoking civil war or sectarian fighting, are political crimes whenever they are committed with a political motive or if they are committed against public or individual political rights. Moreover, the legislator did not mention crimes against state security. The internal law is among the exceptions to the political crime referred to above; He referred to the crimes affecting the external security of the state, and considered them ordinary crimes, even if they were committed with a political motive.

It did not provide for crimes against the internal security of the state. However, following up on the exceptions made by the Iraqi legislator on political crimes, Najda has made an exception for crimes that are committed with a vile selfish motive as well as terrorist crimes, and in light of this it can be said that crimes against the internal security of the state, including the crime of provoking civil

war or sectarian fighting if committed with a vile selfish motive, or that they are. It possesses the characteristics of a terrorist crime, as it is considered an ordinary crime and it cannot be given a political character.

As for the effective anti-terrorism law, we find that the Iraqi legislator has stipulated the crime of inciting civil war or sectarian fighting, and in accordance with Paragraph (4) of Article (2) of it, by saying: "The following acts are considered terrorist acts. Civil war or sectarian strife by arming citizens or forcing them to arm each other and by instigating or financing."

In light of this, it becomes clear to us that the legislator has considered the crime of inciting civil war or sectarian fighting a terrorist crime, and then it is considered an ordinary crime and not a political one. In addition, the legislator in the effective anti-terrorism law has clarified in Article Three of the acts that are considered crimes against state security and the crime of provoking civil war or sectarian fighting was not among them. Also, we find that the legislator has considered terrorist crimes among the ordinary crimes against honor with an explicit text saying, "The crimes contained in this law are considered ordinary crimes against honor" and that the legislator is in the penal code in force. He excluded crimes against honor from political crimes and considered them ordinary crimes.

In light of the above, it becomes clear to us that the Iraqi legislator has made the crime of inciting civil war or sectarian fighting a terrorist crime based on the provisions of Paragraph (4) of Article (2) of the effective anti-terrorism law after removing it from the scope of the political crimes mentioned in Paragraph (A) Article (21) of the applicable Penal Code.

second branch

The legal nature of the crime in the light of criminal jurisprudence

Crimes are divided according to their nature into ordinary and political. The political crime has been defined as an aggression against a right that the law protects. However, this aggression is against the political rights of a state or individuals, such as changing the

form of government, changing the state's political system, or substituting a particular party for another in power. It was also defined as a crime that is committed with a political motive, and in which the political system of the state is attacked.(32) Other than that, it is considered an ordinary crime, and it is also defined as crimes that involve the meaning of assaulting the political system of the state, whether from the outside, that is, violating the independence and sovereignty of the state. Or from the inside, that is, compromising the form of the government or the system of authorities therein, or violating the political rights of individuals(33). As for ordinary crimes, they are those crimes that do not have this meaning, and there is no difference between the attack being directed at individuals or even the state as long as the subject of the attack is stripped of Political adjective in its advanced sense.(34)

The criminal jurisprudence differed regarding the distinction between political crime and ordinary crime according to the sects that endeavored to establish criteria for discrimination. The purpose (the goal) is to commit the crime, for the crime is political if the motive and purpose are political, and this doctrine is taken for its expansion in the meaning of the political crime by adopting the motive or the purpose as they are not among the pillars of the crime in addition to being one of the internal issues that are difficult to reach.(35)

The proponents of the objective doctrine hold that the nature of the crime is determined by the subject of the crime and the nature of the right that has been attacked. If the crime is not political, like the right of public property, the crime is considered normal, even if the motive is political.(36) Thus, crimes against the external security of the state that threaten the independence of the state and the integrity of its territory, crimes against the internal security of the state that affect the internal system of the state, its entity or the form of its government, crimes against citizens' exercise of their public rights and crimes against public liberties are considered political crimes.(37)

Otherwise, the crimes of murder, theft and forgery are considered ordinary crimes, even if the motive was political(38). Proponents of this trend believe that the criterion that is based on the nature of the right that has been infringed upon is the most likely that the distinction between crimes must be based on the types of interests and the degree of abuse(39). In addition, this criterion is characterized by ease of application and often corresponds to the reality of the situation, as the attack on the regime or its form with the intention of changing or modifying it is a political crime without the need to research the personal elements of the crime, which is difficult, if not impossible, to reach. In that to the perpetrator's statement.(40) This is what we agree on.

Through the above, it becomes clear to us that crimes against the internal security of the state, including the crime of provoking civil war or sectarian fighting, the subject of our research, are considered a political crime, according to the opinion of the majority of criminal law jurists who support the objective doctrine by adopting the subject of the crime and the nature of the assaulted right in distinguishing political crime from normal crime.

There are those who argue that all crimes affecting the internal and external security of the state, if they have the characteristics of a terrorist crime, are considered terrorist crimes and cannot be given a political character. (41) This is due to its extreme danger to the security of society, as it involves inciting terror and panic, and the emergence of a danger that threatens society, its institutions, and the lives of citizens(42). On our part, we support this view. This is because of the seriousness of this crime on the security of society and the citizen, as well as the legal importance of the protected interest, as we shall see.

The second requirement

The protected interest in criminalizing inciting civil war or sectarian strife

The legal system of any state bears the burden of protecting the interests that concern

society, by imposing a set of obligations that individuals and groups must observe. It affects certain interests based on the political, economic and social reality, as the interests worthy of protection lie under the foundations of the idea espoused by the state and which the legislator takes as a basis for the protection of interests through criminalization.(44) The legal interest is the rule that the legislator must adopt for each criminalization text(45).

The interest is defined as the benefit subject to the legal protection granted by the legislator to the right that has been infringed or threatened with abuse(46) . It was also defined as a set of constants or human values for a particular society at a specific time, which enjoys the protection provided by legal texts, to achieve the benefits required from this protection(47). There are those who argue that the definition of the interest must be a determination of its reality, which does not exceed that it is a state of agreement between the benefit and the goal, meaning that the interest exists when the benefit agrees to the goal(48). The protected interest lies in the criminalization of the sparks of civil war or sectarian strife by criminal protection for the internal security of the state, and criminal protection for national unity and social peace. To clarify these interests, we will address that in turn.

First branch

Criminal protection for internal state security

The crime of provoking civil war or sectarian fighting in its content represents an attack on higher interests in the state, so we find that the Iraqi project in the Penal Code has included it among the crimes affecting the internal security of the state, and the Anti-Terrorism Law has considered it among the terrorist crimes, because the occurrence of any Civil war or sectarian fighting between the components of the people leads to lack of security and stability in the state, and then represents a threat to the sovereignty of the state and its survival.

The internal security of the state is represented in the continuation of sovereignty on the part of the state over those who are

governed by it(49), and it is also represented in the material and moral entity that the state owns in the eyes and conscience of the individuals who are ruled by it and residing in its territory. As for the moral entity, it is the loyalty and obedience of individuals towards the state and the legitimate authority in it(50). This is that civil war or sectarian fighting, even if it does not directly affect the authorities of the state, but it does harm to the authority and its exercise, which must remain respected, according to tendencies and conflicts; Because the state is a coherent spiritual unit, It is necessary that peace and tranquility prevail among the people, and this is the ultimate goal of the state.(51) Here we must distinguish in the matter of endangering the safety and security of society between harm crimes and danger crimes, on the basis of the nature of the criminal consequence that results from the criminal behavior itself. But if the criminal outcome took the form of potential aggression, i.e. a threat to the interest that is the subject of criminal protection, then the crime is a dangerous crime.

It is noted that the Iraqi legislator considered danger as a target for criminal behavior, so it is not required that the behavior result in an effective and immediate danger by endangering the safety and security of the community. The perpetrator of his criminal behavior aimed to provoke a civil war or sectarian strife within the community.

second branch

Criminal protection of national unity and social peace

The concept of national unity turns to coexistence on the basis of citizenship, as it is the valid basis for achieving national identity, and this identity should transcend all sub-identities regardless of their national, religious or sectarian sources, provided that the treatment of individuals belonging to sub-identities is based on respect for others who differ with them in Identity and within the framework of the constants and national values.(53)

As for the concept of social peace, it expresses security and peace in society, and it

means the state of harmony and harmony between groups or individuals with multiple religious, sectarian or national affiliations within one society and the resulting social harmony in which relations of cooperation and love prevail among these various components and rejection of all manifestations Conflicts, violence and disagreement between them.

Since national unity is a prerequisite for peaceful coexistence, we find that the legislator has been keen to protect it to ensure social peace, and given the interrelationship between national unity and social peace(54), both of them represent the protected interest in criminalizing inciting civil war or sectarian strife, and part of the criminal jurisprudence has gone to say that unity Patriotism and social peace are among the elements of the social entity of the state, and violating it is one of the crimes of internal state security. The organic composition of citizens, while social peace is the climate in which they must live.(55)

This is that the legitimate objective of criminally protecting national unity and social peace is basically protecting the entity of society in general, as compromising national unity or social peace leads to the emergence of a grave danger that casts a shadow on all members of society, regardless of their origins, religions, nationalities or sects. This leads to a vicious circle of sectarian strife, which is a prelude to the outbreak of a civil war, which negatively affects the individual and the state socially, politically and economically.(56)

As the crime of provoking civil war or sectarian fighting aims to confront the unity of the people, stir up division among its sons and waste social systems.(57)

What prompted the legislator to criminalize any attempt to provoke civil war or sectarian strife is his quest to create a prior awareness of the seriousness of the consequences of this crime on the future existence of society and the state, and thus the legislator put an end to the transformation of individuals from patriots to sectarian and when individuals converted to that divisions appeared between the components One people, which leads to the explosion of the collision between the sects of the people and causes the

weakening of loyalty to the homeland; Because sectarian loyalty is invoked upon him, and all of this is a threat to national unity and social peace.(58)

Thus, it is clear to us that the legislator criminalizes everything that disturbs the serenity of this national unity or social peace among the various components of society by provoking civil war or sectarian strife, which as a result leads to political and economic instability, and the rupture of the social fabric is replaced by fear, hatred and constant apprehension among the spectra of a single society.

Findings and Recommendations

After we finished our study, we reached a number of conclusions and recommendations, which can be summarized as follows:

1- The civil war is an armed conflict between two sects within the scope of one state, or between the government of a state and groups revolting against it, in order to gain control of power or independence in a part of the region and establish a new state in it. The use of force by the state does not fall within the civil war. To suppress disobedience, rebellion, pursuit and suppression of armed gangs, and that the crime of provoking civil war or sectarian fighting is a stand-alone crime that has its own concept independent of many crimes that require criminal activity represented by arming citizens or forcing them to arm or inciting fighting or incitement or financing With the intent of provoking a civil war

2- Sedition denotes negative matters that may be represented by words or actions intended to stir up enmity and hatred between the sects of the people or to stir up disturbance or agitation or any act of violence that endangers social peace. A certain part at the expense of the whole for religious or sectarian reasons within the same religion, ethnic, national, political or social to achieve private or partial interests at the expense of the public interest and that inciting sectarian strife means everything that would provoke fear, terror, panic, chaos, instability, insecurity and tranquility between the ranks of the same people of different races,

positions, religions, beliefs, sects, origin and social positions with the aim of splitting the national line, and sectarian fighting means the fighting that erupts as a result of religious and sectarian or customary and tribal gangs, including all forms of fighting between the sects of society, whether it is based on ethnicity, sectarianism, or racist taking into account the criminalization cause that was the goal and purpose of the legislator, because the loyalty of citizens to a narrow sectarian or racist victory could affect the security of the state and threaten it from the loyalty of its citizens and that

the partial identity that is nourished by the culture of gangs of all kinds can lead to the disappearance or loss of the mother's national identity, which negatively affects the national unity.

3- Crimes affecting the internal security of the state, including provoking civil war and sectarian fighting, are considered political crimes according to Iraqi legislation whenever they are committed with a political motive or if they are committed against public or individual political rights. As for the opinion of the majority of criminal law jurists who support the objective doctrine by adopting the subject of the crime and the nature of the crime The right of the infringed to be distinguished is a political crime from an ordinary crime, as it is considered a political crime.

And that there are those who argue that all crimes affecting the internal security of the state, including the crime of provoking civil war or sectarian fighting, if they have the characteristics of a terrorist crime, are considered terrorist crimes and they cannot be politically characterized because of their extreme danger to the security of society because of what it entails of provoking terror and panic and the emergence of A danger that threatens society, its institutions and the lives of citizens, and the Iraqi legislator has removed it from the scope of the political crimes mentioned in Paragraph (a) of Article (21) of the applicable Penal Code and its right to terrorist crimes under the provisions of Paragraph (4) of Article Two of the applicable Anti-Terrorism Law.

4- The protected interest lies in the criminalization of provoking civil war or sectarian strife by criminal protection for the internal security of the state, and criminal protection for national unity and social peace.

As the crime of provoking civil war or sectarian fighting in its content represents an attack on higher interests in the state, not the occurrence of any civil war or sectarian strife between the components of society that leads to lack of security and stability in the state and then constitutes a threat to the sovereignty and survival of the state, which leads to instability The political and economic rupture of the social fabric is replaced by fear, hatred and constant apprehension among the spectrum of the same society.

5- The crimes of inciting civil war and sectarian fighting are considered dangerous crimes or what they are called formal crimes, as the legislator tends to criminalize the interest that he deems worthy of the protection of the criminal law and imposes punishment on its perpetrators. Damage to the protected interest, even if the actual damage is not achieved

6- The Iraqi legislator in the penal code in force specified in Article 195 of it the forms of criminal behavior in three forms: arming citizens or making them arm each other against each other or inciting to fighting.) of Article (Second), of which are the forms of criminal behavior.

In four ways: arming citizens, making them arm each other, incitement or financing.

7- Our most important recommendations are that since the internal security of the state, national unity and social peace represent higher social and national interests in the state, expanding the scope of criminal protection for these interests is one of the first things that the legislator is concerned with in his criminal policy, through the widening of the scope of criminalization of acts that would constitute an assault on The mentioned interests are provided that the legislator comes with clear texts in their formulation, as it became clear to us that the Iraqi legislator in the anti-terrorism law has narrowed the scope of the criminalization in Article (2) (paragraph 4)

Where the two forms of criminal behavior were combined, arming citizens and making them arm each other with violence and threats. A form of support and assistance, so we call on the legislator to amend the aforementioned article in line with expanding the scope of the criminalization of the crime of provoking civil war or sectarian fighting.

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