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التكيف القانوني للهجرة غير المشروعة في القانون العراقي

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المستخلص

تُعد الهجرة غير شرعية , نظراً للجوء الأفراد إليها بطرق و أساليب مخالفة للقوانين والأنظمة السارية في الدولتين المهاجر منها وإليها على حدٍ سواء .
ينجم عن الهجرة غير الشرعية العديد من الآثار السلبية التي من شأنها التأثير في الإصعدة الاقتصادية و الاجتماعية والأمنية وغيرها للدولة التي هاجر مواطنيها منها , وبالمقابل لها ايجابيات للدولة المستقبلية للمهاجرين , لعل أهمها استقطاب الكفاءات للاستفادة من خبراتهم في تطوير قدرات ومهارات الاشخاص المستوطنين في الدول المهاجر إليها , مقابل توفير فرص العمل التي تمكنهم من العيش الكريم الذي عجزت عن توفيره دولهم الأصلية , بسبب الأوضاع الامنية أو الاجتماعي أو الاقتصادية وغيرها , ما يدفعهم ذلك الى الهروب من الواقع المرير المحيط بهم للبحث عن الفرص التي تؤمن لهم الحياة الكريمة , بعيداً عن الأوضاع السياسية غير المستقرة التي تعرض المهاجرين بسببها للظلم وعدم الانصاف في توفير الخدمات وفرص العمل وغيرها من المتطلبات الأساسية التي يبحث عنها كل فرد وبالتالي فإن الهجرة غير الشرعية تكلف دولهم الكثير من الأضرار , لكونها قد خسرت الكفاءات العلمية أو المهنية التي من شأنها أن تساهم في تطوير الأنظمة السارية في المجتمع و إصلاح الأوضاع في البلاد مستقبلاً .

كلمات مفتاحية: الهجرة غير المشروعة ، جريمة ، التصدي القانوني ، الهجرة ، قانون .

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Legal adaptation of illegal immigration in Iraqi law

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Abstract

In recent years, Iraq has suffered a massive illegal migration as a result of the wars and crises it has experienced, and it is trying to identify the causes of this phenomenon, determine its legal adaptation in Iraqi law, identify the shortcomings of Iraqi legislation, and propose solutions that contribute to reducing illegal immigration.

Keywords: Illegal immigration, crime, residence law, immigration, penalties

1-Introduction

Illegal or clandestine immigration is one of the most common and widespread social phenomena in Arab countries, particularly in Syria and Iraq, due to the unstable political and security situation and its adverse consequences for members of society. This leads them to take illegal immigration as a way to escape these consequences, by agreeing with the smugglers to help them move from their country to the country where individuals want to migrate.

Illegal migration is a serious phenomenon that is pretenable to the development and progress of the communities that have been abandoned, especially those with the competence to build and develop their country, if supported by those responsible for managing the country's affairs. Individuals are encouraged to migrate undocumented through social media, which are used on the negative side by encouraging individuals to leave their countries by spreading the pros on the countries to which they will be migrated. Without highlighting the negative aspects of their rights to a decent life that they are considered to be strangers and whose treatment will be different from that of the country to which they were migrated

1.1 the problem of research: -

The problem of research arises by combining the causes and motives of clandestine illegal immigration and open (legal) immigration, although the two differ in terms of legal adaptation of both, if the first is a crime, and the second is an unpunishable permitted act.

1.2 importance of research: -

The importance of research is highlighted by highlighting the concept and motives of illegal (clandestine) migration, in order to suggest appropriate solutions to reduce this dangerous phenomenon, and its relevance to transnational organized crime and other crimes, with a view to reaching appropriate solutions to limit its future Commission.

1- 3 Research methodology: -

We have followed the descriptive and analytical approach to the provisions of the Iraqi Penal Code, which relates to the descriptive approach to describing the phenomenon of illegal migration and to identifying its causes and effects and the mechanisms for reducing it, while the analytical approach relates to the application of the provisions of the Penal Code to criminalize the phenomenon and to penalize the perpetrators, whether they are immigrants. Or instigators.

1-4 research Division:

We will divide our research into two researchers, we will dedicate the first research to research the concept of illegal migration, its causes and its effects, and the second research will demonstrate the legal adaptation of illegal migration and the mechanisms for limiting it.

The definition of illegal (secret) immigration

Secret immigration means illegal immigration, because it is done in secret without the consent of the exporting country and the immigrant country. In this section, we will explain what the causes of migration are, what the negative effects they have on the exporting country, and who emigrate from it, depending on the degree of harm caused by illegal migration. This will be discussed by dividing this research into three branches, as follows:

2.1 the concept of migration

The phenomenon of migration is characterized by temporal continuity (as it continues throughout the year), as well as its spatial spread in most countries of the world, with varying proportions depending on the different social, economic and cultural conditions of the countries exporting migration, and illegal migration is defined as (Moving from the motherland to the immigrant homeland to stay there on a continuous basis in violation of the rules governing migration between countries in accordance with the provisions of domestic and international law (El-Hnaya, 2013, p. 5)

Clandestine immigration means (illegal border crossing or departure from the national territory of the State Shtiwi ,2014, p. 4)

The crime of illegal immigration means "that migrants commit criminal conduct requiring punishment or precautionary measures against them" (Abdali, 2014, 124)

The United Nations defines illegal immigration as "unregulated entry by land, air or sea to an individual from one country to another." this entry does not carry any form of permanent or temporary residence permit, nor does it respect the necessary requirements for crossing the state border" (Shtiwii, 2014,p 7)

Thus, it can be said that illegal migration is called because persons who migrate from their country reach the countries of migrants by smuggling illegally and from which they obtain any visa for entry or residence (Sarrani, 2010, p105).

Illegal immigration can be defined as: - the entry or stay of a person in a country that has nothing to do with, fraudulently illegal, contrary to laws, instructions, regulations or orders.

We conclude from the above that illegal immigration remains as such whether it is honorable or not, and therefore the perpetrators of it must be punished, with the exception of those to whom the immigrant State allows them to accept and grant them entry visas or stay in them, for work, investment or study ... Etc.. .

2.2 the causes of illegal migration

The immigrant uses to take illegal immigration as a way for a number of negative reasons, which may be internal or external depending on the circumstances, although the degree of influence varies from person to person depending on their economic, social, health, cultural and other conditions. We will include the reasons for illegal immigration in the following order:

2.2.1 Economic situation: -

The low economic situation in the migrant-exporting countries, the low level of employment, the low level of services and the standard of living all lead many of these countries to seek employment opportunities outside their country. To obtain them, even illegally, through illegal immigration.

We believe that the economic factor has a great impact on the social situation of individuals, especially those married to them, because they are responsible for the family of what it costs to take all means to provide them with money, even if the means are illegal.

2.2.2 political conditions: -

In some countries, the deteriorating political conditions migrate from them, even if they are illegal, including political instability, widespread unrest, lack of reform policies, development plans, confiscation of freedoms and lack of confidence in the political system as a result of corruption and the inability of its legislative, judicial and executive authorities to carry out their tasks.

The political situation has a significant impact on the lives and future of individuals and thus on their normal and undesired lives, forcing individuals to

emigrate, even if they are illegal, in order to obtain the funds that balance them with the social balance required.

2.2.3 Social conditions: -

One reason for illegal migration is the weakness of social ties and family disintegration within the exporting country, as well as the sectarian and sectarian division and the failure of individuals to adapt to the customs and traditions of the country that source illegal immigration or their non-acceptance of the regimes there, which lead to immigration as a way of salvation from injustice and injustice.

The social factor has a major impact on the security and stability of individuals, since the practice of discrimination and sectarian discrimination against them through cruelty, forced displacement and other brutal methods leads to motivating individuals, especially those who are persecuted to illegal migration, to obtain their right from another place they deem appropriate and fulfill their requirements To achieve its goal is to live in a respectful way for him and his family among the members of the community surrounding them.

2.2.4 Religious' reasons: -

Religious persecution may force individuals to embrace a particular doctrine or belief that is contrary to their original beliefs, leading to their search for a safer environment that would damage their religious beliefs and habits or for an environment that does not matter to doctrinal thought and its sectarian implications. The European countries, however, are more strongly applied to Islamic law, but are not Muslim, especially with regard to the freedom of person to embrace any doctrine they see as consistent with his beliefs and habits.

We conclude from the above that one of the most prominent reasons why young people migrate to some of the economic countries where the economy thrives is stable and the standard of living of individuals in terms of employment opportunities, as well as the climate of freedom and well-being enjoyed by members of European countries and almost non-existent health and social services in countries The exports, especially in Iraq and Syria, due to the security conditions that these two countries are experiencing. This stimulates individuals, especially those who are qualified to blow up their energies in countries that provide them with the right conditions, but the migration of young Iraqis to Europe is not new and is free of the sectarianism that the country witnessed in 2006, before it reached the 1990s. It has roots in the 1980s and 1970s, but the recent wave of migration is the biggest among the young, caused by the crisis security conditions, the absence of jobs and the lack of services, all of which contribute to encouraging the Iraqi youth to emigrate.

The issue of migration is now the main concern of Iraqi citizens, especially the youth group, and the last period has witnessed a wave of massive migration to European countries. They have been limited to social media pages that teach

people about illegal immigration methods, publish migrants' news, and how to migrate to encourage more immigrants, and include ways and advice for young people who want to migrate to Europe, and some provide names for smugglers (perpetrators). Via Turkey, the most common way for Iraqi immigrants (<http://www.niqash.org/ar/articles/society/5073/>)

Iraqi young men are also filming themselves in videos in which they talk about how they get out of Iraq and reach Europe, which in our view are illegal ways. It would motivate others, especially the adolescent community and young people, to resort to clandestine immigration without regard to the consequences.

2.3 the effects and consequences of illegal migration

Migration, particularly illegal, has many effects and repercussions on the situation of migrants as well as on the situation in both the exporting and the immigrant countries. The most important is that individuals or groups move from a social, economic, and political environment to an ocean Other mostly different from the perimeter of origin (El-Hnaya, 2013, p. 7)

In some of its effects, migration is a manifestation of the health and source of economic, social and cultural wealth among its various parties for the exchange of experience and the transfer of skills that it reflects. It has contributed to the promotion of the principles of dialog and positive interaction between cultures, civilizations and peoples for the receiving State, as well as to reduce the burden of responsibility of exporting States, since migration reduces unemployment and raises the standard of living and activates the economic cycle. This does not prevent the negative effects of illegal immigration on the exporting country, and at various levels, including the following:

2.3.1 at the economic level: -

Illegal immigrants are a burden on the economy of the destination country by reducing the efficiency of labor and competition of regular labor, increasing cash transfers and increasing money-laundering offenses (Kamal and other ,2018, p223)

2.3.2 at the social level: -

As a result of the presence of illegal immigrants, slums and the accompanying decline in the health of the environment and the spread of social diseases such as theft, drugs, begging and others, and the country of destination have created new customs, values and cultures, showing social and psychological problems.

2.3.3 At the political level:

The increasing numbers of illegal immigrants are represented as a political danger in respect to their ability to create blocs of pressure and compromise to the existing political system in the country of destination and these immigrants

could be exploited as minorities having influence on the power centers and causing seditions and disputes.

2.3.4 At the security level: -

Illegal immigration leads to an increase in crime rates, as illegal immigrants tend to have low levels of education and their desire to obtain money, which leads many of them to commit criminal behavior and join criminal gangs and make them to commit the most famous crimes such as theft, drug trafficking, smuggling of weapons and explosives in order to obtain Funds.

3-1 Legal adaptation of illegal migration and mechanisms for its limitation.

Legal adaptation is intended to legalize the legal model contained in the body of the Penal Code to the criminal behavior in question, and the mechanisms are the means and tools through which the negative effects arising from the criminal phenomenon can be reduced. It is known that the title of the above topic is divided into two parts, namely the legal conditioning of illegal immigration, and the mechanisms for limiting it, and in order to go into the details of each one of them, this topic must be divided into two demands as follows: -

It is worthy to be mentioning that the general principle of the Penal Code according to which an act or sentence may be criminalized only on the basis of a law authorizing it and thus on the basis of the text of article 167/II/a). According to the law, the penalty shall be "life imprisonment and a fine of not less than 1,000 dinars and not more than those who give, promise or offer something of what has been mentioned with the intent to commit an act which is harmful to the national interest, even if it does not accept his tender, promise or offer". Illegal immigration is therefore a totally premeditation crime because it affects the interest of the state since it exhausts the youth energies, which negatively affect the country's economy in terms of the decrease in the domestic economic, agricultural and industrial product, and we therefore propose that the Iraqi legislator punishes the perpetrators of the immigration crime and impose severe punishment on the instigators. With the crime of instigation to be totally considered as an absolute crime, despite the illegal immigration has not been done, we therefore propose to the Iraqi legislature the following texts, which we shall set out in the conclusion, hoping that they will be adopted if the Penal Code is to be amended in the future (MUTHER Kamal, and Saleh ,2018,p 6).

As for the Law on Residence (76) of 2017, Article 38 of the Act stipulates that: "The commander of any of his means of transport or the person responsible for it shall be punished if he enters or attempts to admit a person in the Republic of Iraq in contravention of the provisions of this Act by imprisonment for a term not exceeding (1) one year and a fine of not less than (500,000) dinars and not more On (1,000,000) million dinars or one of these two penalties, he does not, by virtue, consider anyone who had to move to the Republic of Iraq whose leader tried to enter it unless otherwise proven," he said. The judge can apply this text

to anyone who tries to enter Iraq illegally, i.e. the Iraqi legislator has criminalized the conduct of secret immigration but implicitly, that is, it was not directly provided for.

As for the Passports Act No. 32 of 2015, article 15/IV stipulates that "anyone who has left, tried to leave or enter the Republic of Iraq, or tried to enter it, shall be punished by imprisonment for a period of not less than three years." It is clear from this that the conduct of the illegal route of entry into or exit from the State of Iraq is a crime under the Passport Act and that, therefore, this provision can be made for the offense of illegal immigration because it is committed in secret and carried out through illegal places and roads. Most of them are done by sea with forged and illegal passports.

Paragraph 1 of the same article stipulates that "anyone who sells or buys an Iraqi passport or has acquired it for the purpose of using it contrary to the requirements of its issuance" shall be punished by imprisonment for a period not less than three years for the purpose of benefiting another person from entering the State of Iraq or The exit, therefore, can be introduced illegally by persons who have come to Iraq in an illegal secret way, and that granting them the passport in this way makes their entry into the country legitimate even if their coming is illegal. This is done by circumventing the competent authorities to check the passports before entering the country.

Article 16 (II) stipulates that: From the same law above, "anyone who "knowingly gave or received information on the passport form or in any matter relating to the acquisition of a passport contrary to the provisions of this law, shall be liable to a penalty of imprisonment of not less than one year and not more than three years. .

Article (17) punished the same penalty for any person who instigated or assisted anyone to commit any act contained in article (15) and (16).

Article 20 (I) stipulates that " entry and departure of the Republic of Iraq and the places for checking documents shall be specified by regulations." In other words, any conduct that is committed in contravention of this article is a crime whose effectiveness deserves to be punished in the penal legal model.

In the light of the above, illegal migration is a crime of responsibility and punishment, according to the legal provisions set out above.

3.2 mechanisms to reduce illegal migration

The phenomenon of migration should be dealt with in a holistic and integrated approach encompassing all its aspects.

- emphasizing the need to combat illegal migration within a multilateral framework, ensuring maximum political and security coordination to achieve an effective system of control over the phenomenon, and thus a departure from unilateral policies and unilateral security arrangements.

- political and security confrontation of smuggling networks in national and regional efforts to combat smuggling and trafficking in migrants.
- Support contractual cooperation to regulate exchange of information, resettlement, and other measures to control illegal migration.
- tighten electronic surveillance through the installation of cameras and detective devices, and distribute police and defense personnel in every part of the country, particularly on the border separating Iraq from other countries, in order to monitor illegal migrants and track smugglers who help them to smuggling and to punish them for the most severe penalties ·
- imposition of severe penalties and double fines on illegal immigrants of up to twice the amount agreed with smugglers.
- intensified media and educational efforts, lectures and publications that illustrate the negative effects of illegal migration, as well as ill-treatment of Iraqi migrants by European and other countries.
- to work on the provision of services, as well as to activate the role of the private sector in order to attract minds, competencies and, in particular, high-level certifiers, for the purpose of saving Iraq from losing its lives and saving them from thinking about illegal immigration.
- to make citizens aware of the importance of working and to motivate graduates to engage in free business, not only in employment, but also to grant loans to help them implement projects that benefit them and their society, and to foster a spirit of cooperation and material and moral support among members of society; And working to develop the health, scientific, cultural and social level in Iraq.
- granting loans to landowners to build housing houses for them, or building housing complexes for families that are forgiven or impoverished to protect them from displacement and loss, and to protect them from committing crimes for the purpose of obtaining funds that enable them to provide their basic requirements, for the purpose of keeping them away from thinking of illegal immigration. Or committing criminal behaviors that enable them to fulfill their demands.

4-Conclusion: -

We conclude our research with the most important conclusions and proposals we have reached, as follows:

Illegal immigration is a waste of the country's opportunity to invest its children in order to promote and protect the country from successive crises. This, in turn, has a negative impact on the country's reputation and stability. The energy of young migrants, especially those with competence.

We have concluded that illegal migration is equivalent to trafficking in human beings in terms of the negative effects it has on individuals and society, and constitutes an intellectual terrorist that affects individuals' freedom of opinion because it negatively affects their ideas, especially for individuals who do not have a sufficient degree of awareness and culture.

Illegal immigration is committed by illegal immigration, which entails both criminalization and punishment in accordance with the provisions of the Iraqi Penal Code and the laws supplementing it.

There for we recommendations:

1- the granting of freedom of expression to young people of their intellectual and religious opinions and beliefs, since there is a significant percentage of them who are not motivated by economic or other reasons, other than the reason for generalizing and preventing them from practicing what they believe.

The implementation of bilateral and collective agreements among countries, and the development of joint mechanisms and programs between them, to be implemented by all for the purpose of reducing the phenomenon of illegal migration and preparing for its eradication.

In addition to the fact that it is not possible for young people to have a greater role in the exercise of political work by supporting and embracing them, and giving them the opportunity to take senior positions in the state of origin, because they are more committed to the youth group and capable of fulfilling their demands or some important of them, depending on the circumstances and conditions surrounding the country.

Education of young people, especially graduates, awareness of non-adherence to employment and understanding that self-employment is not a disadvantage, and work to develop all industrial, commercial and agricultural sectors to eliminate unemployment.

Support by the private sector to eliminate unemployment and relieve the State of its pressure.

In addition to the precautionary measures to revoke Iraqi citizenship, the imposition of appropriate penalties for young fugitives and smugglers, as they have indirectly waived it and have their full will, with fines more than double the amount of smuggling.

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