

Legal Adaptation of the Criminal Incident

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Abstract

The Federal Court of Cassation, while seeking to properly apply the law or unify its application as a court of law, its role stops in the area that is not regulated by legal rules, and the judicial conviction of reality in terms of content, being a logical mental process, goes outside the scope of supervision, and thus the criminal judge is subject to the supervision of the Federal Court of Cassation. With regard to the proper application of the law if it becomes clear that it has the characteristics of the legal rule in the matter before it, and on the contrary, it is not subject to this oversight if it does not become clear that the characteristics of the legal rule are available for the matter before it.

Since this is so, the matter requires explaining one of the practical applications of that legal function of the Federal Court of Cassation, by clarifying one of the legal issues. This court has the jurisdiction to monitor it, and then correct it if it deviates, as it falls within its legal scope. This is the issue of legal adjustment, which represents an entry point for implementing the Federal Court of Cassation's oversight of the legal aspect of the ruling.

Therefore, legal adaptation is the means through which the correct application of the law can be achieved, and legal criminal justice can be achieved. Without adaptation, there will be confusion in the legal solution, and this leads to negative repercussions on criminal policy, which is the goal of the legislator in criminal legislation.

Keywords: *Legal adaptation, criminal incident.*

Introduction

Judiciary is considered one of the most dangerous functions carried out by the state.

This danger is evident when a person commits an act that the law considers a crime, such as if he takes the life of a human being. Here the question arises: is the person punished for this act as it constitutes the crime of premeditated murder, manslaughter, or battery leading to death? Is this act considered a felony, misdemeanor, or violation? The answer to these questions varies depending on the legal conditioning given to the act, due to the difference in the penalty prescribed for each crime.

From here, the important role of legal adaptation of the act committed by a person is highlighted, in terms of drawing the line between the various crimes stipulated in the Penal Code. The importance of adaptation is also evident in the procedural aspect in terms of determining the competent court and the essence of the judicial rulings upon which the reasoning for judicial rulings is based. What is the importance of adaptation? For the parties to the case, whether the judge or the accused.

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Since legal adjustment is an issue of law, not reality, and the function of the Federal Court of Cassation, and the goal of this function, lies in achieving legal security in society and in the effectiveness of legal justice and the rule of law as a goal, and in the proper application of the law, and respect for the principle of equality before the law and the judiciary, and the absence of differences in application. The law and its interpretation differ by courts as a function.

Since this is so, the matter requires explaining one of the practical applications of that legal function of the Federal Court of Cassation, by clarifying one of the legal issues This court has the jurisdiction to monitor it, and then correct it if it deviates, as it falls within its legal scope. This is the issue of legal adjustment, which represents an entry point for implementing the Federal Court of Cassation's oversight of the legal aspect of the ruling.

Research problem

The research problem arises in distinguishing what is reality and what is law in the criminal case, and is the adaptation considered a matter of fact, a matter of law, or a technical means, because of the importance of that determination in the process of monitoring the legal adaptation of the criminal incident, considering that the Court of Cassation Federalism is concerned with what is the law and not the reality in the criminal case, and this is the opposite of what is the case in the criminal judge, as he is a judge of reality and the law at the same time, so he is called a judge of reality.

Research Methodology

The research study is based on the comparative analytical approach, which includes analyzing legal texts and jurisprudential opinions and comparing them with others, in a way that serves the subject of the research and drawing conclusions from them. The researcher does not neglect to take into account the applied aspect, which is represented by judicial rulings, within the limits of the available judicial rulings.

Search Plan

We will examine this topic through two requirements. In the first, we will explain the meaning of legal adaptation by defining it linguistically and terminologically. As for the second requirement, it will be devoted to determining the legal nature of this adaptation, whether it is considered a matter of fact, law, or a mixed action.

First requirement

The meaning of legal adjustment

To clarify the limits of the term (adaptation), which we find in the books of law commentators overlapping meanings and extensions according to its multiple definitions, in the first section we discuss the linguistic definition, while in the second section we discuss the terminological definition of adaptation as follows:

First branch

Linguistic definition

The term conditioning has different connotations depending on the nature of the research. In the field of forensic sciences, conditioning indicates that "a specific incident constitutes a specific crime." In the field of natural sciences, it denotes the meaning of adaptation, i.e. (the adaptation and harmony of living organisms with the conditions and laws of the surrounding environment). As for adaptation in the language, it is the source of the verb "to condition", and to condition a thing (to make it known), and to condition a thing (its condition and description).

Second section

Terminological definition

Legal adaptation is the means through which the correct application of the law can be achieved, and legal criminal justice can be achieved. Without adaptation, there will be confusion in the legal solution, and this leads to negative repercussions on criminal policy, which is the goal of the legislator in criminal legislation.

Legal adaptation requires the fulfillment of two conditions: the first: that the legislator stipulates that if there is an abstract fact that has certain characteristics, then it falls under one of the descriptions known by the law and has a specific legal effect, and the second: that the judge declares that the incident presented to him has the characteristics of the abstract fact. to which the law has given a specific legal description. The first condition is the work of the legislator, while the second condition is the work of the judge.

When the legislator adds a certain legal conditioning to a certain incident, he creates this conditioning (constructive conditioning), that is, the legislator gives legal descriptions to certain issues in the legislation, and then decides that a certain incident, designates it and determines its characteristics, as constituting a specific crime.)This is in contrast to the judge, when he gives this conditioning to the incident before him, he announces this conditioning and reveals it (revealing conditioning, judicial conditioning, or practical conditioning), which is a statement that that event possesses the characteristics of the abstract fact that the law described in a specific legal way.)There is a correlation and interrelation between the two conditions. The judge cannot choose a specific adaptation unless the legislator knows it. Rather, his role in this regard is purely revealing, because it consists in clarifying the characteristics that the legislator requires in the abstract fact in order to apply them to the incident presented to him.

There is no legislative text that defines adaptation, but that does not mean that adaptation is an alien term in the world of law, as Article (17/1) From the Iraqi Civil Law to the term adaptation when she said ((Iraqi law is the reference in adjusting relations...)).

Within the scope of the criminal law, the Penal Code, as well as the amended Iraqi Code of Criminal Procedure, did not use the term adaptation, as the amended Iraqi Code of Criminal Procedure in force replaced it with the term (legal description. However, the French Code of Criminal Procedure used the term adaptation in the text of Article (116), obliging the investigating judge to inform the accused of the facts attributed to him and the legal ambiguity.

At the level of jurisprudence, French jurisprudence has defined several definitions of legal adaptation, but they all revolve around one meaning, which is that it represents a relationship between the criminal incident and the texts of the law, as it is known as: (determining the legal relationship existing between the criminal incident and the provisions of the law that apply to it. Some have argued that adaptation means: (searching for the extent to which the criminal legal text applies to the incident. This definition is based on the fact that it limits the idea of legal adjustment to judicial adjustment and excludes legislative adjustment, which constitutes the initial introduction to the process of legal adjustment. The legislator's description of a specific incident as falling within a legal model that criminalizes it gives the judge the opportunity to investigate whether the incident presented to him has the characteristics of the incident. The abstract to which the law has given that description.

In Egypt, jurists defined conditioning in a definition not much different from the definition of French jurisprudence, as it describes the relationship of the punitive legal text to actions, so it was defined as: (the rule of law in the incident. Considering that this definition of the meaning of adaptation is derived from the nature of the work of the authorities in charge of initiating criminal case procedures, as they are mandated, according to the law, to examine the acts presented to them and apply the rule of law to them.

It is also known as: (referring the incident to the legal text that applies to it and determines its punishment) Another aspect of jurisprudence defined it by saying: (The relationship between the incident subject to the discretion of the criminal judge and the legal text that makes it a sin) Or it is (the relationship between the incident subject to the discretion of the criminal judge and the punitive text that makes it a crime. Thus, it is the result of the combination of a number of material and legal elements that entail a certain significance.

Within the scope of Iraqi jurisprudence, adaptation has been defined as: (returning the incident of the case to a valid legal origin that must be applied to it, and qualifying a specific incident as a felony, misdemeanor, or violation is returning it to one type or another of the three types) Another definition of adaptation is: (a mandatory legal act carried out by the judge, by which he understands the incident and determines its elements, understands the law in reality and determines its elements, applies one to the other, and describes the incident in a legal manner) This definition is distinguished by the fact that it sets a dividing line between the stages of judicial work, understanding the reality, then understanding the law, and achieving conformity between them. However, it is taken that it made the process of describing the incident within the jurisdiction of the judiciary by saying (and describes the incident in a legal manner), while the legal description is one of the tasks of the legislator who It stipulates that a specific incident falls under one of the legal descriptions, and it would have been more appropriate for the author of the definition to say: and give it the legal description specified by the text. It is also known as: (implementing the legal rule and establishing it on the proven facts of the case, or describing these facts and highlighting them as elements, conditions, and restrictions of the applicable legal rule) It is also known as: (a mandatory legal process according to which a match is made between the incident subject to the judge's discretion and the legal text that criminalizes it and determines its description through a sound understanding of reality and the law) This type of conditioning is revealing (judicial conditioning), as it involves clarifying that the incident presented to the court possesses the characteristics of the abstract incident to which the legal text gave a specific legal description and made it a subject of criminalization.

Accordingly, legal adaptation can be defined as: a mandatory legal process, in which the abstract general text is allocated to the embodied incident according to its specific nature, as proven by the subject judge, to give it the legal description specified by that text, and the integrity of this process depends on the correctness of the judge's abstract concept of the template he chose. On the one hand, and on the disciplined extraction of the legal characteristics emanating from the facts on the other hand, and from this it is clear that this process (adaptation) takes place within a legal orbit, and the error in it is due to the error in the choice, and therefore it is undoubtedly considered an error in the law.

The judge performs two tasks at this stage of his judicial work, the first: adapting his understanding of the legal characteristics of reality according to the requirements of the law, and the second is to address the applicable rule from its legal sources and then apply its ruling to the outcome of that understanding, meaning that this legal process means, in short, to obscure the incident as it was proven by the judge of the matter. An incident is given an appropriate legal guise without narrowness or breadth, by diagnosing the incident in light of a specific legal text.

Noting that the error in understanding the incident as it was proven and formed does not affect the validity of the adaptation, as some have argued This is what is called bad judiciary, and this bad judiciary naturally falls on the realistic side, subject to the discretion of the trial judge alone, and it is an area that the Federal Court of Cassation (of Cassation) may not approach Adaptation, as we have explained, is a relationship that links or combines a specific legal text with a criminal incident as proven by the judge of the matter.

Here it is necessary to point out a fundamental, pivotal point in the legal adaptation. The legal adaptation is a relationship between the legal text and the criminal incident as it was proven and formed by the judge of the matter, not as the judge understood it. This understanding brought the adaptation into existence. This understanding may be wrong or it may be correct. The legal relationship What is relied upon (adaptation) is the relationship of a text to a physical, embodied, and specific fact, and not a relationship of a text to the judge's understanding of the fact. The judge may make a mistake and declare that the event is not a crime, and at the same time it is proven in his hands that it is a crime. The Federal Court of Cassation's oversight here is the oversight of a text on an incident, not the oversight of a text on The judge understood, this understanding may be wrong, so the adaptation was a matter of law, not reality, and the Federal Court of Cassation has the right to replace the adaptation, as this replacement of adaptation will not affect reality or the understanding of reality.

To further simplify the problem, which we are dealing with, we will cite the following simple example. The judge may understand the incident before him as a crime of theft, when in fact it represents a crime of betrayal of trust. Amending the legal description by the Federal Court of Cassation amends the criminal template without prejudice to the incident or the assessment of its evidence.

Thanks to the principle of legality, the criminal templates for various crimes are predetermined and sculpted in advance in the mind of the judge, in such a way that the legal adaptation of the facts becomes merely the selection of the template whose abstract concept matches the legal characteristics emanating from these facts as proven by the judge, and the judge's selection begins with a process of moral assessment of the facts that He proved it, in order to estimate whether it deserves to be criminalized or not, according to the abstract concepts of the various criminal templates stored in his mind first, and then he identified the templates that are candidates for application to those facts, second.

As for the Iraqi criminal judiciary, it oscillated in its decisions between using the term adaptation, including the decision of the General Authority of the Federal Court of Cassation, in which it stated: ((... it was found that the Rusafa Criminal Court, even if it followed the decision of the General Authority, was wrong in legally conditioning the accused's act...))The term legal description was used, as in the decision of the Federal Court of Cassation, which stated: ((... Whereas the crime attributed to the accused applies and the provisions of the second sentence of Article (...194), so he decided to change the legal description of the crime above to the second sentence of Article (194) of the Penal Code instead of Article (4/1) with the meaning of Article (2/3) of the Anti-Terrorism Law and he was convicted pursuant thereto...)).

The second requirement

The nature of legal adjustment

One of the most important issues that arise in the subject of adaptation is determining its legal nature, because defining adaptation as matters of fact or law or issues of fact and law has legal implications, which are whether the adaptation is subject to supervision or not, or the separation of matters of fact from the law, and the subjection of... The second is subject to censorship and the first is not subject to it. Saying that it is subject to censorship means that it can be challenged.

There are three jurisprudential trends in conflict regarding this issue, which we will explain as follows:

First branch

Adaptation is a technical means of implementing the law

According to this trend, adaptation is nothing more than the implementation of the judge's mind and his mental and legal faculties in light of the existing legal system, and therefore it is not considered a matter of law, nor is it considered a matter of fact, as the will of the parties has no authority over it. Rather, it is merely a means or formulation. technical requirements necessary to implement the rule of law.

Second section

Air conditioning is a mixed bag

Part of criminal jurisprudence has said that adaptation is considered a mixed action that requires legal effort and logical or emotional effort at the same time, because the criminal judge is required in his regard to adapt the established facts of the case and highlight them in a logical manner or inspired by his feelings - especially with regard to criminal matters - as elements and restrictions., or conditions for the applicable criminal legal rule, regardless of whether the law has specified an explicit definition of this rule or not, and whether the conditioning occurs with the words of the law, or it is done with other words and expressions that lead to examining itself.

The proponents of this trend base their statement on the distinction between legal assessment, which is subject to the supervision of the Court of Cassation, and material or moral assessment, which is not subject to the supervision of the Court of Cassation.

What is meant by legal estimation is that some of the terms mentioned by the legislator, such as theft,, and initiation They are principles that are subject to general definition and it is up to the judge to evaluate them and determine their meaning by means of abstract logical deduction, and in this way they are subject to the supervision of the Court of Cassation. As for the non-legal assessment - moral or moral - it is the undefined or specific principles that cannot be defined theoretically. It is a type of ideas that can be determined. Its meaning is based on the judge's own feelings, and the legislator did not specify it specifically, and it depends on the person's feelings in his feelings, such as "insult," "violation of honor," "challenge of honor," "causes contempt," and "indecent act." Adapting the incident contrary to unknown (non-legal) principles is considered an error in fact and is an objective issue, and is not subject to the oversight of the Court of Cassation.

This trend has been subjected to criticism, due to the difficulty of distinguishing between specific principles and non-specific principles, as there is no dividing standard that can be relied upon to differentiate between them, and even for specific principles such as theft, each of the elements that make up the crime of theft still needs to be determined, and limiting the scope of supervision The Court of Cassation's reliance on specific legal principles rather than the non-specific ones means limiting its oversight to the judge's task of applying the law, without interpreting or appreciating it. This is not accepted by sound logic and is not compatible with the nature of the Court of Cassation's function nor with the nature of judicial work.

Based on this criticism, a modern trend has emerged in jurisprudence He recognized the legality of the error that occurred in defining crimes that were not defined in concept, and thus gave this error its correct circle. The ruling that proves the accused's statement to the victim: "Ya Ma'arz," which means (cuckold in the custom of Egypt and the Levant), cannot be disputed regarding the issuance of this statement or not. Its issuance, and upon this proof and only upon it, the realistic aspect of the ruling is limited, which cannot be subject to error in law. As for the assessment of the trial judge that this includes an objection to the symptoms of the meaning of Article (308) of the Egyptian Penal Code in force and amended, it is a matter that depends on the abstract concept of challenging symptoms. Attributing that characteristic to that statement or denying it is only a legal assessment that may contradict the meaning implied by the legislator, which he meant by the phrase "challenging symptoms" and thus constitutes an error. In the law, and in the

same matter, the realistic aspect of the ruling shrinks within the limits of what the judge proved that the accused embraced the victim and kissed him. As for the trial judge's assessment that these facts constitute the crime of indecent assault, it is a matter that depends on the abstract concept of indecent assault according to what is stipulated in Article (368) of the Egyptian Penal Code in force and amended, and an error therein is considered a legal error.

From this it can be concluded that the modern opinion in Egyptian jurisprudence views the issue of adaptation as a matter of law, as it removed the stage of understanding reality from adaptation, so there is no oversight of that understanding, so it accepts reality as proven by the judge of the matter, and the oversight of the Court of Cassation must extend to the legal aspect rather than the reality in the ruling. According to the function assigned to it.

This opinion is completely consistent with what was stated by the Egyptian legislator, as he considered adaptation a legal issue, so he specified veto exclusively and specifically, which is :

- 1- If the appealed ruling is based on a violation of the law or an error in its application or interpretation.
- 2- If there is an invalidity in the ruling.
- 3- If there is an invalidity in the procedures that affects the ruling.

Thus, the Egyptian legislator removed the assessment of evidence, which is considered a matter of fact, from oversight and restricted it to legal issues. In other words, he removed the stage of understanding reality from conditioning or error in understanding reality, which is what is called bad judiciary (judiciary against logic and correctness), so the judge of the matter is required to have an understanding. Of reality, so that his judgment is not bad because he is a judge of facts, and this bad judgment naturally falls on the factual side, which is subject to the discretion of the trial judge alone, and it is an area that the Court of Cassation may not approach without exceeding its function, which is restricted in a way that is prohibitively related to matters of law.)This is what we believe to be true and is compatible with the border between reality and the law, and therefore the conditioning, as we explained in its definition, is a relationship between a legal text and reality as proven by the

subject judge.

The Egyptian judiciary has supported this trend, and some believe that, that the Egyptian Court of Cassation considered adaptation a legal issue, and thus the stage of understanding reality is removed from adaptation, and makes the legal text what gives reality the legal characteristics as proven by the trial judge, by understanding the law and its compatibility with reality. As for the judge's activity in proving the specific and general facts of the claim, this The reality that deviates from the conditioning, even if it is the basis on which the conditioning is based. Thus, the conditioning is a legal issue and it is permissible to appeal it in cassation as a result of an error in the law. As for the stage of understanding the reality, it is an objective matter and the error in it is an error in reality and it is not permissible to challenge it in cassationAs the Court of Cassation monitors legal reasons without objectivity, such as evaluating evidence that is not subject to the oversight of that court, and thus the Egyptian Court of Cassation ruled that: ((The evaluation of evidence is the matter of the trial court, so it should not be punished if it carried its confidence in it with regard to the accused and was not reassured by it. The same evidence for another accused, without this being considered a contradiction that flawed her ruling, as long as the evaluation of the evidence was entrusted to her conviction alone, without any comment on it from the Court of Cassation.It also ruled that: ((The lesson in criminal trials is the judge's conviction regarding all the elements of the case before him, as what the appellant raises in this regard is nothing more than an

objective controversy in the evaluation of the evidence, which is not permissible to raise before the Court of Cassation) There is no doubt that this trend, a sound and praiseworthy trend, is compatible with the necessity of separating reality and law and with the subjectivity of each, as well as with the function of the Court of Cassation. Therefore, the first must be freed from censorship - that is, reality - as it revolves in the orbit of judicial conviction, and the second must be subjected - That is, the law - to be supervised by the Court of Cassation to unify it.

Section Three

Conditioning is a matter of law

Part of jurisprudence has argued that adaptation is a matter of law and not a matter of fact.)Due to the close link between adaptation and the implementation of the law, it is considered a purely legal relationship between the incident and the legal text to which it is subject, and therefore it is considered a matter of law and not reality, and the error in it is an error in applying the law that requires overturning the ruling, and this trend is based on several justifications, including :

1- Adapting the criminal incident into its basic elements (material and moral), and inserting it into the abstract criminal template that applies to it, is a legal issue subject to the oversight of the Federal Court of Cassation (Cassation).

2- The adaptation is considered a matter of law and not reality, whether it refers to a criminal incident or a civil incident. This is because classifying the incident and stating the legal rule that must be applied to it means applying the rule of law to it. Therefore, its subjection to the supervision of the Federal Court of Cassation (Cassation) was self-evident, and it was a mistake. It is considered an error in applying or interpreting the substantive law, or an invalidity in the procedures, which in both cases requires the ruling to be overturned.

Therefore, we believe that the point of this trend, that adaptation is a matter of law and not reality, is more likely to be given weight and support for several

reasons :

1- There is a close link between the implementation of the law and its application.

2- Adapting and classifying the incident and stating the legal rule that must be applied to it means examining and scrutinizing this incident and then applying the rule of law to it.

3- Considering adaptation a legal issue helps expand the judge's discretionary power and guarantees the right of the accused to have this power subject to the oversight of the Federal Court of Cassation (Cassation).

Considering adaptation as a matter of law has several consequences:

1- The error in adapting the facts is considered a form of violating the law, and this occurs through error in its application, that is, applying the law to a situation to which it does not apply, or refraining from this application to a situation to which it applies, and the result of that adaptation should be subject to the supervision of the Federal Court of Cassation (veto).

2- The judge is not bound by the qualification that the investigating judge (Public Prosecution) gives to the incident mentioned in the arrest warrant, the summons paper, or the referral decision. The investigating judge may adapt the incident incorrectly, so the trial judge is not bound by this adaptation, but rather he must adapt it in the correct legal manner. which applies to it.

3- The judge must correct the condition on his own initiative.)The judge is responsible for correct adaptation of the incident, and this duty stems from his obligation

to examine the incident with all its legal descriptions and consider the criminal incident as it truly is through the investigation he conducts in the session, as adaptation is a legal issue that is at the heart of the judge's work.

4- The legal adjustment is subject to the supervision of the Federal Court of Cassation (Cassation).

This is what led an aspect of jurisprudence, which we support, to say that: If the legal adaptation is accompanied by a factual element, then the legal adaptation loses not its legality, but rather the jurisdiction of submitting it to the Federal Court of Cassation (of Cassation) with regard to the factual element.)Despite this, we do not believe that the legal adaptation has a realistic element.

This results in adaptation being a matter of law and not reality, the emergence of the general theory of adaptation The essence of this theory is that the Federal Court of Cassation begins its oversight of the judge's legal discretion, in order to achieve equality between citizens before the law, and because the mission of the Federal Court of Cassation is to give a single adjustment to all legal principles.

The effective and amended Iraqi Code of Criminal Procedure has adopted this trend, which sees adaptation as a legal issue, through the text of Article (249/a), as it allowed the appeal to be discriminatory as a result of a violation of the law, or an error in its application, and also through the text of Article (260) thereof, as the Federal Court of Cassation was granted the authority to replace the legal description of the act with what is consistent with its nature as stated by the trial court, and it was supported by that. The Federal Court of Cassation ruled in its ruling that: ((The conditioning of the incident is a legal issue))This is undoubtedly a praiseworthy trend and is consistent with the function of the Federal Court of Cassation. However, what is being criticized for is introducing the stage of understanding the reality under the supervision of the Federal Court of Cassation, as it allowed the appeal to be discriminatory as a result of an error in evaluating the evidence Assessing the evidence and its weight is a matter of fact or an objective issue, as it is not right for it to fall within the scope of legal adjustment, which is a matter of law. Thus, the legislator's permission for the Federal Court of Cassation to monitor the error in assessing the evidence will lead to a contradiction with what the legislator adopted in the text of Article (213/a) which is the freedom of the criminal judge to form his conviction, and this principle will become more of a text on paper than a reality in application, in addition to its conflict with the function of the Federal Court of Cassation (Cassation), which is to unify the law or properly apply it.

The Egyptian legislator did well to remove the assessment of evidence, which is considered a matter of fact, from the control of the Court of Cassation and confine it to legal matters. In other words, he removed the stage of understanding reality from conditioning or error in understanding realityThis is what is called bad judiciary (judiciary against logic and correctness). The trial judge is required to have an understanding of reality so that his judgment is not bad because he is a judge of facts. This bad judiciary naturally falls on the factual side, subject to the discretion of the trial judge alone, and it is an area in which a court may not (Cassation (approaching it without exceeding its function, which is restricted in a way that is precluded by matters of lawBy limiting the cases of appeal to Article (Article30) From the Law on Cases and Procedures for Appeals before the Court of Cassation, it becomes clear that the Egyptian Court of Cassation does not monitor the error in assessing the evidence and the proof or otherwise of the incident, but rather recognizes it in the manner cited by the trial court, and its function is limited to taking into account the correct application of the law, which is what we support.

On this basis, the judge's choice of the evidence that formed his belief, his presentation of everything else, and the strength of proof that he gives to some evidence (the content of the belief), cannot reject the idea of error in the law because the law itself has given the

judge complete freedom in forming his belief, except If the approach of this belief contradicts a legal rule that restricts the judge to the methods of obtaining evidence.

Accommodation ensures that judges are not biased and forces them to exercise diligence in examining and scrutinizing the claims of the opponents in the criminal case, weighing their evidence, and studying all the factual and legal aspects of the dispute with sufficient and careful study, enabling them to extract the arguments on which to base their opinions. They are judges of facts, so that their judgment descends in the hearts of the opponents. Respect and reassurance, and therefore these opponents can discuss the reasons for the ruling by reviewing the legally specified methods of appeal.

The error that occurs in the ruling as a result of an error in the adjustment leads to one of two cases: The first: declaring a crime in the incident where there is no crime in it, or vice versa, when the judge holds a false relationship between the incident and one of the criminal patterns where the incident is not linked to any criminal pattern in the law, so it is necessary Acquittal is in compliance with the principle of the legality of crime and punishment, like a ruling that declares a crime of indecent assault in the incident while the act does not constitute a crime of indecent assault. The reality of this incident is that it is not related to the crime of indecent assault. The same ruling applies if the incident, as proven by the judge, conforms to the abstract concept of one of the criminal patterns, but one of the reasons for permissibility, such as exercising a right, performing a duty, or legitimate defense, was present in the incident and the judge did not see it or wrongly denied its existence (or vice versa). Such as the ruling that considers the relationship between the incident of beating and the criminal pattern assigned to it and denies the case for legitimate defense. In these cases and others like them (indecent assault and battery.

As for the second case, the incident is declared a crime even though it matches the criminal template of another crime, and this results from a misunderstanding of the abstract concept of criminal templates.

Therefore, the discretion made by the judge in proving the criminal incident is not considered a legal discretion, and the error committed does not constitute an error in the law because it does not contradict or contravene any legal rule, or as the Egyptian Court of Cassation expressed ((The point in criminal trials is the judge's conviction. Based on the evidence presented to him, it is not valid to ask the trial judge to take into consideration a specific piece of evidence, as it is within his authority to weigh or evaluate the forces of proof and to take any evidence or evidence that he is comfortable with as evidence for his ruling)This means that the task of the Federal Court of Cassation (Cassation) is to monitor the relationship of the incident - as proven by the contested ruling - to the law, and it does not have the right to decide whether the ruling misrepresented or did the justice in the incident well. Rather, its powers are determined by whether these facts are as proven. Judge, whether or not you fall under the grip of the Penal Code and under this or that text.

According to one of the most prominent scholars in French jurisprudence,)Bad judiciary and judiciary against the law are two different types. If the Court of Cassation can annul all rulings that violate the law, it has absolutely no right to annul a ruling that only ruled against logic and correctness.

We conclude that the error in the legal adaptation of the facts is an error in choosing the criminal template that matches the legal characteristics emanating from the incident, as a result of not properly grasping the common relationship between them, which is undoubtedly an error in the law, and that the soundness of this choice depends on the composition of the judge at the level Scientific, technical information level and life experience.

References

- It is worth noting that the process of legal adjustment is not the only legal issue. Jurists add other stages other than the stage of legal adjustment to the facts, including the stage of applying the results of the adjustment to the facts, that is, the stage of applying the law to the facts (establishing the rule of law). There are those who say that there is a difference between... The stage of legal adjustment and the stage of enforcing the rule of law, and the latter is a third stage that differs from the stage of legal adjustment and is subsequent to it. An error in applying the penalty may result from the activity of the judge despite the validity of the legal adjustment, and such an error leads to a wrong application of the law, by applying a penalty other than what is stipulated in the law. The law, despite the validity of the crime declared by the judge, if the origin is that the legislator has authorized the judge to weigh the appropriate punishment in line with the purposes of individualizing the punishment, then the judge is restricted to taking into account the legal limits of the punishment and the foundations on which the law hinges on aggravating the punishment, standardizing it, or suspending its implementation. It is not permissible for the judge to deviate in his assessment from the maximum limit prescribed for the crime in the legislation, nor to lower it below the prescribed minimum limit. Thus, it is clear that violating the minimum or maximum limit of the prescribed penalty or the incorrect application of one of the accessory or complementary penalties is considered an error in the law. It is true that this stage is closely linked to the stage of legal adjustment of the facts, but an error may occur in it separate from the adjustment process. The adjustment may be correct, but the application of its results may be wrong, and this is what we found worthy of weighting and support. The conditioning may be correct, but the application of its results may be wrong, and this is what we found worthy of weight and support. The conditioning may be correct, but the application of its results may be wrong, and this is what we found worthy of weight and support. Because this stage is one of the forms of error in applying the law (violating the law, error in applying the law “applying the rule of the law to the facts,” and error in interpreting the law), which the Federal Court of Cassation is working to correct.

There is another legal stage related to the process of issuing a criminal ruling, and it includes every violation by the judge of one of the legal rules necessary for the validity of issuing the ruling, such as the rule of publicity of trial sessions if there is no reason for their confidentiality, as stipulated in Article (58) of the Iraqi Juvenile Welfare Law No. (76) of 1983, as amended, as well as the text of Article (152) of the effective and amended Iraqi Code of Criminal Procedure. And the rule of orality of trial procedures, and the rule of confidentiality of deliberations and the public pronouncement of the ruling or issuance of the ruling without the availability of the necessary numerical quorum for its issuance. It also includes failure to complete the essential data in the ruling or failure to justify the ruling. This includes the preliminary investigation stage as well. For more details on these stages see: Dr. Muhammad Zaki Abu Amer, *The Imperfection of Error in Criminal Judgment*, previous reference, pp. 346-351.

-See: Dr. Muhammad Ali Ali Sweilem, *adaptation of the criminal incident*. University Press House, Alexandria. 2010. p. 42

-See: Dr. Ahmed Fathi Sorour, *Mediator in the Code of Criminal Procedure*, Book Two, previous reference, p575.

-See: Dr. Muhammad Mahmoud Ibrahim, *The General Theory of Legal Adaptation of Cases*, Dar Al-Fikr Al-Arabi, Egypt, 1982, p. 126.

-See: Dr. Abdel Azim Morsi Wazir, *Conditions Presumed in the Crime*, op. cit., p49.

-See: Dr. Ahmed Fathi Sorour, *Mediator in the Code of Criminal Procedure*, Book Two, previous reference, p575.

-See: text of the article (17/1) of the Iraqi Civil Law No. (40) of 1951, and its corresponding text is Article (10) of the Egyptian Civil Law of 1948.

-See: text of the article (187/b) of the effective and amended Iraqi Code of Criminal Procedure, which stipulates: ((The court shall not be bound in determining the legal description of the crime to the description contained in the arrest warrant, summons paper, or referral decision)), as well as Articles (224, 227, 229) From the law itself. Part of the

jurisprudence supports the use of the term (legal description) and equating it in terms of meaning with legal adaptation. See: Dr. Sami Al-Nasrawi, A Study in the Principles of Criminal Trials, on Trials, Judgments, and Appeals against Judgments, Part Two, Dar Al-Salam Press, Baghdad, 1976, p. 86.

-Rene Garraud, theory of religion and penal.1990. p333.

-Maurice Patin: Essay on the peine justifice. The sc Paris.1936. p.25.

-See: Dr. Mahmoud Naguib Hosni, The Power of a Criminal Judgment in Terminating a Criminal Case, op. cit., p254.

- See: Dr. Raouf Obaid, Important Practical Problems in Criminal Procedure, op. cit., p157.

-See: Youssef Muhammad Hussein, Specialization in Criminal Procedure, PhD thesis, Faculty of Law, Cairo University,1992, p. 118.

-See: Dr. Hassanein Ibrahim Saleh Obaid, The General Theory of Extenuating Circumstances, Arab Renaissance House, Cairo,1970, p. 313.

-See: Ali Hamza Asal, Extenuating Judicial Circumstances in Iraqi Legislation, Comparative Study, Master's Thesis, College of Law, University of Baghdad,1990, p. 137.

-See: Huda Salem Muhammad Al-Atraqji, previous reference, p32.

-See: Dr. Adel Youssef Al-Shukri, The Art of Drafting the Punitive Text, op. cit., p468.

-See: Dr. Jawad Al-Rahimi, Legal Conditioning of the Criminal Case, second edition, Legal Library, Baghdad,2006, p. 48.

-See: Dr. Adel Youssef Al-Shukri, The Art of Drafting the Punitive Text, op. cit., p470.

-See: Dr. Adel Youssef Al-Shukri, The Art of Drafting the Punitive Text, op. cit., p470. Hoda Salem Muhammad Al-Atraqji, previous reference, p. 32.

-See: Dr. Muhammad Zaki Abu Amer, The Imperfection of Error in Criminal Judgment, op. cit., p267.

-See: Dr. Muhammad Zaki Abu Amer, The Imperfection of Error in Criminal Judgment, op. cit., p340.

-See: Federal Court of Cassation Decision No. (52/General Authority/2007), on 7/19/2007, published in the Mukhtar of the Judiciary of the Federal Court of Cassation, Criminal Division, Part One, Al-Atak Book Industry, Cairo, 2009, prepared by Judge Salman Obaid Abdullah, p. 67.

-See: Federal Court of Cassation Decision, No. (217/Extended Criminal/2008) on 1/28/2009, published in the Journal of Legislation and Judiciary, issued by the Supreme Judicial Council of Iraq, Issue 4, 2009, Baghdad, 2009, p. 185.

-This trend was pointed out by: Dr. Mahmoud Abd Rabbo Al-Qiblawi, previous reference, p548.

-This trend was pointed out by: Dr. Mahmoud Abd Rabbo Al-Qiblawi, previous reference, p548.

-See: Dr. Ahmed Fathi Sorour, Cassation in Criminal Matters, previous reference, p343.

-See: Article (439) of the Iraqi Penal Code in force, and its equivalent is Article (311) of the Egyptian Penal Code in force.

-See: Article (30) of the Iraqi Penal Code in force, and its corresponding article (45) of the Egyptian Penal Code in force.

-See: Dr. Muhammad Zaki Abu Amer, The Imperfection of Error in Criminal Judgment, op. cit., p342-343.

-See: Dr. Ahmed Fathi Sorour, Cassation in Criminal Matters, previous reference, p344.

-See: Huda Salem Muhammad Al-Atraqji, previous reference, p48.

-See: Dr. Muhammad Zaki Abu Amer, *The Imperfection of Error in Criminal Judgment*, op. cit., p343.

-See: Article (30) of Law No. (57) of 1959 regarding cases and procedures of appeal before the Egyptian Court of Cassation, which was replaced by Law No. (74) of 2007.

-See: Dr. Muhammad Zaki Abu Amer, *The Imperfection of Error in Criminal Judgment*, op. cit., p267.

-It is worth noting that the proponents of the complementary standards explicitly decided to drop these complementary concepts, "secondary purposes," from their consideration when they addressed the definition of the Court of Cassation's oversight powers as not differing in nature from the task that the rest of the ordinary courts are responsible for as they consider reality and the law together. Otherwise, it would be as if They decided previously, which led us to accept the cassation based on an error by whoever was the judge of the matter, and therefore there is no distinction between reality and the law, and this is what supports our opinion. Referred to by: Dr. Muhammad Zaki Abu Amer, *The Imperfection of Judgment in the Criminal Judgment*, op. cit., p267.

-See: Dr. Mustafa Kira, *Legal Adjustment*, research published in the Arab Journal of Jurisprudence and Judiciary, issued by the General Secretariat of the League of Arab States, No. April 11, 1992, p. 91.

-Referred to by: Huda Salem Muhammad Al-Atraqji, previous reference, p53.

-See: Egyptian Criminal Cassation in February 24, 1988, Collection of Rulings of the Court of Cassation, Year 39, No. 3172, Year 57, p. 5.

-Consider: overturn January 19, 1988, Collection of Rulings of the Court of Cassation, Section 39, Rule No. 20, of the year 57, p. 181. And a criminal cassation on December 11, 1988, Collection of Court of Cassation Rulings, Year 39, Rule No. 196, Year 58, p. 1281. Cassation of December 25, 1988, Collection of Rulings of the Court of Cassation, Year 39, Rule No. 208, Year 58, p. 1372.

-See: Dr. Raouf Obaid, *Important Practical Problems in Criminal Procedure*, op. cit., p310. D. Mustafa Kira, previous reference, p. 77.

-See: :D. Mahmoud Abd Rabbo Al-Qiblawi, previous reference, p547. D. Raouf Obaid, *Important Practical Problems in Criminal Procedure*, op. cit., p. 310

-Referred to by: Dr. Adel Youssef Al-Shukri, *The Art of Drafting the Punitive Text*, op. cit., p498.

-See: Dr. Mustafa Kira, op. cit., p77.

-See: text of the article (187/b) of the effective and amended Iraqi Code of Criminal Procedure, which stipulates that: ((The court shall not adhere to the legal description of the crime in determining the description contained in the arrest warrant, summons paper, or referral decision)).

-The Egyptian Court of Cassation affirmed the court's right to amend the charge by saying: "The principle is that the court does not adhere to the legal description given by the Public Prosecution to the act attributed to the accused, because this description is not final and would not prevent the court from amending it whenever it deems it necessary to refer the incident after examination to The proper legal description) See: Egyptian Criminal Cassation in December 13, 1997, Collection of Rulings of the Court of Cassation, Section 48, Rule No. 215, p. 1402. It says in another of its rulings that: ((The trial court may change the legal description of the act attributed to the accused, and it may amend the charge by adding the aggravating circumstance, even if it is not mentioned in the referral order or the summons to appear.)) See: Egyptian Criminal Cassation on November 16, 1988. Collection of rulings of the Court of Cassation, Section 39, Rule No. 162, p. 1067.

-See: Dr. Muhammad Misbah Al-Qadi, *Code of Criminal Procedure*, first edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2013, p. 756.

-See: text of the article (260) of the effective and amended Iraqi Code of Criminal Procedure, which states: ((The Court of Cassation may change the legal description of the crime for

which the accused was convicted to another description consistent with the nature of the act he committed...)).

The Federal Court of Cassation has always subjected the legal adjustment carried out by the trial court to its oversight, as it is a matter of law subject to its supervisory jurisdiction, including its decision in which it stated: ((And since it was established from the facts of the case that the intent of premeditated murder that was coupled with another murder was terroristic, the adjustment The court stated that the accused's act applies to the provisions of Article (406/1/g) and based on Articles of Participation 47/48/49 of the Penal Code, it is incorrect and that she made a mistake in qualifying the crime and that the crime applies to the provisions of Article Four/1 and according to Article Two/1, 3 of the Anti-Terrorism Law No. 13 of the year 2005, and based on the fundamental provisions of Article 260, it was decided to replace the legal description contained in the indictment and criminalization paper to Article Four / D and in the sense of Article Two / 1, 3, of the Anti-Terrorism Law...)), see: Federal Court of Cassation Decision No. (96 / General Authority) /2009) on 10/27/2010, published in the Judicial Bulletin, issued by the Technical Office of the Iraqi Court of Cassation, Issue 2, Year 4, p. 54. Resolution No. (147/General Authority/2006) on 1/24/2007, published in the Mukhtar of the Judiciary of the Federal Court of Cassation, Part One, prepared by Judge Salman Obaid Abdullah, previous reference, p. 13.

- Referred to by: Dr. Mahmoud Abd Rabbo Al-Qiblawi, previous reference, p549.
- See: Dr. Mustafa Kira, op. cit., p77.
- See: Huda Salem Muhammad Al-Atraqji, previous reference, p52.
- See: Decision of the Court of Cassation in Iraq No. (221/First Expanded Commission) on 7/25/1981. Referred to by Dr. Adel Youssef Al-Shukri, The Art of Drafting the Punitive Text, previous reference, p. 493.
- The article states (249/a) of the Iraqi Code of Criminal Procedure in force and amended as follows: ((Each of the public prosecution, the accused, the complainant, the civil plaintiff, and the civil official may appeal to the Court of Cassation the rulings, decisions, and measures issued by the misdemeanor court or the criminal court in a misdemeanor or felony if they have been It was based on a violation of the law or an error in its application or interpretation, or if a fundamental error occurred in the due process, in evaluating the evidence, or in estimating the penalty, and the error affected the ruling.)
- See: Article (30) of Law No. (57) of 1959 regarding cases and procedures for appeals before the Egyptian Court of Cassation, which was replaced by Law No. (74) of 2007.
- See: Dr. Muhammad Zaki Abu Amer, The Imperfection of Error in Criminal Judgment, op. cit., p267.
- See: Dr. Muhammad Zaki Abu Amer, The Imperfection of Error in Criminal Judgment, op. cit., p320. Likewise, the text of Article (225) of the Egyptian Code of Criminal Procedure stipulates that: "In non-criminal matters that are decided in accordance with the criminal case, criminal courts shall follow the methods of proof established in the law pertaining to those matters.
- See: Dr. Ibrahim Naguib Saad, private judicial law, Ma'arif facility, Alexandria, Egypt, 1974, p. 250.
- See: Dr. Muhammad Zaki Abu Amer, The Imperfection of Error in Criminal Judgment, op. cit., p347-348.
- See: Egyptian Criminal Cassation in 3/26/1964, Collection of Court of Cassation Rulings, Section 14, Rule No. 48, p. 235.
- See: Dr. Mahmoud Mahmoud Mustafa, Explanation of the Code of Criminal Procedure, Twelfth Edition, Dar Al-Nahda Al-Arabi, Cairo, 1988, p. 623.
- Francois Rigaux: the nature of cassation control, these, Brux-ieles, 1966, p. 361.