



## Material Requirements for the Crime of Changing the Status of Persons, Places or Things According to the Iraqi and Jordanian Legislation

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### Abstract

The court of subject matter, when issuing a ruling in the case, relies on the status of the persons, places or things related to the subject of the case before it. It may happen that someone changes the status of a place, person or thing related to the crime, which deprives the competent court of the opportunity to determine the truth and reach the correct ruling. Such actions occur with the intention of preventing the judiciary from ruling with justice and in accordance with the law. Therefore, the Iraqi and Jordanian legislators considered this crime as a crime of misleading the judiciary and a crime that disrupts the course of justice. Each of them punished it with criminal penalties commensurate with its seriousness and danger to the achievement of justice.

**Keywords:** requirements, material, crime, change, status, persons, places, things, legislation, Iraqi, Jordanian.

**Received:** 10 September 2023 **Revised:** 25 October 2023 **Accepted:** 20 November 2023

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### Introduction

The crime of changing the status of persons, places and things is one of the crimes of misleading the judiciary. It is one of the crimes that disrupt the course of justice and crimes that affect the course of justice, which obstruct the work of the judiciary and affect its integrity and the soundness of its rulings. It conflicts with the proper functioning of the judiciary and leads to its preoccupation with malicious cases and distances it from ruling with justice and achieving equality between opponents. Therefore, comparative legislation has criminalized and punished it to ensure the proper functioning of justice and to protect the judiciary. The one whom the law protects from misleading is the judiciary in the first place, and through it, individuals are protected from the misleading people's tampering with their rights. ===

This is because the act of changing the status of people, places or things is one of the acts that affects the evidence of the crime, and its negative results are reflected on the public interest of society, as this crime is committed against the state as a symbol of sovereignty and targets the judicial system, and affects the private interest of the opponents in the case, thus constituting a serious act that affects the integrity of the judiciary and obstructs the smooth course of justice. The act of change also obstructs the work of the competent authorities while they are carrying out their investigative duties and indicates that there is a crime going on in secret and that it disrupts the course of the investigation.

### 1<sup>st</sup> Research Importance

Research importance is that the crime of changing the status of people, places and things is one of the crimes that disrupt the course of justice, and one of the crimes of misleading the judiciary. This crime occurs with the intention of misleading justice and preventing the judiciary from ruling with justice, and that this research sheds light on the objective requirements of this crime, taking into consideration that it occurs on the evidence that the court relies on in issuing the ruling and on which it builds its conviction.

## **2<sup>nd</sup> Research Problem**

The research problem can be summarized as the crime of changing the status of persons, places and things represents an infringement on the course of justice, leads to the loss of the value of evidence in proof, and leads to misleading the judiciary and distancing it from ruling with justice. However, despite the seriousness of this crime, the Iraqi legislator did not highlight its specificity, as it criminalized it in addition to concealing criminal evidence and providing incorrect information. It also narrowed its scope by stipulating the specific intent in it, which is that this crime occurs with the intent to mislead the judiciary. It also considered this crime to be intentional, and it may happen that the crime does not occur with the intent to mislead the judiciary, or that the evidence is concealed by mistake and without the presence of criminal intent. In addition, it criminalized changing the status of persons, places and things in one text, while changing the status of persons differs from changing the status of places or things, and changing the status of either of them differs from changing the status of persons.

## **3<sup>rd</sup> Research Hypothesis**

The research assumes that the protection of crime evidence is achieved by preserving the condition of people, places and things and not allowing them to be changed, which requires the existence of special penal texts that determine the necessary punishment for the perpetrator of this crime and achieve sufficient deterrence for the perpetrators as a material penalty for committing it.

## **4<sup>th</sup> Research Objectives**

The research aims to shed light on the objective requirements of the crime of changing the status of persons, places or things in light of the texts contained in the Iraqi and Jordanian legislation, and to demonstrate their sufficiency in achieving the necessary protection of criminal evidence from the seriousness of this crime.

## **5<sup>th</sup> Research Methodology**

The most appropriate approach to the nature and scope of the research is the comparative analytical approach, in which we will attempt to analyze the position of the Iraqi legislator on the crime under study, comparing it with the position of Jordanian legislation.

## **6<sup>th</sup> Research Structure**

We will divide this research into an introduction, two requirements and a conclusion. In the first requirement, we will show the material element of the crime of changing the status of persons, places or things. We will divide this requirement into two branches. In the first branch, we will address criminal behavior and allocate the second branch to the criminal result and the causal relationship. As for the second requirement, we will show the moral element of the crime of changing the status of persons, places or things. We will divide it into two branches. In the first branch, we will address the general criminal intent and allocate the second branch to the specific criminal intent. Then we will conclude our research with a conclusion that includes the conclusions and proposals that we reached through research on the subject of the study.

### **First Requirement**

#### **Material Elements**

The material element of the crime is represented by the material behavior that the law stipulates to be criminalized. It is everything that enters into the entity of the crime and has a material nature that can be perceived by one of the senses. The Iraqi legislator defined the material element in Article (28) of the Penal

Code as "criminal behavior by committing an act criminalized by law or refraining from an act ordered by law." The material element is represented by every act related to the materiality of the crime and is what represents its entity in the tangible material world and through which the assault on the interest protected by criminal law is achieved. The essence of this element is the criminal behavior committed. The legislator does not punish abstract intentions as long as they remain latent in the depths of the perpetrator's soul and do not appear in the open in the form of a tangible material act.

Accordingly, we will divide this requirement into two sections. In the first section, we will explain the criminal behavior, and in the second section, we will discuss the criminal result and the causal relationship, as follows.

## **Section One**

### **Criminal Behavior**

Some have defined criminal behavior as the physical activity that the law stipulates as criminalizing and takes a physical appearance that can be sensed and perceived, and others have defined it as the activity that constitutes the physical element of the crime, which expresses the offender's disclosure of his will that violates the provisions of the law.

Criminal behavior is the most important element of the physical element of the crime, as it is its apparent face and represents its tangible entity, and it expresses the offender's will directed towards achieving the criminal act and result, and criminal behavior is embodied in the movements issued by the offender in which he uses one of his body parts to achieve physical effects, and it is the apparent face of the crime, as it is not achieved without criminal behavior, and if the offender does not commit it, the legislator does not intervene with the punishment.

Accordingly, we will explain in this section the act that constitutes the crime of changing the status of persons, places or things, and the place where the crime occurs, in the following two paragraphs:

#### **First: The act that Constitutes the Crime**

Crimes differ from each other in terms of the act that constitutes the criminal behavior in them. The law is what determines the act that is achieved by committing the criminal behavior that makes the crime different from others. As for the crime of changing the status of persons, places and things, it occurs by the act of change. Change means changing the status of the person, place or thing to another status in order to mislead the judiciary and prevent it from ruling with justice. This occurs by changing its status prior to the occurrence of the crime to another new status, i.e. changing the reality of the crime in a way that would give it a quality other than the quality it had and in a way that would be a status subsequent to the status prior to its occurrence. Changing the status is considered comprehensive for all cases in which change is expected to occur or upon it, whether it occurs on persons, places or things, as the perpetrator usually takes precautionary measures before and after committing the crime in order to mislead the judiciary.

It may become clear during the investigation or trial of the case that there are some places related to the crime or some things related to it, such as documents, papers or papers, whether they are with the accused or any other person related to the crime committed that is being investigated or tried, so the competent court decides to review these things or places due to their importance in deciding the case, so the perpetrator, with the intention of misleading the judiciary, changes their condition to another condition, as the things or places related to the case may not have been seized and may be subject to change that would affect them, whether these actions were committed by the person who submitted them to the judicial authority or someone else or by the person charged with seizing or preserving them.

The status of persons, objects or places related to the case before the judiciary in which the deception occurred is subject to assault, by virtue of the crimes committed against them, including changing the status, i.e. changing its status to another different status. Therefore, the legislator imposed on the competent authorities the custody of persons, preservation of places and seizure of objects as a procedure of the investigation procedures and what results from it of placing the seized objects in the possession of

the judicial authority in order to be guided by them as evidence that helps in revealing the truth. However, they may be exposed to some actions that may affect them, and since this crime is one of the crimes that threaten justice and lead to the loss of evidence and the escape of criminals from punishment, it was therefore a reason for changing the course of many criminal cases and closing them in the end due to insufficient evidence due to the change.

Therefore, the crime of changing the status of persons, places and things occurs with the intention of causing the judiciary to form false convictions. Accordingly, the perpetrator's activity in this crime is represented by his committing acts that distort the facts for the court of subject matter, so that it forms a conviction that contradicts the facts of the case and its evidence. The material element of this crime is thus achieved when the perpetrator changes the status of persons, places or things to prevent the judiciary from the truth.

Therefore, the material act that constitutes this crime is achieved by the act of change, in order to prevent the judiciary from reaching the truth about the dispute presented to it. The judiciary seeks, in the midst of a turbulent sea of different interests, to achieve justice through accurate research and investigation into the truth, returning the right to its owner, and ruling on the convicts with the ruling stipulated by the law. All these procedures are not easy, but rather require scrutinizing the evidence presented to it, examining it, and discussing it with the opponents, as well as presenting the facts of the dispute. In this process and before forming his emotional conviction in the case presented to him, the judge needs more deliberation, contemplation, caution, depth, consideration, and broad knowledge of the details of the dispute, which requires that he reach this without misleading or distorting. In this sea of different interests, he needs someone to help him reach the truth. Therefore, changing the status of people, places, or things poses a danger to the work of the judiciary and prevents it from reaching the truth, which affects the outcome of the lawsuit and the decision issued by the court in it, which constitutes a great burden that prevents the discovery of the truth, as the judiciary is one of the most difficult and harsh professions. I mean the risks, because the path of justice is not paved, but rather full of difficulties. It is a long and arduous path full of obstacles and impediments. The most common of these impediments is providing incorrect information to the judiciary regarding a specific fact presented to it. Often, the misleader fabricates lies in order to present something other than the truth in the case presented. Therefore, criminal legislations have considered this crime to be one of the crimes that disrupt the course of justice because it targets the judiciary and distances it from ruling with justice. Therefore, the Iraqi legislator has criminalized it among the crimes that disrupt the course of justice in Chapter Four of Book Two of the Penal Code.

According to the above, the criminal activity of this crime is achieved by the perpetrator committing acts that distort the facts for the court of subject matter, so that it has a conviction that contradicts the facts of the case and its evidence, due to the perpetrator changing the status of people, places or things, and when the change occurs to the status of people, places or things, it leads to the creation of a wrong mental state in the judge when he assesses the probative force of the evidence on which the right can be based, i.e. it leads to the formation of a wrong belief in the judge whose source is the deception committed by the perpetrator when he changed the status of people, places or things, which leads to the formation of a wrong idea and conviction in the judge that makes him believe that something is true while it is contrary to the truth, it is a deception of the judge by means or illegal actions that are based in essence on evasion, and therefore it represents a dangerous criminal behavior used against innocent people through the judiciary and the goal of the deceiver is to harm others and tamper with their rights by disrupting the course of justice, and these acts are crimes that are intended to falsify and change the truth, so deception in this case is achieved by placing obstacles in the way of the authorities. The basis for achieving justice is not to reach the truth and rule on it, which is one of the most dangerous attacks that the judiciary is exposed to.

On this basis, changing the status of persons, places or things leaves an impact on the original lawsuit in which the deception occurred before the judiciary, as it has an impact on the ruling issued in the original lawsuit before the judiciary in which the change occurred. If the ruling issued in the original lawsuit has not yet become final, the occurrence of the change is a reason for appealing it by the Public Prosecution or the person who was a victim of the deception. However, if the ruling has not yet become final, it cannot be

appealed by cassation, except that changing the status of persons, places or things is a reason for appealing it by way of retrial.

Therefore, comparative criminal legislation has considered these acts a crime punishable by law, due to their great danger to the position of the opponents in the case before the judiciary. The aim of criminalizing them is to ensure the proper functioning of the judiciary and not to occupy it with malicious cases. It is a crime of a material nature, where the perpetrator tampered with the status of persons, places or things with the intention of misleading the judiciary, causing it to make a mistake and preventing it from ruling with justice. Lying is one of the basic elements of this crime.

Just as the crime of changing the status of persons, places and things is supposed to occur exclusively before the judiciary, it only occurs before a judicial authority, and this is what the Iraqi legislator explicitly stipulated in Article (248) of the Penal Code, as it stipulates that it occurs before a judicial authority, and the Iraqi legislator has specified the authorities before which the law punishes the deception that occurs, which are either a court, an investigative authority, or a police officer authorized to conduct the investigation.

On this basis, the crime of changing the status of persons, places and things as one of the original crimes in misleading the judiciary is considered a subsidiary crime and does not occur initially, so it assumes the existence of a dispute before the judiciary and then misleading occurs in it, so it is a crime subsidiary to the dispute, and assumes the existence of a previous lawsuit before it presented before the judiciary, then changing the status of persons, places or things occurs in order to prevent the judiciary from seeing the truth, i.e. it requires that there be a lawsuit before the judiciary and misleading occurs in it, so this crime occurs during the course of the investigation or trial procedures, where the perpetrator changes the status of places, persons or things or tamper with evidence of the crime, but despite the fact that the crime of changing the status of persons, places and things is considered a subsidiary crime and does not occur except before the judiciary, the perpetrator's behavior in it is secret, as the perpetrator changes the status of persons, places or things secretly, then presents this to the judiciary with the intention of misleading it, i.e. he commits his activity in complete secrecy, but this crime, although it is committed secretly, is considered a positive crime, because the nature of the behavior that constitutes it is positive, and the evidence for that is what is stated in Article (248) of the Iraqi Penal Code, in which the legislator used terms that indicate positive behavior, which are terms that indicate a change in the situation.

## **Second: Crime Location**

Crime Location of changing the status of persons, places and things is the person, thing or place to which the change occurs and its status is changed to another status. Therefore, the person, thing or place is the subject to which the crime is committed, and this is done by changing it, i.e. by changing its previous status to a new one. This is done by changing it in a way that gives the status a characteristic other than the one it had and in a manner that is subsequent to the previous status. Given the difference in the nature of each case of change mentioned in Article (248) of the Penal Code, it was necessary to examine each of these cases separately as follows:

### **1- Changing the status of persons:**

It means changing the status of a natural person, whether a victim or an accused, by changing the status he was in before the crime occurred to another different status. The change occurs with respect to a natural person, and it is not conceivable that it would occur with respect to a legal person, because the legal person's actions are through someone who represents it and does not carry them out himself because he does not have a tangible physical entity. However, a change can occur to the status of the natural person who represents the legal person, such as its president, a member of its board of directors, one of its leaders or advisors. Where its status is changed to another status.

### **2- Changing the status of places:**

The legislator did not specify what is meant by changing the status of places mentioned in Article (248) of the Penal Code, but from the point of view of criminal law it can be defined as any inhabited area of land, private or public, where the crime occurs, such as houses and fenced and unfenced shops such as public parks, roads, ships, airplanes and public shops, including the traces left by the perpetrator or the victim, and if it is most likely that every crime must leave a material trace indicating its occurrence or its perpetrators, whether it is the result of the perpetrator or the victim such as the remains of the victim's blood or the perpetrator's fingerprints, or traces of gunfire, then anyone who subsequently tampers with these traces with the intention of misleading the judiciary is considered to have committed this crime.

### **3- Changing the status of things:**

The Iraqi legislator did not specify the type of things that deception leads to changing, so the term things include everything related to the crime. The change may occur in the type of crime itself, such as changing the body of the victim in the murder crime or changing the tools of the crime that were used in committing it. It also includes things that are likely to reveal the crime, such as papers, correspondence, or letters that indicate the perpetrator's relationship to the crime.

## **Section Two**

### **Criminal Result and Causal Relationship**

The material element of the crime is not achieved by simply committing the criminal behavior, but rather requires the availability of its other elements, which are the criminal result and the causal relationship, and we will explain each of them in a separate paragraph.

#### **First: Criminal Result**

The criminal result means the effect that results from committing the criminal behavior, which is represented by the change that occurs in the outside world due to the crime. Thus, the criminal result is the effect that the criminal behavior leaves on the rights and interests protected by criminal law, and is represented by the change witnessed by the outside world. The criminal result has two meanings: the material meaning, which is represented by the effect that results from the committed behavior, and the legal meaning, which means that it represents an attack on the rights and interests protected by criminal law. Accordingly, we will discuss the material meaning and then the legal meaning in the following two paragraphs.

#### **1- Material Implication**

It refers to the change that occurs in the external world as a result of committing the crime. This meaning is based on the idea that the situation was in a certain state before the crime occurred, but it became in another state after it occurred. Crimes are divided in terms of material meaning into formal crimes and material crimes. Formal crimes are those crimes that do not result in any change in the external world, but rather their material element is limited to criminal behavior only. If the behavior occurs, the crime is realized even if it does not result in a material criminal result. As for material crimes, they are crimes in which the commission of criminal behavior results in a material criminal result represented by the change that occurs in the external world.

The crime of changing the status of people, places and things is a material crime and not a formal crime, and it requires a change in the outside world, and the criminal result that results from it is the judiciary falling into a state of deception and punishing the innocent and acquitting the guilty, meaning that it affects the final result of the ruling. This crime is material and does not occur completely by simply committing the criminal behavior represented by changing the status of people, places or things, but rather requires that it have an effect in the outside world, and this change is represented by the judiciary falling into deception due to changing the status prior to the occurrence of the crime to another status resulting from its occurrence. This crime is therefore material and does not occur in its complete form by simply changing the status of places, things or people, but rather requires a change in the outside world as an effect resulting

from its commission, and this change is represented by the judiciary falling into deception due to changing the status prior to the occurrence of the crime to another status resulting from its occurrence.

Since the crime of changing the status of persons, places and things is a material crime, it is possible for an attempt to be achieved in its complete or incomplete form, as if the perpetrator changed the status of places, persons or things and yet the judiciary did not fall into misleading.

## **2- Legal Implication**

The legal implication deals with the criminal result in that it represents a breach of the criminalization texts and represents an assault on the rights and interests protected by criminal law, and does not deal with it as a material effect that results in a change in the outside world as is the case with the material implication, as the criminal result in terms of the legal implication is not represented by the change witnessed by the outside world, but rather it is a dangerous phenomenon that represents a breach of the criminalization texts.

A crime, in terms of legal meaning, is either a crime of danger or a crime of harm. Crimes of danger are those crimes that do not require the occurrence of material harm, but rather warn of the occurrence of a danger that affects the rights or interests protected by criminal law. The law does not stipulate that the criminal behavior in them should result in a material criminal outcome, but rather its material element is limited to the criminal behavior only. As for crimes of harm, they are those whose material element is not limited to the criminal behavior only, but rather require that it result in material harm represented by what the act committed by the perpetrator caused in terms of harm to the right or interest subject to criminal protection.

The crime of changing the status of persons, places and things is considered a crime of harm and not a crime of danger. It is not limited to committing the act that constitutes it by changing the status only, but rather requires that this act results in tangible material harm, which is represented by harm being inflicted on the thing, person or place that is the subject of the crime and changing its previous status to another new status different from the first. This crime also results in a legal consequence, which is that it represents a violation of the provisions of the law that impose not misleading the judiciary or confusing the facts, and allowing it to rule freely and on the basis of the law and according to the evidence available in the case. It also violates the constitutional and legal rules that stipulate ensuring the independence, specialization and impartiality of the judiciary and imposes on everyone to respect and adhere to these rules so that the judiciary can rule with justice and according to the law and based on the evidence presented to it.

### **Second: Causal Relationship**

The causal relationship means the link that connects the criminal behavior and the criminal result. It is the material connection that shows that the criminal behavior is what led to the occurrence of the criminal result, as the realization of the material element in the complete crime requires the connection of the criminal behavior with the criminal result by a causal link. It is not sufficient for the crime to be realized merely by committing the material act that constitutes it, even if that act results in the criminal result, unless that result is linked to the criminal behavior. The causal relationship is the link that connects the criminal behavior and the criminal result, i.e. a material connection between two events, the occurrence of one of which depends on the occurrence of the other.

There is no problem if the perpetrator's action is the only reason that led to the criminal result, in this case the causal relationship between the behavior and the result is available without any problem, except that the problem appears if another reason contributes to the perpetrator's action in causing the result, in this case the jurisprudence differed about adopting a unified standard when several factors contribute to causing the criminal result, so the theory of equivalence of causes went to equality between all the factors that contributed to it, so that the causal relationship is available between each one of these factors and the criminal result as long as it has a role in causing it, while the theory of the strongest cause went to that the factors that contribute to causing the criminal result are not equal, some of them are suitable alone to cause it, so it is the strongest and is considered a cause of the criminal result, and some of them play a limited role

that is not suitable alone to cause it, so the criminal result is attributed to the strongest cause, while the theory of the appropriate cause went to that the act is a cause of the criminal result, whenever it is shown that its contribution to causing it represents an aspect of importance, such that it can lead to causing the result according to the normal course of things.

The Iraqi legislator has organized the causal relationship in Article (29) of the Penal Code, which stipulates that:

- 1- A person shall not be held accountable for a crime that was not the result of his criminal behavior, but he shall be held accountable for the crime even if another previous, contemporary or subsequent cause contributed to its occurrence, even if he was unaware of it.
- 2- However, if that cause alone is sufficient to cause the result of the crime, the perpetrator shall in this case only be held accountable for the act he committed." The Iraqi legislator adopted the theory of equivalence of causes, while narrowing its scope, because it stipulated that in order to sever the causal relationship, the new factor must be sufficient to cause the criminal result. As for the theory of equivalence of causes, it stipulated that the new factor must be sufficient and independent to sever the causal relationship. In Jordanian legislation, the legislator did not adopt a specific criterion for the causal relationship and left that to the discretion of the subject court.

Regarding the causal relationship in the crime of changing the status of persons, places and things, since this crime is a crime of harm, it is not sufficient for its material element to be fulfilled by merely committing the act of change, even if the criminal result results from it, unless the behavior is linked to the result by a causal link. If the result is not connected to the behavior, the crime stops at the point of attempt. On this basis, the crime under study requires the availability of a causal relationship between the criminal behavior (i.e. between the act of change) and the criminal result that resulted from it, i.e. that the act of change committed by the perpetrator, represented by changing the status of persons, places or things, is what caused the judiciary to make a mistake and led to its misleading. If this is not achieved, the crime does not occur in its complete form, but rather a complete or incomplete attempt occurs, so it is either a failed or suspended crime.

### **Second Requirement**

#### **Moral Element**

Moral element means the psychological force that stands behind the activity by which the perpetrator intended to achieve the crime. The moral element is a mental relationship between the act constituting the crime and the perpetrator's will, and the essence of this relationship is the free chosen will. The moral element does not take one form. If the perpetrator intends to achieve the act and the result, then the crime is intentional, and the moral element appears in it in the form of criminal intent. The Iraqi legislator defined it in paragraph (1) of Article (33) of the Penal Code, which states that "criminal intent is the perpetrator directing his will to commit the act constituting the crime, aiming at the result of the crime that occurred or any other criminal result." Or the crime is unintentional, when the perpetrator intends to achieve the act only without the result, then the crime is one of the crimes of error, and the perpetrator is punished for not taking precautions and caution to prevent the criminal result. In this regard, Article (35) of the Penal Code states that "the crime is unintentional if the criminal result occurs due to the perpetrator's mistake, whether this mistake is negligence or recklessness or inattention, lack of caution, or failure to observe laws, regulations, and orders."

The crime of changing the status of persons, places, and things is an intentional crime and requires general criminal intent. This crime also requires, in addition to general intent, a special intent, which is that it be committed with the intent to mislead the judiciary. This is what the Iraqi legislator explicitly indicated in Article (248) of the Penal Code, which stipulates that "Whoever changes, with the intent to mislead the judiciary, the status of persons, places, or things shall be punished. "

Therefore, this crime requires general intent and special intent, and therefore we will divide this requirement into two branches. In the first branch, we will explain general intent, and in the second branch, we will discuss special intent, as follows:

## **Section One**

### **General Intent**

General intent is represented by general criminal intent, and jurisprudence has defined it as a psychological force that drives the perpetrator to commit the act that constitutes the crime and achieve its result with knowledge of them. Intent is general if the perpetrator's will be directed towards achieving the act that constitutes the crime with the intention of causing the criminal result with knowledge of that. It is a psychological state that is directed towards committing the acts that constitute the crime and achieving the criminal result.

The general criminal intent is based on two elements: knowledge and will. It requires that the perpetrator direct his will to commit the act constituting the crime with the intention of achieving the criminal result, knowing them. Since the crime of changing the condition of people, places and things is an intentional crime, it requires that the perpetrator direct his will to commit the act of change, knowing that this leads to misleading the judiciary and causing it to make a mistake. Accordingly, in this section we will discuss knowledge and then will, as follows. **First: Knowledge**

An opinion in jurisprudence defined knowledge as the perpetrator's knowledge of all the elements and facts that constitute the crime, and this is achieved by his knowledge of all its elements. Knowledge requires the perpetrator's knowledge of the subject of the right that was violated and the seriousness of the act committed against that right, in addition to his knowledge of the time and place of committing the act. The perpetrator's knowledge of the facts of the crime and its elements is achieved when there is a psychological relationship between the incident that the law criminalizes and his mental activity, which leads to his knowledge of all the facts that constitute it, so he is knowledgeable of all of them. Knowledge is a mental state in which the perpetrator is, the essence of which is awareness of the act that directs his will to commit it, with the expectation of the result that that act is likely to cause.

Since the crime of changing the status of persons, places and things is an intentional crime, it requires that the perpetrator know the nature and essence of the act committed, in addition to the necessity of his knowledge of the location of that attack and the seriousness of the act committed against the right or interest protected by criminal law, this crime requires that the perpetrator know that his act constitutes a change in the status of persons, places or things, with his knowledge that he is changing the truth, and that he also knows that the situation is incorrect. The person who changed the status of the person, place or thing that was the subject of the crime, i.e. he was aware that the situation in which he made the person, place or thing that was the subject of the crime was incorrect and contradicted its reality before the crime occurred. The Iraqi legislator explicitly referred to knowledge in Article (248) of the Penal Code when it stipulated that "Whoever changes the status of persons, places or things with the intention of misleading the judiciary ... and he knows that it is incorrect shall be punished." If he does not know this, the criminal intent loses one of its elements, and then the crime is not committed.

This crime also requires that the perpetrator be aware of the criminal result that may result from committing it, i.e. the perpetrator be aware that his action will result in misleading the judiciary and preventing it from determining the truth, and that the change he made will harm one of the parties to the lawsuit and hinder its progress before the judiciary. The perpetrator intends the act that constitutes the material element with his knowledge of all its implications, and thus if he commits that act beyond his will or his knowledge is absent, the moral element is not achieved and the crime is not established.

### **Second: Will**

Will is defined as a psychological activity that tends to commit an act that the law criminalizes with the intention of achieving a criminal result. Will is the director of nervous forces and is the activity by which a

person can influence the people and things around him. Thus, will is represented as a mental force latent in the perpetrator himself that drives him to commit the crime by directing his muscular forces to commit the act that the law criminalizes in order to achieve the criminal result. Just as knowledge requires that the perpetrator be aware of all the elements of the crime and its facts, this is also required of will. It requires that the perpetrator's will be directed toward achieving all the elements of the crime, i.e., toward achieving the act and the result that follows from that act. However, not every will that tends toward committing an unlawful act is legally valid. Rather, the will is subject to legal blame if it is free and chosen and has voluntarily directed toward violating the law. It is then called the sinful will. If it is not free and chosen or if it is unable to direct a person's actions, it is not subject to punishment.

The crime of changing the status of persons, places and things requires that the perpetrator direct his will to commit the physical act by which he changes the status of persons, places and things to another state, i.e. that his psychological powers are directed towards changing the previous state of the person, place or thing that was the subject of the crime to another state.

In addition, this crime requires that the perpetrator's will be directed towards achieving the criminal result resulting from committing the act of change, i.e. that the perpetrator's will be directed towards misleading the judiciary and distorting its vision of the truth by changing the status of persons, places or things, and the motive for committing this crime is not important, as the perpetrator's commission of one of the acts that constitute it with knowledge and will is sufficient for it to be achieved with all its elements regardless of the motive for committing it, as the motive according to the general rules is not taken into account and is not included in the elements of criminal intent, and thus the availability of knowledge and will is sufficient for the criminal intent to be established in this crime regardless of the motive for it.

## **Section Two**

### **Special Intent**

Special intent is an intention directed towards achieving a specific goal or a specific motive sought by the perpetrator when he committed the crime. The special criminal intent requires that when the perpetrator directs his will to achieve the act and the result, he aims to achieve a specific goal behind committing the crime. In some crimes, the legislator is not satisfied with the general intent, but rather stipulates that there be a specific motive, which is taken into account for the criminal intent to be established.

The moral element of the crime of changing the status of persons, places and things is not achieved by mere general intent, but rather requires special intent, which is what the Iraqi legislator referred to in Article (248) of the Penal Code, which stipulates that "anyone who changes the status of persons, places or things with the intent to mislead the judiciary shall be punished...".

This crime requires that there be a special intent on the part of its perpetrator, which is that the misleader has changed the status of persons, places or things with the intent to mislead, i.e. with the intention of harming the course of justice in reaching the truth. On this basis, general criminal intent is not sufficient to achieve the moral element for the crime mentioned in Article (248) of the Iraqi Penal Code. In addition to it, there must be a special criminal intent represented by misleading the judiciary. This means that the perpetrator must have committed the act of change with the intention of harming the course of justice. The assessment of the presence of the intent to mislead the judiciary or not is left to the discretion of the court. Therefore, if the perpetrator did not intend to mislead the judiciary by his act, the moral element is not achieved and the crime is not established.

### **Conclusion**

After we were able, with the praise and success of God, to complete the study on the research topic entitled (The material requirements for the crime of changing the status of persons, places or things in Iraqi and Jordanian legislation), we show conclusions and suggestions that we have reached as follows:

#### **First: Conclusions**

1. The crime of changing the status of persons, places or things is considered one of the crimes that disrupt the course of justice, and one of the crimes of misleading the judiciary.
2. This crime is achieved by the act of change, by replacing the previous state of the person, thing or place that resulted from the occurrence of the crime with another state.
3. The place of the crime is the person, thing or place on which the act of change committed by the perpetrator is directed.
4. This crime is considered intentional and requires knowledge and will, as well as the availability of a special criminal intent, which is that it occurs with the intent to mislead the judiciary.

#### **Second: Suggestions**

1. We propose that the Iraqi legislator criminalize changing the status of persons, places or things in a text independent of Article (248) of the Penal Code in order to highlight its specificity, and that the act by which this crime is committed differs from the acts by which other crimes stipulated in this article are committed, such as concealing criminal evidence and providing false information, as it is not a form of these two crimes, but rather an independent crime of misleading the judiciary.
2. We propose that the Iraqi legislator increase the penalty for the perpetrator of changing the status of persons, places or things and make it imprisonment for a period of no less than two years, because the penalty stipulated in Article (248) of the Penal Code is not consistent with the seriousness of this crime and does not achieve sufficient deterrence to confront its perpetrators.
3. We propose that the Iraqi legislator not require specific intent in the crime of changing the status of persons, places or things, as it narrows its scope and leads to criminals escaping punishment, and that it be limited to general intent only.
4. We propose that the Iraqi legislator criminalize changing the status of persons, places or things if committed by mistake.

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