

## **The Consequence of The Abstention of Informing in the Iraqi Criminal Law**

**Dr. Khalied Mohammad Ajj**

*Department of Law/ College of Law/ Cihan University/ Sulaimanya*

**Abstract:** Most of the international criminal laws stated in their legislation that hiding necessary information in specific situations is a crime to be punished. This is especially when there is a legal necessity which entails revealing necessary information where in case of not revealing such information, there must be a legal article which allows such prevention. The action of not revealing is a crime because hiding necessary information concerning the occurrence of a crime is an obligation that the law imposes. In fact, this kind of crime is considered impendence for the development of the society because it is considered as being indifferent and a reflection of selfishness. This paper deals with illustrating the crime of hiding necessary information though the analysis of texts of laws and showing how such crime might be committed and the evaluation of the Iraqi Law towards the occurrence of such crimes.

**Key words:** *criminal law, the penal code, abstention of informing, crime punishment*

---

### **I. INTRODUCTION**

It is well-known that the crime cannot be identified in most cases by the jurisdiction unless it is told by others who may have witnessed or known something about it. Telling about a crime is considered the first thread to reveal the crime. The quicker informing the authorities on the crime, the sooner the authority can reach to clues and important evidence concerning a committed crime. Moreover, informing about a crime may lead to the accumulation of more evidence and knowing if crimes might be committed in the future (Tama, 2010). The current study aims at illustrating the issue of not informing the concerned authorities concerning the witnessing or the knowing of crime. The paper also aims at showing the stand of the Iraqi Law concerning not informing the authorities and whether it fits committing such a crime or it needs to be reconsidered.

### **II. DEFINING THE ABSTENTION OF INFORMING**

The crime of the abstention of informing is considered one of the crimes which impose a criminal responsibility as a consequence of doing so. This crime can be reflected by not informing the authorities concerning the witnessing or the knowing of a crime and thus results into making no progress in the investigation or arriving at vital evidence. Such action is considered a negative behavior which the law prevents it. Such crimes are called negative crimes. In fact, abstaining informing about a crime is itself a crime that is punished by the law where not informing, if resulting into a crime, is a negative crime and one of the elements of a committed one. This kind of crime can be defined as not doing something that should have been done on the basis of a specific basis (Salama, 1984). Consequently, the negative crime is committed and is defined as abstaining informing about a crime that he/she was there the time it was committed or knowing about a potential crime and hiding information which might lead to reveal the criminal. In other words, it is defined as the crime which is based on the abstention of doing something which is basically imposed by law like abstaining informing about some crimes (AL-Kateeb, 2012).

### **III. THE ELEMENTS OF THE ABSTENTION OF NOT INFORMING**

This section is devoted entirely to discussing the elements that are considered fulfilling the crime of abstention. The most important element of this kind of crime is the corporal one which is represented by the negative action that a person adopts concerning the fulfilment of law obligation as far as the abstention of doing something is concerned. However, law obliges people to inform about any crime (Ali, 1997). This element occurs when two conditions exist. The first is that the absentee knows about the crime and the second is the abstention of informing about the crime. Concerning the first issue, the Iraqi law obliged people to inform about any crime when witnessing or knowing about it particularly when such a crime is related to the state internal security. This can be clearly found in article 168 of the Penal Code which states that anyone who knows about a crime and doesn't inform is punished. Whereas article 219 of the same law has punished whoever knew about a crime which touches the foreign state security and never informed about it. On the other hand, the second element is concerned with not informing the juridical seizure authorities. As far as the Iraqi legislature is concerned, there is no specific form of the two articles 186 and 219 concerning the way of informing in addition to the fact that

the text did not refer to a specific period which entails informing as well as not to hasten the informing. But this does not mean to keep things unrevealed till it is too late where the informing becomes useless and in general what shows the abstention is beyond dispute in the hand of the estimating authority of the court (Abid,1987). The Iraqi law added another condition to punish the abstainer which is not being accused of being a partner in the crime. The other important issue concerning the punishment of the abstainer is the fact that the criminal intention should exist based on the two elements of knowing and will so as the crime of abstention occurs. Though the crime of not informing is a negative crime, it might be have purpose which includes the criminal intention based on knowing and will. The person should inform about the crime once he/ she knew about it since law ordered citizens to do so. If not informing, the abstainer would be charged legally regardless of the purpose of not informing (Salama, 1984). It should not be considered to be an informant with the knowledge of abstaining from the crime and refrain from reporting it. Science is not available to the news presenter if he informs a person who is not competent to investigate the crimes in the belief that he is a specialist. The latter did not inform the competent authority of receiving the news. The criminal intent of the first person is to be unaware of the failure to inform, while the second person may be held accountable for knowing about the crime. (ibid). The knowing element of the criminal intent is available in the case of the offender's knowledge of the facts constituting the crime and its anticipation of the results and then the will to commit the act and the will of the result. It requires knowledge to surround all the facts constituting the physical element. The definition of knowing about the crime and refraining from informing is the limits of knowing that the act is ordered by law. Since informing about the crimes is a duty imposed on a certain number of persons in certain cases, this knowing is a presumed one and cannot be excused as an ignorance of the consequences (Abid, ). We conclude from this that abstaining from informing is the reluctance of the offender to commit an act he/ she is required to do so as not to be subjected to legal accountability, by directing his will so aim behind this reluctance to achieve a certain goal, which means that the criminal intent here is the knowing of abstinence and will.

#### **IV. THE EVALUATION OF THE ABSTENTION CRIME**

The panel code stated the crime abstention in many articles and under various titles in this particular law. One of such articles is the article 186 which stated that anyone who is accused of not informing the authorities about a crime is to be punished by being imprisoned or paying a fine not exceeding 500 dinars or by one of such punishments. Article 247 also stated another type of punishment where is asserted that a person is punished by paying a fine or by imprisoning if he/she is legally obliged to inform about a crime and he/she did not do that. This of course includes the employees and staff members who work in any governmental sector.

#### **V. CONCLUSION**

The legislator's position on the crime of not informing was not systematic, as we noted the following: the first acts harmful to the security of the State from the inside and outside of his own care, not only the criminalization, but the crime of not being informed by everyone who is related to them, and recognizing the seriousness of these crimes and gravity as well as all the crimes provided for in the Penal Code was supposed. Should also be covered by the text of the offense. Not to report them, but there are other crimes of no less serious and we mean terrorist crimes. The wording of article 247 of the Penal Code and its provisions in the first sentence is in contradiction to the specific provisions of the same law regarding abstaining from the news, although the predominance of this conflict will inevitably be the private text. Abstain, who is originally charged with public service and between abstinence from one of the people, and this, in our opinion, equality in its place leads to a violation of the principle of proportionality in punishment, and on the third hand, the text has expanded much of the exemption circle by using it to express the status of these. The Sahira) is an expression that excludes from the rule of the text a large number of people and in this provision to the text and in order to avoid the above to prove the shortcomings and the need to achieve compatibility with our previous proposal on the performance of duty in the news we call on the legislator to repeal texts of articles (186) and (219) (247) of the Penal Code, and the inclusion of one text in its first sentence, includes two paragraphs, the first relating to the prohibition of deliberately informing public matters that the law requires to be brought before the public authorities.

#### **BIBLIOGRAPHY**

- [1] Abid, M., J.(1987). The Crime of Abstention in the Iraqi Legislation: A Comparative Study. Thesis of Doctorate. University of Baghdad: College of Law.
- [2] Ali, Essra. (1997). Informing About the Crimes: A Comparative Study. Thesis of M.A. University of Babel. College of Law
- [3] AL-Kateeb, Hassan Abdul Ghani.(2012). The General Law. Beirut: AL-Hakhokya Publication.
- [4] Salama, Mamoon, M. (1984). The Explanation of the Code of Panel, The General Part. Cairo: Dar AL-Fikar AL-Arabi.
- [5] Tama,Fawzi, S.(2010). The Secret Informant in the Iraqi Legislation. A paper submitted to the Supreme Court Council. Baghdad.