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## **The Role Of The Ruling Authority In Interpreting Penal Texts**

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### **Abstract**

Legislative texts are always characterized by generality and abstraction, and every piece of legislation requires interpretation, no matter how perfect and perfect it may be. The need for interpretation must arise, as it is impossible for the legislator to predict the developments and events that may occur in the future after the issuance of the legislation, and even if the drafters of the legislation no matter how high their level of In science and knowledge, they are possible and likely to be exposed to oversight and error, which requires the intervention of the ruling authority in the appropriate interpretation of the legal definition of the facts, because many texts, especially penal texts, include some that are ambiguous, such as if the text is problematic, hidden, or general. , or contradictory, which calls on the ruling authority, represented by the judge or court, to remove this ambiguity or contradiction by means or methods permitted by the law, the most important of which is the appropriate interpretation of those texts and the removal of anything that obstructs them when applying them to the reality under consideration before that authority, and through our research we have come to the conclusion that: The power of the criminal judge, represented by his discretionary power to search for evidence and evidence that is considered a reason for the ruling, is not completely



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absolute, although the law has given the judge room to interpret the legal texts, to fit the facts and evidence presented before him, whether in proof or denial, but this power is limited by the restrictions of the law. On the one hand, and judicial oversight on the other hand, represented by the courts that have the authority to monitor the investigation courts and trial courts, and we hope that the authority of the ruling will be restricted by the law in its interpretation of general rules, as if the rule of doubt was interpreted in favor of the accused, and the rule of non-retroactivity of the criminal law on The past, and the rule of the right of legitimate defense, which secures a person's life against criminals, deviants, and others, and is also restricted by what the competent courts have followed in searching for the legitimacy of the rulings and decisions issued by the subject courts based on their authority to interpret the legal texts in question before them, and this research discusses Through three axes, the first axis is a statement of the ruling authority, while the second axis presents the texts that require interpretation and the removal of their ambiguity, their generality, or their problem by the ruling authority, while the third axis represents a statement of the restrictions that are imposed on the legal and judicial ruling authority.

## **Introduction**

### **Research Topic**

Penal texts do not have the same degree of clarity, accuracy and precision, which requires research into the meaning of the text so that it can be understood and applied to the facts. Interpretation is necessary for both sound and flawed text, but at the same time it is a dangerous weapon in the hands of the criminal judge, which the legislator may use. He decides the case that is the subject of the dispute before



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him according to his personal conviction, as the role of the criminal judge in criminal texts is limited to searching for the will of the legislator in accordance with the requirements of the principle of criminal legality. In many cases, texts are formulated in clear terms and are open to several interpretations, which makes the judge's task not easy and easy in determining the precise meaning. To adapt the penal text to the incident relied upon, decide on that case that was presented to the ruling authority, and by ruling authority we mean the competent judge or court, what requires the existence of rules and foundations that the judge must follow when interpreting the text to be applied so that its application is sound according to the logic of jurisprudence and the judiciary, despite the fact that everything Mention in this aspect does not mean, in fact, that the opinion of the judge or the competent court regarding interpretation is absolutely free, but rather it must be carried out in accordance with controls and that the main control is the judicial oversight of the decisions and rulings issued by the ruling authority, especially if there are rulings and decisions issued and part of them goes back to the interpretations of the ruling authority. The ruling.

## **Research Importance**

The importance of the research is due to the fact that the decisions and rulings issued by the penal courts must be reasoned, and this reasoning as long as from a legal standpoint is based on the evidence and the circumstances of the criminal incident, which often obliges the ruling authority to make its decisions and rulings a symbol of justice, which makes all rulings and decisions vulnerable to appeal, which is what is called... The jurisprudence of judicial oversight requires that the



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ruling authority be restricted by its decisions so that this authority, when interpreting the penal text, adheres to what the legislator intended.

## **Research Problem**

The interpretation of texts by the ruling authority is intended to issue a ruling that reassures the opponents in the criminal case. However, the problem arises when there is an ambiguous interpretation of the penal text that is to be applied, which takes away the wisdom intended by the author of the penal text, despite the court's need for interpretation to remove the ambiguity that has plagued its application.

## **Research Methodology**

The research methodology was based on the analytical presentation of some of the criminal texts compared to some ambiguous or general texts based on the rulings and decisions issued by the criminal courts.

## **Research Plan**

Our research plan, entitled *The Role of the Judicial Authority in Interpreting Penal Texts*, was built on two demands. The first requirement was the authority of the ruling in interpreting the penal text, which was divided into two branches. The first section is the authority of the ruling in interpreting the ambiguity of the penal text. The second section is entitled the authority of the ruling in interpreting the conflict between the texts while the title of the second request is the restrictions on the ruling's authority in interpreting the penal text, which is divided into two branches. The first section is devoted to legal restrictions, while the second section is devoted to judicial restrictions, with a conclusion for the research.

## **The First Requirement**

### **The Authority Of The Ruling To Interpret The Penal Text**



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Interpretation is an attempt to adapt the penal texts, which by their nature are general and abstract, to the facts that occur by looking at each incident separately. If the legislator is the one who sets the penal texts, then the judge is the one who bears the burden of applying them. What is meant by judicial interpretation is what is issued by the judge in deciding a case. A certain way to identify the legislator's intent in order to achieve or not apply the text to the presented incident, which means that the judiciary is not a reference to which it resorts to interpreting legal texts, but rather this interpretation occurs on the occasion of considering a case before it, which does not make it an end in itself, but rather a means used by the judiciary in order to decide. In disputes, and in consequence of the above, we examine the role of the ruling authority in interpreting ambiguous and conflicting texts in the next two sections, as follows.

## **First Branch**

### **The Authority Of The Ruling To Interpret The Ambiguity Of The Penal Text**

Ambiguity means the ambiguity of the word and its lack of clarity in a way that requires an effort from the interpreter to determine the intended meaning (1), and the ambiguity of the legal text is defined as: the concealment of the meaning of the text or the lack of understanding of its intent, and the ambiguity of legal texts is one of the main reasons for interpretation, and therefore the concept of ambiguity refers to the lack of clarity of the text's phrases. It is characterized by generality, such that the text has several meanings (2). The text is ambiguous or ambiguous if its phrases are not clear, so it is acceptable for interpretation and interpretation. Accordingly, the judge's task is to select the clearest meaning from among the different meanings of the text.



The ambiguity arising when drafting the penal text appears in many forms, the most important of which are:

1- The hidden penal text: A hidden word may be used in drafting the text, which indicates an apparent meaning, but when applied to individuals or facts, there is some ambiguity and concealment in it, such that it requires interpretation to clarify whether it applies to one of the individuals whose characteristic is greater or less than the rest. Individuals or an individual who has a special name such that doubt is raised about the application of the word to him (3). For example, a question was raised about pickpocketing (4) , and the extent to which this term applies to the word “thief” (which means anyone who embezzles money belonging to someone else, hidden from possession while asleep or absent), which requires research and interpretation to remove this concealment, by introducing what is similar in meaning to it. The concept of the thief or removing him from him (6). The word movable property is mentioned in the Egyptian Penal Code in Article (311), which states: “Whoever embezzles a movable property owned by someone else is a thief.” (7) The movable property is a material thing that has a financial value that can be moved from one place to another without damage. The question is regarding this aspect. Is it possible to apply the meaning of transmitted matter to electric current? The answer to this is that we find that the Egyptian Court of Cassation decided to count the electrical current as movable, as it has a financial value, it can be seized and possessed, and it can be transferred. Therefore, it decided to count it as movable, and whoever embezzles it is a thief (8). This is the same direction taken by the Iraqi Court of Cassation in its ruling stating that





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“consuming water after raising the meter without the knowledge of the municipality is considered theft” (9).

The ruling on a hidden word is not to act on it before removing its hiddenness in order to find out the reason for the ambiguity, whether it is due to an increase in the meaning of the incident to which the text is intended to be applied or due to a decrease in its meaning, and the interpreter’s method in this is the reason for the ruling (10).

2- The problematic penal text: It is a word whose wording does not indicate its intended meaning and must resort to external elements to explain it. The problematic ambiguity arises due to the use of a word with a common meaning, that is, it indicates more than one meaning, such as when a word has a linguistic meaning and the other is conventional (11), in this case. The situation obliges the judge to adopt its conventional meaning that the legislator adopted, unless there is a parallel that diverts the word from its conventional meaning to its linguistic meaning. For example, the word “adultery” in legal terminology is an illicit relationship between two people, one of whom is married, while the known linguistic meaning of adultery deviates. To every illicit relationship between a man and a woman without legal marriage, whether one of them is married or not. Therefore, this terminological wording must be taken into account regarding the crime of adultery in Articles (377-380) (12), but it must be taken in its linguistic meaning that the legislator intended regarding the inheritance of the child of adultery from His mother, her relatives, and their inheritance from him, as stipulated in the Personal Status Law, as well as the word “night” mentioned in the Penal Code, which stipulates increasing the penalty for the crime of theft



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committed at night. Night in its astronomical sense is the period between sunset and sunrise, but in colloquial language it is the period during which darkness descends. It ends with the rising of dawn (13), and here the ruling authority has the right to explain this ambiguity by referring to the wisdom of legislation when tightening the punishment for theft at night, as darkness makes it easier for the offender to commit his crime, and theft in the dark casts terror into the soul of the victim, which makes it more dangerous, which justifies the severity of the punishment, so it is taken in the meaning Secondly, the judge cannot take this meaning when he is faced with determining the crime in question or adjudicating it, because the ruling on the problematic word is not to act on it before removing its ambiguities. This means that the court (the judge), even if it has the full ability to interpret the problematic word, is unable to do so. Acting on it without removing the ambiguities that obstruct it for the purpose of applying the appropriate text to the incident before it, which forces the judge to search the evidence and evidence to remove the aforementioned ambiguities by using the principles of the rules of legislation and what is the reason that the legislator wanted from it and what is the protected interest, which shows the will of the judge in his interpretation of the intended texts. Applying and reconciling them.

3- The general penal text: In the event that the general penal text is a word that does not indicate what is meant by it in its form, it is clear that the role of the judge is the apparent one in interpreting it, because the meaning of it is not known except by a statement from the person who wrote it, as there is no evidence showing this intended matter. It is difficult to verify it during the investigation and trial procedures, which makes the judge obligated to clarify its meaning and remove the





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ambiguity that surrounds it. This clarification is often due to the judge's interpretation based on the legislator's explanations and the reasons for the legislation that give the correct meaning to the penal text, as if we take Article (406/1/A). (14) Since the words premeditation and premeditation are among the general terms that need an explanation and clarification of their meaning, the legislator defined what is meant by the word premeditation in Article (33/3) (15 ) and the legislator is blamed for his omission to define the word premeditation, unlike the Egyptian legislator who clarified The meaning of the two words, and the other example is what is included in Article (1) of the Iraqi Anti-Terrorism Law (16), and because the word terrorism is used to define the terrorist crime, and regardless of the controversy raised about the definition of the term terrorism or its concept in the legal systems of many countries, giving a concept or definition For a national judge, a terrorist crime is defined by what the national legislator intended for the concept of this crime. For example, environmental pollution in the Swiss legal system is considered a terrorist crime whose perpetrator is punished according to the Swiss Terrorism Law, while environmental pollution is not considered a terrorist crime in many legal systems, including the Iraqi legal system. In this case, the national judge is obligated to follow what the national legislator wanted to define the concept of a terrorist crime, which is known as the restricted interpretation (17) which does not tolerate any other concept, and the wisdom of the general wording is the necessity of pausing in specifying the meaning until the statement comes from the most comprehensive, that is, the legislator defines what is intended. With that wording, if this statement is not sufficient and does not remove the ambiguity from the general wording, it follows



that the general wording becomes a problem whose forms can be removed with diligence and evidence to reach what is intended from it. Here, the role of the ruling authority is highlighted in removing the ambiguity from the ambiguous texts because the criminal judge is not one of the His authority is to add text or insert any phrase or term that would change the wording of the penal text or its literal meaning. Rather, he can include it when issuing the ruling, by virtue of the authority granted to him to remove confusion and ambiguity from those texts, based on the reasons and evidence that enable him to He issues a final ruling based on his conviction.

## **Second Section**

### **The Authority Of The Arbiter In Interpreting The Conflict Between Texts**

The conflict between the legislative texts after their formulation appears when the law is applied, as the judge finds that the law includes two texts, one of which does not agree with the other. Jurists define conflict as the state of texts colliding with each other due to the contradiction between them, whether brought together by one text or two different texts such that it is not possible to reconcile them. Between them, and this conflict is not limited to texts within one law, it may be between two laws, one of which precedes or succeeds the other<sup>18</sup> , or two pieces of legislation of varying degree depending on the rank of the legislations that include the conflicting texts, which necessitates giving priority to the law that occupies the highest rank over the lowest, taking into account the principle of gradation of rules. Legal. or between two texts issued at the same time and of equal strength, as one text prevails over the other according to the rules of legal logic that we will



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mention later. or the judge may ignore both texts and work with a third text that applies to the material incident presented before the competent judge (19).

The conflict that occurs between legislative texts is one of the most prominent reasons that prompt the judge to resort to interpretation, as the large number of legal texts on one subject leads to conflict or contradiction between the legislative texts. This leads to difficulty in understanding the texts and knowing their content. The judge also finds it difficult to reach the ruling and apply it to the judge. The dispute before him (20). In all of these previous cases, the judge is obligated to remove this contradiction or contradiction, so that only one legal rule remains that must be followed. What is important in this is that the judge has no goal when interpreting the texts presented before him other than revealing the intention of the legislator at the time of drafting the law, so if he is convinced of what he says. This matches the intention that the legislator wanted, and from that there is no importance to the method he followed or the method of interpretation, as all the legal value of the text is limited to its being an expression of the intention of the legislator (21). If this intention matches this, it is considered the correct interpretation of the text. Based on the above, it is clear that the interpretation of penal texts is based on searching for the legislator's intent, which is what is followed in the interpretation of other legal texts.

In interpretation, it is necessary to investigate the rules of legal and judicial logic to resolve the problem of conflict in favor of one of the texts. Among these rules is the rule that the specific text prevails over the general text. To distinguish the specific text from the general text, one must refer to the legal text of the incident. If the text includes all the elements contained in the text. The second then adds other



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elements to it that increase its definition and its connection to the incident. The first text is the specific text that must be applied to the incident (22), including what was stated in the text of Article (405) of the Iraqi Penal Code, which mentioned the crime of premeditated murder. It is considered a general text in relation to the text. The special text that was mentioned in the text of Paragraph (1/B) of Article (406) regarding murder with a toxic substance. In such a case, the text of Article (406) in its aforementioned paragraph is applied instead of Article (405) because it is a special text that required increasing the penalty due to the crime being associated with an aggravating circumstance, which is logic. Which requires to be followed when any crime is associated with an aggravating circumstance (23).

Likewise, the rule of the comprehensive text applies without the short-term text. This rule applies if a single act has two texts, one of which is broad and includes a wide range of actions punishable by law, and the other is partial and includes a narrower range. The competition between the two texts and the two adaptations ends in favor of the first which takes up or accommodates a circle. Illegal acts included in the second qualification and more than that. As in the gradual crime that falls in the seriousness of the behavior from a less serious crime to a more serious crime (24), as if the offender's behavior graduated from beating and wounding the victim to the intended and most serious goal, which is taking his life. In this case, the text regarding murder is the one that must be applied because it takes Its elements include the act of beating and wounding. Death takes both acts together on the condition of gradualness, and this is only achieved between two acts of the same type and nature with the unity of the interest or right attacked. In confirmation of the above, the legislator mentioned several acts that are criminal



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and punishable by law and are mentioned in Article (1) of the Terrorism Law No. (13) of 2005. He referred to several acts. Any of these acts shall be punished by the perpetrator in accordance with this article, which indicates that all the acts mentioned In this article, this text defines it as a terrorist crime, and this rule is also applied in the case of a complex crime that consists of more than one element, each of which alone achieves an independent crime, such as theft using artificial keys (25).

The rule of the original text replaces the reserve text. Knowing whether the text is original or reserve is by referring to the wording of the text itself, as the legislator determines that the text has its reserve character. This case occurs when he decides that the text is applied unless the law imposes another punishment, or that it is applied without prejudice to any A more severe punishment than what was stipulated in the law that the judge used (26). The reserve character of punitive texts may be deduced by extrapolating their place in the legislation and the connection between them and the rest of the texts related to them in accordance with what is contained in the wisdom of the legislation and the philosophy of criminalization and punishment adopted by the legislator (27) , so the text of the criminal agreement is considered precautionary. According to the text of the crime that is committed in implementation of the agreement, if many people agree to carry out a rebellion or armed disobedience against the public authority, the crime of criminal agreement is established. If these people carry out what they agreed upon, the crime of disobedience is achieved. In this case, these people are not punished for the crime of criminal agreement, only being punished for the crime of disobedience (28) .



## **The Second Requirement**

### **Restrictions On The Authority Of The Referee In Interpreting The Penal Text**

It is necessary to briefly explain the restrictions imposed on the freedom of the criminal judge when he interprets ambiguous texts or conflicting texts that give him complete conviction in issuing the ruling. These restrictions are, firstly, the legal restrictions, and secondly, the judicial restrictions.

#### **First Branch**

##### **Legal Restrictions**

Legal restrictions serve as a check on the authority of the criminal judge, who must use them well because they provide an important guarantee for preserving the rights and freedoms of individuals in society, including these legal restrictions.

##### **1- Hidden text rule**

The legal restrictions clearly appear when the criminal judge expands the concept of the hidden text, because the hidden text gives a concept whose meaning cannot be explained and determined by a non-specialized person, and since the criminal judge's authority extends to interpreting texts, including the hidden text, which requires him to clarify and determine its meaning as if he had interpreted it. The judge stated that Article (68) of the Code of Criminal Procedure extends to include the grandfather, and not the father, as one of the ascendants against whom it is not permissible to testify, as stated in this article referred to (29).

##### **2 - Restrictions due to the overall text**

The criminal judge will not be absolutely free, even if his conviction is firmly established that the accused is the one who committed the crime that is the subject of the case before him, because the law obligates the judge or the court that





represents the ruling authority to follow specific procedures that cannot be bypassed, as if the judge or court had a conviction and according to its interpretation of the facts and implications. The texts that are the subject of the case that must be decided indicate that there is evidence indicating the innocence of the accused. This evidence was not presented to the court, neither in the preliminary investigation nor in the judicial investigation, which obliges the judge to follow the legal text that stipulates not to issue a ruling based on evidence that has not been presented for discussion. During the stages of the criminal case procedures (30), the matter is interpreted as a legal restriction that the ruling authority may not ignore. This shows that the general interpretation is not permissible in this case because the ruling, if the text is general, can only be issued based on evidence, clues, proof, and presumption. It was not put up for discussion at any stage of the criminal case procedures, which does not make the judge's authority to interpret extend beyond that.

### 3 - Restrictions that respond to conflict

The restrictions that respond to conflicting texts and the authority of the criminal judge to interpret which of them is appropriate to apply for the purpose of completing the criminal procedures for the case before him, by referring to the rule of legislative gradualism, because the gradualism is directed towards applying the texts of the higher-ranking law to the lower-ranking texts of the law, as in the case of the court appointing a lawyer for the accused, as stated in Article ( 123) (31), that the court decides to appoint a lawyer for the investigation roles, and the phrase that the court decides to appoint a lawyer does not mean that the investigation court is obligated to appoint a lawyer of its own, as is the case in the Court of



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Felony and Misdemeanors, while Article (144 (32)) stipulates ), on appointing a lawyer for felonies without mentioning his appointment for misdemeanors, and this contradicts paragraph (11) of Article (19) of the Iraqi Constitution of 2005 (33 ), and this matter requires the ruling authority to go, in its interpretation, to apply the rule of gradualism to choose the highest text. A lower-ranking power. Based on the above, the law requires that the judge, i.e. the ruling authority, interpret the situation before him by applying the higher-ranking text. In such a case, he must go to the constitutional text while neglecting the rest of the lower-ranking texts.

#### 4 - The exceptional text

The law restricts the criminal judge from interpreting the exceptional text in an expanded manner, and is committed to a narrow and limited interpretation if this text comes as an exception to the general legal rule, according to the rule that says it is not permissible to expand the meaning of what the legislator intended by the applicable text as an exception and for one of the specific cases. On the contrary, The Civil Code has permitted the judge to deviate from this rule when amending the contract in exceptional circumstances so that it does not become burdensome for the debtor (34), and this is the direction that the Iraqi judiciary followed. In a decision of the Court of Cassation (35) in which it rejected the ruling issued by the trial court in which it indicated that The ruling issued was in violation of the law because the exceptions to the legal rules in general must be interpreted within the narrowest scope. The exception may not be expanded upon in its interpretation or by analogy, and since the crime of using forged official documents is mentioned among the exceptions stipulated in the General Amnesty Law No. 19 of 2008, it is considered of the crimes covered by amnesty in accordance with the provisions of



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the aforementioned law, the decision must be annulled and returned to the authority that issued it to follow what the court decided. This is what the content of this decision indicates that the annulled ruling was issued based on a broad interpretation of the law, such that it negatively affected, in terms of the result, what the legislator intended from the general amnesty legislation. Which made the decision of the Court of Appeal a restriction on the authority to issue the ruling in terms of its interpretation of the law when it asked this authority to reformulate the ruling in accordance with what the legislator wanted for the purpose of issuing the amnesty law, since the amnesty law is considered one of the exceptional laws in violation of the original.

## **Second Section**

### **Judicial Restrictions**

The criminal case is essentially based on the facts and the law, and they are linked in terms of the outcome of the case to the ruling issued by the judge or the competent court, and this is based on the ruling authority's understanding of the facts presented before it and the legal adaptation of those facts, and the legal adaptation is essentially due to the conformity of those facts that are the subject of the case to the legal texts and logical interpretation. These texts are consistent with the purpose for which they were enacted, and the role of judicial oversight appears clearly through searching for the suitability of the laws and procedures followed by the court when issuing the ruling. Judicial oversight, even if it is established by law, is considered a restriction used on the discretionary power of the ruling authority, and this is especially true. The law has many judicial authorities that monitor the decisions and rulings issued by the subject courts and those courts are



## 1- Criminal Court

The Criminal Court, in its cassation capacity, is a supervisory authority over the decisions issued by the investigating judge, and this is considered a restriction on the discretionary power of the investigating judges when the investigating judge decides, based on the evidence in the criminal case before it, that the act does not constitute a crime, even if this act caused harm to others on a documented basis. Thus, depending on his interpretation of the facts presented before him, whether or not those facts were considered criminal acts is linked to the legal definition of those facts versus the penal text that they contain for those facts, and an example of this is the decision of the investigating judge of the Najaf Court issued on 8/7/2023, which included rejecting the complaint and closing the investigation permanently based on the provisions of Article (130 / A) (36) of the Code of Criminal Procedure in force - because the complaint does not contain an element of fraud - and because the complainant (distinguished) was not convinced, he took the initiative to discriminate against him in his regulations dated 8/8/2023, and the case was placed under scrutiny and deliberation before the Criminal Court in its cassation capacity. Upon examination and deliberation, it was found that the decision was premature because the numbered decision, located in Najaf / Al-Amir District, was not linked to the returnees of the Youth and Sports Directorate or to the Najaf Municipality Directorate, and because the legal representative's statements were not recorded in this regard, so he decided to overturn the distinguished decision and return the case to its court to follow suit. The decision was submitted and issued by agreement based on the provisions of Article (265/B)(37) of the Code of Criminal Procedure on 8/23/2023, and from the



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appearance of the decision it is clear that the investigating judge's decision came based on his interpretation of the problematic text because the crime of fraud is a broad concept that the legislator did not specifically define. This is an example of what allowed the ruling authority, which is the investigating judge, to issue his decision to reject this complaint due to his narrow interpretation of the facts in question presented before him, in which the complainant was demanding that those who defrauded him be punished.

## 2- The Court of Appeal in its discretionary capacity

One of the judicial restrictions is the Court of Appeal's oversight, in its discriminatory capacity, over the rulings issued by the misdemeanor courts, because the decisions and rulings issued by this court are binding and conclusive on the part of the trial court - the misdemeanor court - and the parties to the criminal case brought before it, in that the Court of Appeal, in accordance with the law, has the right to return the case file. The criminal court shall be referred to its original court if it found a legal error in it or if the ruling was arbitrary against one of its parties based on its opinion in interpreting the penal text applicable to the case presented before it, which makes the Court of Appeal decide, based on those facts, to request the trial court to correct what it ruled in implementation of that. The court ruled that Basra's appeal in its discriminatory capacity, No. 63 / TJN / 2022, to return the request for discriminatory intervention in accordance with the provisions of the law to its original court because the investigating judge had previously issued a decision to arrest the accused (S) in accordance with the provisions of Article (248)(38) of the Iraqi Penal Code, and since This article is punishable by imprisonment and a fine, or by both. This means that the committed



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crime is a misdemeanor and not a felony, and because the accused is a member of the House of Representatives, and the provisions of Article (63/2/b, c)(39) of the effective Iraqi Constitution stipulate that it is not permissible to arrest or execute a warrant. Arresting a member of the House of Representatives, unless they are one of them for a crime of the type of felony, in which case the arrest that was previously issued by the investigating judge and referring the case to the misdemeanor court is considered a violation of the law and constitutional rules, and this is considered a restriction on what the misdemeanor court adopted in its interpretation of the constitution and the law because The constitutional text contained some ambiguity in its interpretation, which exposed the ruling authority when issuing its ruling in this case to be overturned by the Court of Appeal in its discretionary capacity.

### 3- Federal Court of Cassation

The Court of Cassation is the highest supervisory authority and sits at the top of the judicial regulatory pyramid in Iraq, and its decisions in this field must be followed. This means that the rulings and decisions issued by this court are considered a restriction on the enforcement of the ruling issued by the subject courts if that ruling is in violation of the law and violates the rights of any person. of the parties to the criminal case presented before the relevant court, and the ruling is contrary to the law for many reasons. One of these reasons is the incorrect adaptation of the ruling authority (the court) to the incident presented before it as a result of the incorrect interpretation of the penal text applicable to the incident in dispute. In accordance with the above, the Court of Cassation ruled in its decision that the number No / C / 2022 On 1/19/2024, the case numbered No / was returned to the





Rusafa Criminal Court to follow the discriminatory decision issued by this court, because the Criminal Court had previously issued its aforementioned decision on 12/16/2020 sentencing the accused in this case to a period of imprisonment. Fifteen years for practicing prostitution and brokerage in accordance with the provisions of Resolution No. 234/First/6 of 2001, and since this ruling was an error in the legal definition of the crime committed and its description in accordance with the provisions of the aforementioned decision, this case was returned to its court, but the facts of the case deduced from its evidence are that the accused did In which it constitutes a crime that applies to the provisions of Article (247) (40) of the Iraqi Penal Code, because the owner of the building knew that the accused was carrying out brokerage and prostitution within the building belonging to him and used as a massage center, and he did not inform the competent authorities of that, so they decided to change the legal description of the crime to become in accordance with the provisions of Article (247). ) of the Penal Code mentioned above, and it appears from this incident that the ruling authority represented by the Rusafa Criminal Court made a mistake in the interpretation because the text is considered a general text that needs evidence and evidence to apply, and the intent intended by the legislator is not an inaccurate interpretation of the text that is described as a general text.

## **Conclusion And Recommendations**

### **First : Conclusion**

1- We concluded that there are penal texts that include many linguistic concepts that are commonly mentioned in legal jurisprudence, and that need interpretation from the authority that the law empowers to issue decisions and rulings in the



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criminal case, including the conflicting text and the general and problematic text. However, this authority is not absolute, but rather restricted.

2- The ruling authority represented by the criminal judge or the court is not absolute by interpretation, but rather it is restricted by law by the courts of a higher rank.

3- One of the results we have reached is that the interpretation by the ruling authority is important in some cases pending before this authority now. These interpretations remain confined to what the legislator wanted at the time of drafting the penal text, which is known as the legal restriction that the ruling authority does not have the right to exceed.

4- It was found through the research that there are judicial decisions from the highest courts that represent, from the researchers' point of view, restrictions on the ruling authority competent to issue decisions and rulings in criminal cases when this authority makes a legal adjustment to the fact before it and issues a ruling in it that came after interpreting an ambiguous or problematic text or Overall.

## **Second : Recommendations**

1- We suggest that the authority responsible for legislation elect a committee with a distinguished academic standing within the scope of law and language for the purpose of reviewing all penal texts that contain two-faced, double, or ambiguous concepts in order to facilitate the task of the relevant ruling authority.

2- With regard to the second paragraph of the aforementioned findings, we recommend that the authority of interpretation entrusted to the judge and the court for the purpose of issuing a ruling related to the case before him be restricted to the



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narrowest extent in order to preserve the defendant's guarantees in the criminal case.

3- We suggest that the legal restriction on interpretations originating from the judiciary, that is, the ruling authority, include only some of the criminalization texts, without going beyond that to interpreting the part related to punishments, so that the periods related to the type of crime and its punishment remain confined to the will and wisdom of the legislator for the purpose of achieving special deterrence and general deterrence.

4- We recommend that decisions issued by courts higher than the trial court must be followed by the latter with regard to the interpretation of ambiguous or general texts or hidden text, as they are the judicial restriction closest to adaptation and the impact of that on the incident being considered before the competent court.

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14. It is stated in Paragraph 1/A of Article (406) that "Anyone who intentionally kills a person shall be punished with death in one of the following cases: A - If the killing was premeditated and premeditated."
15. Premeditation is defined in Paragraph (3) of Article (33) of the Iraqi Penal Code in force as (premeditation is determined thinking about committing the crime before its implementation, away from an outburst of immediate anger and psychological agitation).
16. Article (1) of the Anti-Terrorism Law No. (13) of 2005 defines terrorism as (every criminal act committed by an individual or organized group that targets an individual or group of individuals or groups or official or unofficial institutions that causes damage to public property or For the purpose of disrupting the security situation, stability, or national unity, or introducing terror, fear, or panic among people, or provoking chaos in order to achieve terrorist goals)
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29. Paragraph (b) of Article (68) of the Iraqi Code of Criminal Procedure No. 23 of 1971 stipulates that “no parent shall be a witness against his descendant, nor shall a descendant be a witness against his descendant unless he is accused of a crime against his person or property.”

30. Article (212) of the Iraqi Code of Criminal Procedure No. (23) of 1973 stipulates that “the court may not base its ruling on evidence that was not referred to in the session, nor on a paper presented by one of the litigants without enabling the rest of the litigants to review it.” The judge does not have the right to decide the case based on his personal knowledge.

31. Paragraph (c) of Article (123) of the above law stipulates that (the investigating judge or investigator must decide the issue of the accused’s desire to appoint a lawyer before commencing the investigation. If the accused chooses to appoint a lawyer, the investigating judge or investigator does not have the right to initiate any action until appointing a lawyer. delegate).

32. Paragraph (b) of Article (144) of the above law stipulates that (the president of the criminal court assigns a lawyer to the accused in the felonies, if he does not have one, and appoints a lawyer on his behalf. The court determines the lawyer’s fees upon deciding the case. The decision to assign is considered a proxy ruling, and if the lawyer shows a legitimate excuse for not If he accepts the trust, the president must appoint another lawyer.

33. Paragraph (eleven) of Article (19) of the effective Iraqi Constitution stipulates that “the court shall appoint a lawyer to defend the accused of a felony or misdemeanor for those who do not have a lawyer to defend him, at the expense of the state.”





34. Article (146), Paragraph (2) of the Iraqi Civil Law No. (40) of 1951 stipulates: “If general exceptional incidents occur that could not have been predicted and their occurrence results in the implementation of the contractual obligation, even if it does not become impossible, it becomes burdensome for the debtor to the extent that Threatening him with a heavy loss, the court may, after weighing the interests of both parties, reduce the onerous obligation to a reasonable extent if justice so requires, and any agreement to the contrary is declared invalid.

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36. Article (130), Paragraph (A) of the Iraqi Code of Criminal Procedure No. (23) of 1971 stipulates that “If the investigating judge finds that the act is not punishable by law or that the complainant waived his complaint and the crime is permissible for reconciliation without approval The judge or the accused is not legally responsible due to his young age, so the judge issues a decision to reject the complaint and close the case permanently.

37. Paragraph (b) of Article (256) stipulates that “...the criminal court may bring any case or any investigation report into a crime in accordance with the provisions stipulated in Article 264.”

38. Article (248) of the Iraqi Penal Code No. (111) of 1961 states: “Anyone who, with the intention of misleading the judiciary, changes the condition of persons, places, or things, conceals evidence of the crime, or provides false information related to it, shall be punished with imprisonment or a fine, or with one of these two penalties.” He knows it is not true.)

39. Article (63), Paragraph (2), Clause (B, C) of the effective Iraqi Constitution stipulates that (B - A member may not be arrested during the period of the legislative term unless he is accused of a felony and with the approval of the members by an absolute majority to lift his immunity, or if Caught red-handed in a felony C- A member may not be arrested outside the period of the legislative term unless he is accused of a felony and with the approval of the Speaker of the House of Representatives to lift his immunity or if he is caught red-handed in a felony.

40. Article (247) of the Iraqi Penal Code in force stipulates that (a penalty of imprisonment or a fine shall be imposed on anyone who is legally obligated to inform a person charged with a public service about a matter or inform him of matters known to him, and who intentionally refrains from informing him in the required manner and at the legally required time, and anyone charged with a service. In general, he is entrusted with searching for or apprehending crimes. He neglected to report a crime that came to his knowledge, unless the filing of the lawsuit was based on a complaint, or the offender was a spouse of the person assigned to the public service, or one of his ascendants or descendants, or his brothers or sisters, or someone in the household of these who are relatives by virtue of marriage.