

Penal liability arising from the tourist guide's illegal activities

A comparative study

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Abstract

The tour guide at the historical or archaeological sites is necessary for tourism promotion as he/she is one of the complementary means of the tourism sector in the country, as he/ she is an important means of displaying information and data that explains some answers requested by tourists. Hence, the tourist authorities were keen to provide a tourist guide accompanying tourists and be a cadre member in travelling and tourism agencies and companies. An integrated legislative organization set up before in order to regulate this job in each site after preparing and developing him. The perfect and qualified tour guide should be selected to carry out this task; he should be trained on the tourism guidance techniques, and then the task is done, but whoever has this job may deviate and commit acts affecting tourism, as well as, tourists who are the target group of the tourism guidance. Hence, the legislator intervened through the criminalization and punishment rules to face such acts.

Keywords: Penal liability, historical or archaeological sites, tourism

I. Introduction

Firstly: Identify the research subject

The tour guide's job is one of the complementary activities for tourism; so those who work in this job needed to have special qualifications and characteristics as they should be highly efficient scientifically and technically with sufficient experience, as well as, be aware of the historical, geographical, natural and civilizational aspects of the country in which he practices his job, in addition to mastering some languages spoken by tourists, which are universally recognized. As a result, any tourism program contains a range of services, the most significant of which is getting benefits from the tour guidance, as each tourist destination must involve all activities and services such as the tour guidance services, tourism accompaniment, and providing tourists with supplementary data and information that they don't know about places they're visiting.

By reviewing the legislation regulating the affairs of tourist guides, we find out that their main advantage is to guide and sensitize tourists, and then treat the incoming tourists, which in turn results in

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increasing tourism awareness for them; therefore, the tour guide performs important profession. Due to the financial factor and earning financial gains, we notice a substantial growth for this profession. Accordingly, those who perform this profession may be misused; so the legislation initiated to criminalize their activities as they are related to the importance of tourism and affect it, which is a source of increasing income and economic boom. This means that the crimes of the tour guide affect travelling and tourism agencies where they operate on behalf of, besides, it also affects the tourist reputation of the country where the tourist guides practice various crimes without a deterrent punishment against their actions, which required legislative intervention to criminalize their actions.

The legislator has also criminalized the tourist guide's illegal activities, aiming to protect the development of tourism awareness as one of the social awareness branches that tries to create the psychological and social benefit needed by the tourist, and then the guide's crimes will affect the tourists and disturb their trip.

Secondly: The Research Importance

There is no doubt that the research importance results from the importance of the tour guide profession; therefore any legal regulation of this category is not limited only to the organizational aspects, but goes beyond to involve the criminalization and punishment rules; so searching in this subject entails the importance of identifying the crimes committed by the tour guide, as well as, the legislative provisions enacted by the legislator to face them.

Thirdly: The Research Problem

The study of "Penal liability arising from the tourist guide's illegal activities" results in several legal problems as the research seeks to identify them and then find the appropriate solutions. These problems are about the adequacy of criminalization and punishment provisions mentioned into the tourism legislations to deter those who commit these crimes; they were enacted in a time when the tour guidance profession wasn't there, which clearly affects the tourism sector. The study treats a very significant problem represented in how to reconcile between providing greater work freedom for the tour guide and criminalizing all works arising from his illegal activities, by which the legislator aims to protect tourists and tourism.

Fourthly: Research Methodology

This study followed the comparative analytical approach by analyzing the legislative provisions that dealt with the subject for getting the target results, depending on the legislator's attitude in both Iraq and Egypt as essential countries for comparing and then taking advantages of the legislative provisions mentioned by the Egyptian legislator to strengthen the legislative provisions regulating the tourism guidance affairs in Iraq.

Fifthly: The Research Plan

For studying the subject of criminal liability arising from the tour guide illegal activities, a plan has been drawn up to go with the content of the research. It was divided into two themes; the first theme was devoted

to the concept of the tour guide, while the second theme was devoted to some applications of criminal liability of the tour guide; the research ended with a conclusion including the most important results and recommendations of the research.

The first theme

The concept of the tour guide

For identifying the concept of the tour guide, we will handle it by many approaches, including its definition, the conditions of this profession and its criminal liability justifications, which requires to be presented through two issues; the first issue is about indicating the concept of the tour guide, the second issue is devoted to present the conditions of the tour guide's profession and Justifications for his criminal liability.

The first Issue

Identifying the tour guide

We identify the tourist guide doctrinally and legislatively only within two sections; the first section is devoted to its doctrinal meaning, while the second section is devoted to its legislative meaning.

The First Section

The doctrinal meaning

The doctrine, whether it is touristic or legal, cares about the meaning of the tour guide and differed accordingly in its definitions and requirements needed to identify this concept. This differing is natural as it's resulted from different legislation that handled the legal status of the tour guide in adopting a specific term, besides, he different views of the doctrine, whether it is the law or the doctrine that dealt with the tourist guide. There is no doubt that this jurist or the others seeks to differ his view according to the legislative provision that he attempts to clarify, which results in different definitions.

In addition, the doctrine gives such importance to the tour guide because he is the closest one to the tourist and the seeker to complete the requirements of the trip planned by the tourist; and because he is the closest person understanding the landmarks of his country and who is aware of its historic heritage; therefore almost the success of the tourism program in achieving its goals depends on this guide and its ability to achieve the wishes of the tourist. If the tour guide has such importance, so what is meant by?

The doctrine defined the tour guide; some jurists define it as the well- educated and conscious person (male or female) to provide a clear and honest message and image about his country without increasing or decreasing). He was also defined as the person who explains the historic monuments and the tourist attractions for the tourists, as well as, answering their questions asked to him in all the places they visit, such as museums and archaeological sites for certain payment. Others defined him as the person who explains and guides the tourist in tourist places such as monuments, museums and exhibitions for certain payment). Others added that he accompanies a group of tourists so he is their companion or he is the one who leads the group, so he's the group leader.

Others added that he is a qualified person to accompany tourist groups during visiting tourist sites in order to explain the related historical characteristics and information for payment. The tour guide is subject to

legal rules regulating and governing the nature of his profession and determining his duties and commitments towards tourists, the agency he worked for and his country.

It is noticeable that these definitions varied; some based on the legal aspects for describing the person carrying out this task; others focused on the technical aspects and tasks he performed. Whether the definition adopted one of the two directions, it expresses the meaning of the tour guide and we will see after that the majority of the doctrine has been affected by the legislative definition of this term.

The second section

The legislative meaning of the tour guide

The legislations regulating the tourism affairs believe in the importance of introducing and outreaching the tourist to the country's monuments and historical heritage visited for tourism purposes, so the state cares about regulating the tour guide's profession, as he is responsible for making tourist understand and guiding them in the various places, but was the regulating carried out by the legislator accompanied by a definition of this concept, or was he satisfied by just regulating this profession and how to perform the guidance function?

The Egyptian legislator defined the tour guide as (... The person who explain and guide the tourists in the monuments places or museums or exhibitions for certain payment....)

While the Iraqi legislator argued that he (... The guide - the person who assists and accompanies tourists to explain the historical, scientific and artistic monuments of tourist and archaeological sites and shops worth seeing all over different parts of the country for certain payment), while the term of tourism guidance was used in the Ministry of Tourism Law. (The ministry adopted the following means to achieve its goals:

Firstly: Tourist guidance services to attract tourists.....)

We deduce from the legislative definitions mentioned above the following:

1- There is no agreement between the comparative legislations mentioned above about a specific concept of the person in charge of guiding tourists, which is highly intuitive because these legislations differ about adopting the concept and the how it is compatible with the legislative system of the country; some legislations call him "guide" while others call him "conductor", we have mentioned the term as a title for our research, since the vast majority of legislation agreed to adopt it.

2- Although the legislations are different, they agreed on common issues, which are the pillars of this concept, such as helping and guiding tourists, being in tourist sites, and being paid.

But in light of this legislative difference of the researched term, we wonder which is more accurate the term "conductor" or "tour guide"? What are the justifications for preferring one term to another?

The advanced question can be answered in many ways as follows:

1- The World Tourism Organization, which is the international organization interested in all matters concerning tourism affairs around the world, including formulation and standardization tourism terms used in its reports and recommendations concerning tourism affairs. It has confirmed this within many reports, such as the report issued in 2008, which means that the organization has adopted this term rather than other terms.

2-The Iraqi Ministry of Tourism, integrated with the Ministry of Culture, confirmed in its law regulating the affairs and powers of this ministry; it provided for (... The ministry adopts the following means to achieve its goals: first... tourist guidance services to attract tourists ...) This means that although there is a set of legislations regulating tourism guidance titled "the tour guidance", it has either become annulled or conflicted with this law. There's no doubt that the incompatibility of terms prefers the later law according to the principle "later law supersedes earlier law"

The Second Issue

Conditions of the tour guide profession and the justifications for his penal liability

We divide this issue into two sections; the first section is devoted to examining the conditions of operating the tour guide his activity, while the second section is devoted to examining the justifications of his penal liability.

The first section

Conditions of operating the tour guide his activity

We identify these conditions as follows:

First: Nationality

Tourism legislations have been keen to regulate the nationality condition before operating tourism activity, this is perhaps due to many considerations, including that the national person is the closest one to know the landmarks of his country, and that the country extends its control over their activities because they have to register for it, including what the Egyptian legislator provided for (... The license applicant must be an Egyptian nationality...) While the Iraqi legislator went on that the guide must be (... an Iraqi...) According to the Constitution of the Republic of Iraq of 2005, a person is considered an Iraqi if he was born to Iraqi father and mother, or if he was born to Iraqi mother.

Second: The competence

Any person under the set age can't be accepted to do the work; the philosophy beyond this condition seems that if the person attains the age set by the legislator to operate this work, he will be aware of what he is doing and be more familiar with the landmarks of his country. The Egyptian legislator has provides for (... his age mustn't be under 21 years old...); while the Iraqi legislator provided for (... his age mustn't be under 20 years old ...). We believe that this age set by the legislator is subject to criticism and therefore we suggest that the minimum age should be twenty-two years, i.e. after graduating from the university as the person would be specialized and able to perform the tasks related to tour guidance.

Third: Health condition

If the person has infectious disease or a disease that prevents him from engaging in mandated or applied work, he won't be able to carry out the tourist guidance profession. Hence the legislation condition that the person must be free from diseases and healthy looking, that qualifies him to carry out his tasks related to tourist guidance. The Egyptian legislator has provided for (... To prove his medical fitness as defined by the

implementing regulations...), while the Iraqi legislator went to (...be free from contagious diseases and physical disabilities that affect practicing his profession)

Fourth: Fluent in one of the foreign languages

There is no doubt that tourist destinations are not limited to citizens who speak the tour guide language, but a tourist may be someone who does not know the language of the country he visited. Hence the tour guide needs to be fully aware of a one or a group of foreign languages as this will facilitate performing his tasks. The Iraqi legislator has provided for (...he should be influent in one foreign language ...) , while the Egyptian legislator did not provide for such a condition.

Fifth: The Academic Qualification

The tour guide cannot carry out his tasks unless he has an academic qualification that enables him to carry out his tasks, especially those related to the issues of history, monument, tourism and geography. The Egyptian legislator conditions that the tour guide should have(...high academic qualification from any Egyptian university or equivalent qualification from a foreign university and the Minister of Tourism has the right to exempt from this condition according to terms and conditions determined by the implementing regulations...) The Iraqi legislator stipulated that he should have(...a middle school certification).We believe that determining this certificate is criticized as it's no longer compatible with the developments in Iraq after the expansion of the Iraqi universities, so we suggest that the minimum certificate required is the university degree.

Sixth: Good conduct, behavior and reputation

Those who practice this profession are required to have such characteristics, as they must be honest, with good conduct that enables them to do this work. The Egyptian legislator provided for (... he should have good conduct and reputation...); but the Iraqi legislator went on to say that (... he should have good conduct and behavior).

Seventh: mustn't have a previous conviction for indecent offence

The applicant for practicing this profession (...He must never have been convicted of a criminal offence or sentenced to prison for an offence against honor, unless officially rehabilitated). This is what the Egyptian legislator referred to, but the Iraqi legislator has been conditioned he (... mustn't have been convicted of a criminal offence against honor and not legally rehabilitated...).

Eighth: Passing the exam

There is an exam organized by the tourism authorities for distinguishing between applicants for this task on the basis of competence. The Egyptian legislator referred that (.....he should pass the exam held by the Ministry of Tourism for license applicants according to the terms and conditions issued by the Minister of Tourism; those who have a bachelor's degree or postgraduate diploma in tourism guidance from Egyptian universities are exempt from this exam...).The Iraqi legislator pointed out (... he should pass the exam conducted by a special committee composed by the department...).

The Second Section

Justifications of penal liability arising from the tourist guide's illegal activities

The tour guide at the historical or archaeological site is essential, as it is one of the most important means of displaying information and data that explains some answers requested by tourists. Hence, the tourism authorities have been keen to provide a tour guide in each site after preparing and developing him; it's important to choose the appropriate and qualified tour guide, who have been trained on the tourist guidance techniques, to do this task. Accordingly, the tour guide is considered a complementary activity to the tourism activity, which requires him to be scientifically and technically highly qualified, experienced and aware of historical, geographical, natural and cultural aspects, in addition to, being fluent in the living foreign languages. Consequently, any tourism program consists of a range of services, tourist guidance services, as each tourist destination must be surrounded by all activities and services that take place in the tourist destination, foremost of which is the services of tourism guidance and tourism accompanying, and providing tourists with data and information.

By reviewing the legislation regulating the tourist guides affairs, we notice that the main task of the tour guides is guiding, sensitizing and then dealing with the tourist arrivals, which in turn results in elevating their awareness of tourism. This is what the Iraqi legislator pointed out its necessary to use (... accompanies or guides or specialized staff to provide religious tourism inside and outside Iraq ...), which results in (... guiding the tourists and vacationers to the tourism and monuments sites, well as, providing guides, who are assigned by an office, for them.....). Therefore, the tour guide performs significant functions; because of the financial factor and the earning financial gains, we notice a substantial growth for this profession. Accordingly, those who perform this profession may be misused; so criminalizing their activities relates to the importance of tourism which is a source of increasing income and economic boom. Therefore, countries provide individuals with facilities to establish the tourist constructions because it provides several countries that have tourism sector with financial return. This meaning is obvious to the Iraqi legislator as he provided for (... Tourism occupies a prominent importance in developing the society because it positively impacts on the issues of social development and the growth of national income; it is an area where public services coexist and modern facilities of comfort and entertainment provided for all citizens, in addition to being an effective means of introducing the heritage and civilization of the country and the Arab World and attracting tourists from abroad...). He also went on to point out that (... believing in the increasing importance of the tourism industry and its significant role in the fields of economic, social, cultural and media development ...) ; besides, increasing of the financial returns as profits for their investors and revenue to the public treasury of countries, in addition to not denying their contribution in creating many job opportunities and eliminating unemployment This means that the crimes of the tour guide affect travelling and tourism agencies where they operate on behalf of, besides, it also affects the tourist reputation of the country where the tourist guides practice various crimes without a deterrent punishment against their actions, which required legislative intervention to criminalize their actions.

The legislator also pursued to criminalize the illegal activities of the tourist guide in order to protect the development of tourism awareness as one of the social awareness sections that works on creating the psychological and social benefit required by the tourist). Therefore the tourist guide's crimes will affect tourists and disturb the atmosphere of their journey, (... For the purpose of selecting people who are competent in facilitating the tourists' task in moving to see archaeological, artistic and scientific sites and good shops, it is necessary to entrust this task to people who are morally virtuous and have their own historical and archaeological culture, in addition to being fluent in one living foreign language.

The Second Theme

Some Applications of the Penal Liability of the Tour Guide

We introduce this research within two issues, we allocate the first issue to study the crime of practicing tourist guidance without a license, and the second issue is devoted to the crime of violating laws, decisions, regulations or instructions.

The First Issue

The Crime of Practicing Tourist Guidance without a License

We introduce this issue within two sections, showing the first section is for identifying the crime of practicing tourist guidance without a license and its elements, while the second section points out the consequences of committing the crime.

The First Section

Identifying the crime of practicing tourist guidance without a license and its elements

We introduce this section as follows:

Firstly: meaning of the crime

The country is keen on streamlining to regulate the tour guide profession by issuing a set of legislations that involve a mechanism of specifying the profession of this category which in turn has substantive and formal conditions prior to practicing this activity. Perhaps the most important condition is the administration's approval of practicing the tour guide his activities in accordance with the applicable legislation. Not adhering to these substantive or formal conditions prior to the tour guide profession will be considered a crime according to the provisions of the law, and then these crimes will take place. But when can we call practicing the tour guidance without a license a crime?

The under comparative studied legislations has discussed this crime, but it has not determined a specific concept for it, leaving the criminal doctrine to determine such concept. Yet the Iraqi legislator has stated that (... Anyone who engages in practicing the guide profession without a leave shall be punished by the competent court...). He also stated that (... municipality of Baghdad within its borders gives a tourist guide license to those who have successfully passed the tourist guides course inside and outside the province ...).

The Egyptian legislator stated that (... The profession of tourist guidance may only be practiced by those who have a license from the Ministry of Tourism and are enrolled in the Tour Guides' Association...). In reviewing the Iraqi legislator, we find that he used the term "a leave" instead of "a license", but we deduce that he means "a license" by the following:

1-Leave is a term that represents the role of the management in issuing a prior permission for the tour guide activity and then operating his activity. We find this concept is compliant with the under compared legislations, i.e. it means the work that empowers the ability to do a specific thing). Leave is equivalent to license or authorization; thus it's compatible with the concept of authorization, which means permission issued from management to engage in a particular activity.

2- It is not permitted to consider the tour guide practices as legal actions; therefore they will not have this concept if they don't have a license from the competent authorities, we deduce this from the part stating that(.....It is not permitted.....).

As for the doctrine, it referred to " the license" without adopting a definition for it. Some have indicated that" it is not permitted for the tour guide to carry out his activities without a license to engage in the profession, in addition to, adhering to the conditions of the license and having the scientific qualification determined by law.

Second: The Crime Elements

We're searching the crime elements as follows:

1-The Material Element

It consists in any crime of criminal behavior, criminal result and causal relationship. The criminal behavior achieved by any means that violates the legal provision, i.e. individuals operate the tour guide profession without a license issued from the administration as if they have a license in violation of the terms that must be followed, starting from the procedures of operating this profession. The Egyptian legislator stipulated that (... It is not permitted to practice the tour guidance profession except for those who have a license from the Ministry of Tourism and are enrolled in the Tour Guides' Association....).The Iraqi legislator stated that(.....everyone who operate the guidance profession without a leave....). The key here is the license issued or not issued from the administration, and then operating the actual work in this profession that results in the criminal behavior forming the material element.

By achieving the criminal behavior, we should examine the criminal result which is formed as a public rule from material and legal significance. The first significance requires a material impact results from committing the criminal behavior; while the second doesn't relate only to the harmful result. The under studied crime relates to the second significance which is the legal significance, which is achieved by just performing the tour guidance profession by anyone without harming those who get benefit from his services; but this meaning doesn't deny that this crime causes harms for those who benefits; and the legislator don't count the crime on these harms only; we are compatible with and support this view as it expands the penal protection for those who deal with the tour guide. Because of the legal significance of this crime- danger crime, there's no causal relationship in this case.

2- The Mental Element

It is defined as the psychological relationship between the material elements of the crime and the offender's personality. The essence of this relationship is the will. The mental element of this crime relates to the fact that it's a premeditated crime in which the intention represented in knowing and the will which is defined as a psychological activity aims at achieving a certain purpose. Due to the mental element, the crime's elements have been completed and therefore the offender is punishable for the crime. This crime is a premeditated crime that involves the criminal intent and limits it to the fact that the offender may know that he is practicing the tour guidance profession without a license or a leave; and his will intended to commit criminal behavior.

The Second Section

Consequences of the crime

The penal impact is one of the most important consequences of committing this crime, as the legislator seeks to include in, the provision dealing with the subject of the crime, a penal impact representing the principal punishment imposed on the offender, as this punishment should be applied to ensure fighting against crime and deterring its offenders. The Egyptian legislator provided for (...shall be subjected to imprisonment for a term not exceeding six months and a fine not exceeding 200 pounds or to one of these two penalties every persons who operate the tour guidance profession without having a license provided for in the law; the penalty is doubled in cases of a repeated recidivism...). The Iraqi legislator did not include in, instructions for the activities of the tour guide, a text provided for, punishment for practicing this profession without having a license, but the repealed guidance law referred to (... Anyone who engages in operating the tour guide profession without a leave shall be subjected to a fine not exceeding 50 dinars or imprisonment for a term not exceeding one month. or to one of these two penalties..). We conclude from the advanced provisions the following notes:

1- These penalties have been limited to violation and offences and did not exceed that to be felonies; this is clear from the range of penalties imposed on the offender.

2- These penalties depriving of liberty provided by the Egyptian legislator, as well as, the Iraqi legislator in previous provisions, we find that they did not take into account the multiple impacts of this crime on the tourist in particular and tourism in general. Therefore, these penalties are not similar in terms of the resulting risk, so it is necessary to reconsider it.

3-It is indicated that the Iraqi legislator did not include in its applicable legislation an offence to punish committing this crime, unlike the previous repealed legislation. Therefore, it is necessary to reintroduce the Tourism Guidance Act and not to be satisfied with the applicable instructions because the Constitution does not involve a provision authorizing criminalization doctrinally, but limiting criminalization and punishment to ordinary legislation only.

The Second Issue

The crime of violating laws, decisions, regulations or instructions

We introduce this issue within two sections; the first section is devoted to the concept of crime and the second section devoted to the effects of the crime.

The First Section

The crime concept and its elements

We introduce this crime as follows:

First: the meaning of the crime

The legislator obliged the tour guide to carry out a set of duties; usually violating them is a crime that deserves punishment. If the tourist guide has rights, then he has another set of duties compatible with his rights. In case of giving up his duties, this crime, which is different from the previous one- practicing tourism guidance without a license-, will rise up. It is true that the crime of practicing guidance without a license necessarily requires violating the legislative provisions that should be followed before practicing this profession. But the crime that we are discussing is achieved by violating the laws, regulations and instructions imposed on those

who perform the guidance profession. Tourism adheres to these commitments and one of those duties is imposed by tourism legislation.

This is what the Egyptian legislator provided for (... **12-** A guide may not engage in another profession, engage in commerce or brokerage, and is prohibited from accepting any commission or reward from public or commercial shops. **Article 13-** The guide may not practice the profession within military areas, border areas or customs areas in ports and airports without having a written permission from the competent authority. **Article 14** - The guide may not work in hotels, tourist companies or other entities except in accordance with the regulations and instructions determined by the implementing regulations. **Article 15** - The tour guide must take into account his professional behavior the principles of honor, honesty and integrity and carry out all the duties imposed on him by this law , the regulations of professional ethics and its traditions and the internal regulations of the union. **Article 16-** A tour guide may not argue in political or religious matters contrary to public order and morals, nor may he drink alcohol or play gambling at the union's office or its branches or while on his or her duties.)

The Iraqi legislator referred to some of these commitments and duties, including what he provided for (...During practicing his profession, the tour guide is committed to be well-dressed with good appearance and carrying the badge (Bag) of the tourist office he works for...) Therefore, we can identify this crime as (any act or omission of an act by the tour guide violating the laws, regulations and instructions that must be followed during practicing tourist guidance.)

Second: The Crime Elements

This crime's elements are summarized as follows:

1-The Material Element

As a general rule, the material element is discussed on three items; the first item is devoted to criminal behavior and it appears naturally within any violating act which may be positive or negative. It will be positive if the tour guide, after having this profession, commits crimes that the legislator prohibits otherwise he deserves the applicable punishment, such as performing the tour guidance in military areas or other prohibited areas, as he should practice his profession in accordance with public order or public morals. It may be negative if he refuses to do duties imposed by the law by adopting negative attitude through which a crime occurred such as refusing to have a written permission to enter the tourist sites for practicing the tour guidance profession. The Egyptian legislator provided for (...A tour guide may not argue in political or religious matters contrary to public order and morals, nor may he drink alcohol or play gambling at the union's office or its branches or while on his or her duties.), as well as, the Iraqi legislator provided for (...During practicing his profession, the tour guide is committed to be well-dressed with good appearance and carrying the badge (Bag) of the tourist office he works for ...). Accordingly, any violation of these provisions will result in such a crime.

By the criminal behavior in this crime, the criminal result should be examined. This crime relates to the legal significance, which is achieved by just performing the tour guidance profession by anyone without harming those who get benefit from his services or the administration that prohibited or panned him from performing it. Because of the legal significance of this crime- danger crime-, there's no causal relationship in this case.

The Mental Element

This crime is a premeditated crime that involves the criminal intent and limits it to the fact that the offender may know that he is practicing the tour guidance profession without a license or a leave; or his will intended to commit criminal behavior.

The Second Section

Consequences of the crime

This crime results in two impacts introduced as follows:

First: The Penal Impact

The penal impact is the impact relates to the principal punishment occurred to the tour guide and represented in penalties depriving of liberty and a fine. The Egyptian legislator provided for (... without prejudice to the penalties laid down in the other laws... shall be subjected to a fine not exceeding 200 pounds, every tour guide who violating any provision of this law or its applicable decisions, regulations or instructions issued by the Ministry of Tourism. He may be suspended from operating the profession for a term not exceeding six months...).

The Iraqi legislator did not include in a provision states this case. Here we wonder whether we are facing a legislative vacuum in this field. Or can we resort to general provisions?

In the tour guidance field, we're really facing a legislative vacuum as Iraq has an independent law regulating only a set of instructions that don't involve criminalization aspects as the constitution prohibited that. If we want to treat this defect, we shall either enact a law concerning the tour guide, starting from the conditions of practicing the profession to the aspects of criminalization or punishment or resort to the provisions of article (240) of the Iraqi Penal Code, which provided for (... shall be subjected to imprisonment for a term not exceeding six months or a fine not exceeding 100 dinars, Whoever violates the orders of an employee or person in charge of public service or from municipal councils or an official or semi-official body within their legal authorities or does not comply with the orders issued from any of the mentioned authorities, without prejudice to any severe punishment provided for by law...). In the scope of our research, we can consider this article as a way to address the legislative vacuum that we have established in this case, but we find the need to issue a law that takes into account the specialization of the offender - the tourist guide - and determines the type of offenses on which the tour guide deserves punishment if he violates laws, regulations or instructions.

Second, the disciplinary impact

We have already shown the crime of practicing tourist guidance without a license that the legislator did not impose a significant disciplinary impact on its offender; this is not a defect in the provision directed on his legislator, but it is a proper view because the offender does not elevate to be a tourist guide as there is no legal relationship between him and the administration, so the legislator is satisfied with the penalty imposed on him. This crime has a legal significance; therefore the administration has to monitor him to ensure that he applied the laws, regulations and instructions well. Accordingly, the legislator did not only state the criminal impact, but he also imposed a disciplinary provision on the offender, including what the Egyptian legislator provided for (... The Minister of Tourism or his delegate is authorized, basing on a written investigation conducted with the guide who violates one of the previous commitments, to impose the following disciplinary penalties 1- the fine not

exceeding fifty pounds, and may be deducted from the amount of insurance deposited at the Ministry of Tourism. The guide must complete the insurance amount within one month from the notification of the deduction with recommended and certified mail. 2- he shall be suspended for a term not exceeding 3 months duplicated in cases of a repeated recidivism, and the tour shall be notified by this suspending with recommended and certified mail.....)

As for the Iraqi legislator, he provided for (... the authority issued a leave, on the recommendation of the Association of Tourism Offices, may annul the tour guide license by a reasoned decision in one of the following cases:

First- If he no longer fulfils one of the conditions laid down in article (2) of these instructions is lost.

Second- If he is proved to do an act that is detrimental to tourism in Iraq or the office for which he works.

Third: If he has not been renewed the leave for three consecutive years without a legitimate excuse....).

By reviewing the disciplinary impact, we prove the following notes:

1-The issue of the administration's adopting to the disciplinary impact, as a punishment for the tour guide offences, is a permissible matter; ; as evidenced by the terms quoted by both the Egyptian and Iraqi legislators, which is a praised trend because the administration will appreciate the extent to which an act must be confronted with a disciplinary impact or that it does not worth.

2-The legislator surrounded the offending tour guide with guarantees, perhaps the most prominent of which is the investigation. Hence, we find that the Egyptian legislator has adopted such a guarantee explicitly; while the Iraqi legislator did not mention such a guarantee, which requires inclusion of the applicable instructions or the hoped law to include these guarantees, the most important of which is the written investigation with the offender.

II. The Conclusion

Having concluded the topic of "*penal liability arising from the tourist guide's illegal activities*", we have come up with a set of conclusions and recommendations that we introduce as follows:

First: The Conclusion

1-The legislation regulating tourism guidance has been given priority to address the crimes issued by this category, whether it is by practicing guidance activity before or after getting this profession officially, which is an interest that accompanied the legislative interest in the tourism sector, which included in the rules relating to criminalization and punishment.

2-The justifications related to the criminalization of the tourist guide illegal activities are based on several considerations, some of which care about protecting the tourist as the focus and objective of the tourist guide, as well as, protecting the national economy through protecting tourism. Repetition of those crimes will result in bad reputation for the tourism of the country. Thus, tourists will deliberately avoid the country, regardless the availability of the tourism elements.

3-The Iraqi legislator did not succeed in repealing the Tourist Guidance Act and replacing it with instructions, as this resulted in lack of criminalization and punishment provisions in this law, as well as, the failure to include the conditions of tourism guidance activity in the rules of criminalization and punishment because of a constitutional prohibition. Therefore, the legislator keeps away from regulating this vital category unlike the countries that have a vital tourism sector.

Second: The Recommendations

1-Reinstatement the guidance law and issuing it under the heading " The Tourism Guidance Act" and including in the conditions for becoming a tour guide and the stating the legal status of this profession, as this will reassure the tourist and will meet the legislative requirements recommended by the World Tourism Organization for the countries that have a sector Tourism in this field.

2-Due to the importance of the interests involved in criminalizing the tourist guide illegal activities, we suggest that the law, that we call on the legislator to issue, shall include in the penalty of imprisonment for the crime of practicing the tourist guidance profession without a license, as well as, the crime of violating laws, regulations and instructions for a term for at least one year and a relative fine commensurate with the seriousness of the crime he commits.

3-The law must include the establishment of the Tourist Guides Union along the lines with the Egyptian legislator. This union, in addition to receiving applications from those wishing to work in this profession, and then supervising them, it will discipline them if they violate the regulations and instructions issued by the Ministry of Tourism and culture or the General Authority for Tourism or the union.

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