

CONSUMER PENAL PROTECTION IN IRAQ (COMPARATIVE STUDY)

AWLIA JABBAR SHAHIB AL-HILALI

COLLEGE OF MEDICINE, UNIVERSITY OF AL-QADISIYAH, IRAQ

awlia_sahib@qu.edu.iq

Abstract

The consumer has been a "natural or legal person" and is still the subject of international and national attention. The old legislation has given clear attention to the consumer, and modern legislation has enacted special laws to protect the consumer both objectively and procedurally. The fraudulent declaration and sanctioned penalties for perpetrators of such crimes. Among these laws is the Iraqi Consumer Protection Law No. (1) of 2010, which was enacted to eliminate the attacks on the consumer, which is no longer just an individual case, but has become a phenomenon. However, the protection provided by this law was not integrated and effective for several reasons. The most important of which is not the criminalization of the Iraqi legislator of all forms of attacks that can be exposed to the Iraqi consumer, as did other legislation, especially the law of consumer protection in Lebanon and Egypt. And that the sanctions he had provided were criminal sanctions only and disproportionate to the gravity of the crimes against the consumer, in particular the fine.

Keywords: THE CONSUMER, CONSUMER PENAL PROTECTION , CONSUMER FRAUD, DECEPTIVE ADVERTISEMEMENT THE CONSUMER .

I. INTRODUCTION

In recent times, the consumer has been subjected to many attacks on his rights, whether in fraud in the type , quantity of goods and services or in manipulating the packaging process or violating the rules of importing, producing or marketing these goods or reducing their benefits by advertisers or processors on the one hand, and deception in the advertising of these goods and services on the other, as well as the exposure of consumers to arbitrary conditions, especially in electronic contracts (Internet service contracts), which has become a phenomenon, not just an individual case.

Due to the openness on the world and its development and the many technological developments, the world has become a small village, which led to multiple crimes against the consumer.

In Iraq, especially after 2003, we find that Iraqi citizens no longer rely on fresh goods, but rather depend on one or more of the bulk of their consumption of frozen or canned goods imported from abroad and throughout the year, and the latter may be subject to contamination or non-conformity of storage to the specified specifications. etc, hence the importance of research on this subject.

II. MYTHOLOGY OF THE STUDY

Study Problem

The research on the subject of "Consumer penal protection in Iraq comparative study " raises many problems that can be raised in the form of questions. Did the Iraqi legislator in the Penal Code No. (111) of 1969 (amended) protect the consumer from the crimes that he could face? Is this protection sufficient? Has the Iraqi Consumer Protection Law No. (1) of 2010 come into full protection for the consumer? Is this protection parallel to the protection afforded by comparative laws?

Research objectives

This research aims to achieve the following goals:

2-1- Clarify the concept of consumer and the legal basis for its protection in Iraqi and comparative law, and develop a clear picture of the criminal and penal policy of assaulting the consumer

2-2- Determine the crimes committed against the consumer stipulated in Iraqi law and the comparative laws on the one hand, and clarify and evaluate the punitive aspect in the crimes against the consumer on the other hand.

The Importance of Research

The importance of this research appears on the following:

3-1- Increasing the attacks against the consumer and its diversity, the multiplicity of methods and systems used in committing them, and the multiplicity of means used by the perpetrators (suppliers, processors, advertisers, etc.).

3-2 - Lack of Iraqi legal studies interested in consumer protection in terms of penalty, since most research and studies concerned other aspects, especially the civil or administrative aspect.

Hypotheses of the Research

Based on the foregoing, the following hypotheses can be formulated:

The First Major Hypothesis

4-1- Coherence and convergence in the approach, content and goals of Iraqi law and comparative laws exist .

The following secondary hypotheses are derived from it :

4-1-1- The goal of consumer protection laws is to protect it in its health and safety.

4-1-2- The nature of the crimes mentioned in the Iraqi Consumer Protection Law is similar to the crimes mentioned in the comparative consumer protection laws.

4-1-3- The lack of adequate guarantees for the consumer towards the provider or the merchant in Iraqi law and comparative laws.

5- Research method

The research on the subject of "Consumer penal Protection in Iraqi Comparative study" requires two approaches:

5-1- the first approach is the comparative approach. The Iraqi The law will be compared with the Iraqi Penal Code No. 111 of 1969 and the Consumer Protection Law No. (1) Law of Suppression of Egyptian Fraud and Fraud No. (48) for the year 1941 (amended) and the Egyptian Consumer Protection Law No. 67 of 2006 and its Executive Regulation No. (886) for the year 2006.

5-1-2-The second is the analytical approach, as the comparative legal texts will be analyzed in order to reach the legal protection of the consumer.

III.DATA COLLECTION METHOD

The researcher relied on the following two methods

a. library search method. library search method And that is through reviewing the Arabic and foreign references from books, periodicals, research and a thesis related to research variables, with the aim of building the theoretical and intellectual framework for the research topic.

B. Observational research method. The observational data collection method was used to determine the availability of adequate consumer protection in Iraqi and comparative law.

IV. The concept of consumer protection and its legal basis

The Research for consumer protection in Iraqi law and some comparative laws requires a first step in the concept of consumer protection, and then the basis of this protection in two cases. I will allocate the first requirement to demonstrate the concept of consumer protection, while the second requirement to the legal basis for consumer protection will be as following:

1- The concept of consumer protection

In order to understand the concept of consumer protection, it is necessary to clarify its concept at the language on the one hand, and the concept of consumer protection on the other hand, so I will divide this requirement into two topics. I will explain the concept of consumer protection language in the first topic, while I will allocate the second topic to the concept of consumer protection terminology and as follows:

1.1 The concept of consumer language protection

To clarify the concept of consumer language protection, I will demonstrate the concept protection and the concept of consumer linguistically in order to reach the concept of consumer language protection, in two consecutive points as follows:

A. THE CONCEPT OF PROTECTION linguistically

The word (protection) refers to the act: protect, protecting, protectors, protected and protect the citizens. prevented them, and conserve, projecting by letter A made him a fever not close and dare not to, and doubling it of the fever two protected. protected the people to protect means assisting them (Al Rafi'l,1986).

B. Consumer Concept Language

The term (consumer) refers to the verb (perish),consumed by a lot of users, and the way of the consumer of roses: any effort, and the consumer is an active name of the act consumed by a user other than the producer, and consumer: an actor who consumes, consumed, it is consumed .

Consumed linguistically refers to expend money: spend any consumed from the dirhams during the week what was consumed in a month, and the word (consumed) comes in the sense of spending, and the consumer means the spender(Al firouzdi,1987).

The consumer in language means who consumed the thing which spent money or thing or lost(Al munajjid,1986).

From the above it can be said that the concept of consumer protection in language is the maintenance or protection of the financier thing or money or its individual.

1.1.2- The concept of consumer protection is a term

I will explain in this section the concept of consumer protection in the legal and jurisprudential terms in two consecutive points as follows:

A. consideration of consumer protection in legal territory: By reference to comparative laws, the Lebanese consumer protection law No. 659 of 2005 found that the concept of consumer protection was indirect when it defined the objectives of this law. Law to - define the general rules that protect consumer protection and the health and safety of goods and services and quality - safeguarding consumer rights and ensuring the transparency of economic transactions that the consumer is one of its parties - protecting the consumer from fraud misleading advertising and questioning without exploitation(The article 1). It defined the consumer concept as (a consumer is

a natural or moral person who buys, rents, uses or benefits from a service or a good for purposes not directly related to his or her professional activity)(The article 2).

The Consumer Protection Law No. "67" of 2006 did not provide an explanation for the concept of consumer protection, but merely defined the concept of consumer by saying: (Consumer: Every person to whom a product is submitted to satisfy his or her personal or family needs or are engaged or contracted in this regard)(The article 1/3).

Some criticize the Egyptian legislator's tendency to define the concept of consumers because it has reduced the scope of consumer protection and focused on the purpose of contracting (to spend the personal needs of the consumer and his or her family or family). He also pointed out that those who contract for their professional activities.

Whatever the economic status of the consumer is not a consumer, this means that the person is a consumer and covered by the protection of the law, for example, when he bought a computer for his personal or family use, while a consumer is not the same person if he bought the computer for purposes of his professional activity such as the university professor who buys the computer for the purposes of his profession lectures to his students. However, this narrow trend is critical. The exclusion of a contractor for the purchase of a service, commodity or product for the needs of his or her professional activity from the scope of protection afforded by law to consumers is unjustified. Such a contractor also has the wisdom of protection provided by the law within a framework beyond its field of competence(Dr. Qassim,2011).

There are those who criticize the concept of the Egyptian legislator in that it limits the concept of the consumer to the natural person only without the moral person, as evidenced by the fact that he used the phrase (to satisfy his personal or family needs.) Such needs are sought only by the natural person in order to enable him to continue, live in contrast to the legal person who only needs to continue his activity. According to this concept, the person to whom the products are related to his professional activity is not considered to be consumer because such person has the expertise and know-how to protect him from deception and fraud(Tariq,2015).

The French Consumer Law No. 949 of 1993 did not mention a concept of consumer protection, nor doesn't provide a consumer concept. However, the Law of 1972 related to the application of the provisions on the need to place price cards defined the concept of consumer by saying: (Consumer: Who uses the products to meet their own needs or the needs of persons responsible for them and not for resale, conversion or use within the scope of their profession)(Dr. Al-rifai,1994).

Despite the clarity of the consumer concept above and its identification of personal consumption cases on the one hand, and the non-inclusion of categories of traders and professionals within the concept of consumers, but it is critical of two things:

The first is to make the shop protection (products) only without services. The second matter is that it limits the legal protection to natural persons without morals(Dr. El Khalid,2005).

It is noticeable on the concept consumer in French law above it is not clear. Once it takes the broad concept of the consumer, and once again takes the narrow concept of the consumer, the reason that the French legislator did not regulate consumer protection within a single legislation, but organized in multiple legal texts sporadic, which led to the creation of several definitions of the consumer(The article 1649).

As for the Iraqi consumer protection law No. (1) for the year 2010, the consumer concept was defined as(the consumer: a natural or moral person who has a commodity or service for the purpose of benefiting from it).

It also outlined the concept of consumer protection by saying (consumer protection: To protect consumers' rights and prevent harm from them)(The article 1 / paragraph IV).

It is worth mentioning that the Consumer Protection Law of Iraq went to the statement of the concept of consumer protection in the summary of the law saying, (In order to protect the consumer and establish the principle of justice and equality between processors and consumers of goods and recipients of services and maintain their health and safety and to reduce the practices of industrial fraud and manipulation of the process of industrial packaging and the included Data and specifications of this law)(The article 1 / paragraph V).

The Iraqi legislator also explained the consumer protection mechanism when it stated the objective of the Consumer Protection Law by saying:(The purpose of this law is to: First - guarantee basic consumer rights and protect them against illegal practices that lead to harming it Second - raising consumer awareness III. Rules for the import, production or marketing of goods, reduces their benefits or leads to misleading consumers)(The article 2).

It is well-known that the Iraqi legislator came to the concept of a collector for the consumer. Consuming every person, whether natural or moral, is considered as (legal).(A person who buys goods and services for the purposes of his profession or activity is considered to be a consumer meat which is provided by the Iraqi consumer protection law, and the Iraqi legislator came in a concept that included both goods and services and did not limit the place of protection to goods

only. The legislator used the term "to provide", and here he was very successful because he used the comprehensive and comprehensive abbreviated term for all forms of transactions, rather than stating(who buys, deals, benefits, leases, etc.)Hard to enumerate(Nasser and Samira, 2015).

We support the advanced opinion, and I think it is better to have the concept of consumer as follows: (Every natural person or legal person) shall be provided with a commodity or service to satisfy his personal or family needs or the needs of others without having to do with his profession or activity, Supply them).

I believe that the Iraqi legislature was successful in defining the concept of consumer protection at the heart of the law.

B. The concept of consumer protection jurisprudential: Jurists have cited several consumer definitions ranging from the broad concept of the consumer to the narrow concept(Al Hajj et al,1990);(Dr. Al- side,2003);((Dr.Al-Tohami,2005);(Al-Jaridli, 2008).

However, the most widely accepted definition among jurists is that it prevents the entry of categories of traders and professionals if they contract for the purposes of their trade or profession within the concept of the consumer. They are also prohibited from enjoying the consumer's legal protection by law, and because it is a comprehensive definition that includes the natural and moral person on the one hand, and goods and services on the other. Household and personal consumption also includes (every person who contracts to satisfy his or her personal or family needs with a view to the consumption or use of a service or money)(Philippe,1981),(Dr. Anwar,1995).

As for the concept of the concept of consumer protection jurisprudential, jurisprudence has introduced some concepts. It has been defined as (protecting consumer rights and ensuring that these rights are obtained by sellers in all their forms, whether they are traders, industrialists or service providers). According to this concept, consumer protection is a social term. Consumer protection in positivist systems is intended to (increase consumer rights and influence for the seller and his right to obtain the right and useful information in the goods and services he wishes to obtain so that he can make the appropriate decision)(Dr. Abboud,2009).

There are those who see consumer protection as (efforts to put the buyer on an equal level with the seller. Consumers want to know what they are buying, what they eat, how long the product is to be used, whether the product Safe and harmless to their health at consumption and use and harmless to the environment)(Laurence,1980).

Also, the concept of consumer protection was defined as (activities of an organized and continuous nature for all consumers and government agencies to defend the rights and interests of consumers before companies offering goods and services that satisfy their desires and to prevent acts detrimental to consumer rights) (Katler,1988).

1.2- Legal basis for consumer protection

It is not enough to describe the concept of consumer protection, but it is necessary to clarify the legal basis for this protection, so I will divide this requirement into two sections, I will allocate the first section of consumer protection in the old legislation, while the consumer protection in modern legislation in the second section as follows:

2.2.1 Consumer protection in the ancient legislations

The interest of ancient societies was to establish general rules governing the behavior of individuals among themselves, to prevent the domination of the weak by the strong and to achieve justice. Among these rules was the protection of a weak party in the contractual relationship but the consumer. To clarify consumer protection in ancient legislations, Legislations before Islam and legislations in the beginning of Islam, in two consecutive points as follows:

A. The legal basis for consumer protection before Islam: Ancient Egyptians cared about the laws of the King, "Hormehib" in 1330 BC The last kings of the Pharaohs the Eighteenth Dynasty is one of the most important economic criminal laws. Article 8 clarifies the crime of the inspectors, Complicit with the tax collectors, and Article 10 showed the crime of collecting grain taxes(Dr. Labib,1997).

The laws of King Horemheb continued in the Ptolemaic and Roman times until 2012 BC. King Bukhoris, the founder of the twenty-fourth family, compiled the Egyptian laws that existed prior to his time, with amendments and collection in one group called (Boukhouris Group.) The most important of the laws of this group regarding the consumer protection determine the legal price of interest, Annual interest of more than one-third of the capital, nor allowed to claim more than double the debt no matter how long it was, and deprived the compound interest, and also criminalized acts that disturb the economic aspects such as acts of fraud in the scales and scales and make the punishment of cutting off the hand(Dr. Abdel Mattal,1935).

The old Iraqis also were known with many laws and their kings' concern for justice and the protection of the weak. This protection began with the promulgation of the law of Oromo, which

contained articles on balances, money and social insurance, the abolition of Market dues and compensation, it is the first law to replace retribution with compensation(Dr. El Khalid, Ibid).

Then came the law (Orokagina) economic reforms, as consumer protection was the elimination of the exploitation of the weak by preventing the rich to buy animals and homes of their subordinates only if they consent and pay them the right price, and also dealt with the law " and the loan(Dr. Al-Aboudi,1988).

The economic aspect was also regulated by the Hammurabi Law, and it worked to protect the consumer by determining the prices of goods and the fees of doctors and surgeons, and determining the wages of the builders, the wages of the carpenters, the sailors and the shepherds (Yakan,1969).

Regarding to Greeks found laws that concern the consumer among the most important of these laws is the Dracon Act and the Solon Act. The Dracon Law drafted legal systems in the texts of the Code to prevent them from being monopolized in the hands of supervisors and in order to achieve the principle of equality. The Solon Act was designed to alleviate the economic situation in Athens in 600 BC. By working on the equality of the classes of the people by making the provisions of this law one applies to all, and the establishment of the system of standards, and set the interest rate, and the prohibition of usurious usury(Al-Fadl,1998).

The Romanian law regulates the importation of grain and its trade and the rise in prices, and penalizes those who violate prices and regulations related to grain trade, supply, import and export of goods and other offenses related to sellers and buyers with severe penalties such as the prohibition of trade, the penalty of deportation, fines and confiscation, Arduous, and in some cases the death penalty(Dr. Jabra,1982);(Dr.al-Marsafawi,1986);(Dr. Abu Talib, 2007).

The Law of the Twelve Panels prevent monopoly and limit price increases. This law created the function of the accountant or market controller whose owner monitors prices and the market.

B. The legal basis for consumer protection in Islam: Islam has aimed at protecting all human life as a consumer, and this protection necessitates the preservation of matters that require the preservation of human life, whether consumer or non-consumer. These are the five faculties(self-preservation, birth control, keeping the mind, preserving money) (Dr.Zanati,1966);(Abdul Qader,1986).

The Islamic consumer legislation has taken great care, as it is reflected in the fact that it regulates transactions and disinfects profits. It has subjected them to the criterion of halal and haraam and advocating for action, making accountability and reward the way to increase production and achieve economic development, and obliged traders to know the jurisprudence of transactions before practicing this profession.

Islam also worked to protect the Muslim consumer from false and fraud advertisements by obliging traders to give the necessary information about each commodity offered for sale as a statement of how to use it and the date of its validity, otherwise it would be considered adultery forbidden to Islam.

Islam also governs the corruption or invalidation of the contract if it violates the rules of Islamic transactions. The Islamic legislation has stressed the punishment of tyranny on anyone who cheats, cheats or monopolizes or hides what must be stated in the sale, or sells at a price more than usual or contrary to what he must contract, but sentenced to cheating the punishment of the removal of the Muslim communit (Dr.Al-Shahawi,1962);(Dr. Al-Sharabahi, 2004).

1.2.2 The Consumer Protection in Modern Legislation

It was not only the old legislation that concerned consumer protection, but the consumer protection movement moved to modern legislation. To illustrate this, I will divide this section into two points:

A. The legal basis for consumer protection in some Western countries: The United States was the first to take care of the issue of consumer protection and the maintenance of its rights. In 1882, the Law on deception and fraud was promulgated. On the regulation of the local food industry and the development of standards for consumer protection for 1890.

Then, in 1927, the food and drug Administration was established. It became the law enforcement agency and succeeded in contacting the Ministry of Industry in 1930 to set standards for the quality of local products. On 15 April 1962, President Kennedy worked on consumer rights by sending a letter to Congress Including the consumer's right to security, the right to information, the right to choose, and the right to be heard by consumers.

Then the presidents of the United States after President Kennedy followed the issue of consumer rights, and they sent letters to the US Congress to protect consumer rights.

This interest in consumer rights continued. A group of activists of the Consumer Protection Movement led by Ralph Nader, the world's most famous activist in America and in America, defended consumers. In the 1970s, these activists developed an extensive consumer rights list, adding six rights The number of these rights to (10) ten rights (Al-Sadiq, 2014).

In 2000, the US legislator passed the US Federal Law on Electronic Signature.

As for France has seen an interest in consumer protection. In 1905, a law was enacted to protect the consumer from the product or interfere with the circulation of products, and to impose penalties on those who commit the crime of deception or fraud in the commodity.

Thus, the consumer protection associations began to appear in a significant manner and under the pressure of these associations, the French legislator intervened and issued the Commercial and Literary Directives Act in 1973.³² Article 1 of this law stipulates that (In terms of price or awareness of the services and products offered)and the Act on Arbitrary Conditions of 1978 and the Act on the regulation of labeling and data on food Products of 1984.

The order on freedom of prices and competition was issued in 1986, which contained several consumer texts. In 1987, the Law on Organizing Consumer Price Notification was promulgated, and in 1988 the right of consumer protection societies was granted the right to recourse to the judiciary in order to defend the common interests of consumers (Al-Sadiq, The same reference).

In 1993, the French legislator was crowned with all these legal efforts to protect consumers by issuing the Consumer Code of 1993, which collected all the legal rules for the protection of sporadic consumer in several texts.

Finally, the French legislator passed Act No. 334- 2014 on 17 April 2014 on consumer protection. This law guarantees provisions concerning consumer information and protection, conformity of products, services and safety, protection of intellectual property, etc.... (Dr. Hamdallah,2000).

B. The Legal Basis for Consumer Protection in Some Arab Countries: The consumer protection movement has been part of the system of underdevelopment that has affected the development movement in the Arab world for many centuries, especially after World War I when the hegemonic powers began to dominate the resources of the Arab countries. Which affected social and institutional construction and cultural dispersion, in turn reflected on the establishment of civil society organizations. It also affected the emergence of associations with interests in human beings in general and institutions and associations concerned with consumer protection and defense of their rights in particular. However, this does not mean the absence of associations

whether the associations are connected to the government apparatus or not, but they are not effective in this work, on the one hand, and on the other hand, there is legislation, but it was not at the level that should be on consumer protection.

Studies indicate that the Arab Republic of Egypt is one of the first Arab countries where appeared signs of consumer protection. These signs are a number of texts and laws dating back to 1883 concerning cheating, whether cheating in medicines or cheating on food, Purchased by the consumer (Aboud, Ibid).

These laws were subsequently developed, influenced by the laws of Western countries, particularly France. In the 20th century, a number of laws were passed on the criminalization of acts of fraud or deception, whether in penal or special laws. In the early 19th century, the Egyptian Penal Code was passed in 1883, which criminalized commercial fraud.

Then the mixed Egyptian Penal Code was passed in 1890, which criminalized fraud of various kinds such as cheating on gold and silver materials, and cheating on the amount of goods using counterfeit balances and others (The article 229).

In the early 20th century, in 1904, the Penal Code was passed on to criminal acts of commercial fraud. The texts were similar to or derived from the mixed penal code. The fraud in gold or silver materials or goods and fraud in the quantity of goods was carried out using false methods, The penalty specified in this law or one of these penalties (The articles 235 , 311) ,As well as the punishment of anyone found in his shop or store or his commercial place is one of the fruits or drinks or materials used in eating or medication and these things are corrupted or damaged is imprisonment for a period of not more than one week with fine or one and the control of corrupt or damaged items with confiscation, and penalizes anyone who causes high or low prices by fraudulent or illegal means (The article 300)

Then the Egyptian Penal Code No. (58) of 1937 (amended) was issued, including provisions aimed at protecting consumers on the one hand, and protecting the national economy on the other (The article 302).

The Egyptian legislator started issuing special laws, as each of these laws is concerned with the protection of a consumer's rights. Law No. (57) of 1939 on commercial transactions was issued. Law No. 48 of 1941 on the suppression of fraud and fraud, Consumer protection in the twentieth century, as it was dedicated to protect consumers from all types of fraud and deception(The article 300, 336) and the Law No. (95) for the year 1945 on the provision of food (The article 1, paragraph 1, 2, (3 bis).

Then the law No. (163) was passed for the year 1950 on compulsory pricing, including the criminalization of acts aimed at protecting the consumer from raising or falling prices, and clarifying the procedural provisions. (The articles (345-346). The Law No. 241 of 1959 concerning the prevention of monopolization of domestically produced goods, also it was issued law no. (10) of 1966 on the Control and Regulation of Food (The article (23- 25), and Law No. (1) of 1994 on weight, measurement and balance (The article (15-19).

In the 21st century, the Egyptian legislator passed a law on consumer protection regulating penal and procedural provisions, Law No. (67) of 2006 (The article 15-22) and its executive regulation No. (886) for the year 2006(The article 15-22).

The Arab countries have introduced special consumer protection laws, as well as criminalizing consumer abuse at the core of their penal laws, In Morocco, the Law on the specification of service products of 1971 was issued, and the Law on Quality Control and Fraud Prevention, 1990, was issued in Algeria.

In the late 20th century, associations began to play their role in Sudan, Iraq, Yemen, the United Arab Emirates and Qatar, and the governments of these countries sought to push the specialized authorities to enact a special law to protect consumers. However, they did not enact such laws in those years. Consumer "and then based in Amman, since membership is in this union of the parties operating in the Arab countries and the participation of regulatory bodies and institutions concerned with consumer rights, which do not have associations (The articles 9-16, 18-19).

In Iraq, despite the fact that the consumer suffers from the lack of legal protection, if not lack of it in many cases, but theoretically in the interest of the Iraqi legislator, as there are texts and legal materials related to the economic aspects that protect the consumer as a citizen as in the Penal Code No. (111) of 1969 (The articles 11-20 , 29.33).

In addition, several laws have been issued for the purpose of forming institutions related to consumer protection and defining their functions or laws, regulations and regulations related to consumer activities or activities such as the Trademark Law and Commercial Data No. (21) of 1957 (amended), which was devoted to a full article entitled "Crimes and Penalties" Protection of consumers from abuse of their rights (Dr. Abboud, Ibid).

Law No. (34) for the year 1970 concerning the regulation of the circulation of agricultural materials for the protection of consumers in terms of agriculture (The articles 467- 468) and the Trade Regulation Law No. (20) of 1977 (53). And the Customs Law No. (23) for the year 1977. (The article 35-36 bis) The Law on Marking Scales, Measures (The article 2,4,9) and Commercial

Standards No. 42 of 1978 was issued with the aim of protecting consumers from commercial fraud and counterfeiting in scales, standards and standards. The Public Health Act No. (89) of 1981 was issued and provided health protection to consumers (The article VIII-XII).

Then came the food system No. (29) for the year 1982 for the protection of consumers in terms of health because it prevents the circulation of all that is harmful to public health, and criminal everything that was corrupt, damaged or adulterated. In 2000, (The article 2-4, paragraph 8) the Law on Associations No. 13, which aims to establish the general rules for the protection of Iraqi consumers was issued (The article 3.4,6.9). In 2009, a very important law concerning environmental protection was issued, the Environment Protection and Improvement Law No. 27 of 2009 (The article 22, 26, 26 bis, 28 and s30).

In 2010, for the first time, a law was issued to collect punitive and procedural provisions aimed at protecting the Iraqi consumer from the various types of attacks that can be inflicted on them by both natural persons "suppliers, producers" or "corporate, institutional, etc." Consumer Protection No. (1) for the year 2010 which is the subject of study (The article 2, 4-6, 8, 10 and 12).

It is worth mentioning that there is a difference between jurists on whether consumer protection is old or modern. Two conflicting opinions emerged:

The first is that consumer protection is an old protection that exists with human existence and is not modern, as evidenced by its existence in ancient civilizations such as the civilization of Mesopotamia and the pharaohs. Their laws aim to protect the consumer implicitly or explicitly (Dr. Kassem, 1995).

The second group considers that consumer protection is relatively recent protection (Dr. Wazir, 1984).

I believe that consumer protection has not been the result of modern legislation. It has clear roots in old legislation, both directly and indirectly. However, it was not the same at present because most of the countries of the world followed one of the two approaches. In the form of penal laws or to issue special laws concerning the consumer and provide him with protection and regulate all related thereto.

V. Some consumer protection applications

The protection of consumers in the laws either to be a criminal or civil protection, the protection of the criminal has two parts, one of which is substantive, and the second is procedural.

I will explain in this section the first part of the criminal protection of the consumer, which is the substantive part, through the statement of some of the applications of this protection in the Iraqi and comparative law, so I will divide this subject into two requirements, as I will first demand the first statement of consumer protection from the crime of fraud, while the second requirement for consumer protection of the crime of false advertising.

2.1 Consumer Protection from Fraud Crime

The first section will be divided into the elements of the crime of consumer fraud, while the second section will be to clarify the sanctions imposed on the perpetrators of this crime, as follows:

2.1.1 Elements of Consumer Fraud Crime

For the crime of consumer fraud General Staff, and special elements and this I will explain in this section in two consecutive points as follows:

A. The General Elements of Consumer Fraud Crime: The general pillars are the physical and moral pillars, which I will discuss in two paragraphs:

A1. The material element of the crime of consumer fraud: The physical element consists of criminal behavior, criminal result, and causal relationship.

- **Criminal Behavior:** The first element of the physical element of the crime of consumer fraud is criminal behavior. The question here is whether this crime is a crime of conduct or not? To answer this question, reference must be made to comparative laws.

The Egyptian legislator went on to criminalize consumer fraud in the Law of Suppression of Fraud and Fraud No. (48) of the year 1941, as amended by Law No. 281 of 1994, making criminal conduct by positive behavior (fraudulent act) in the following images:

The first feature is the perpetration by the offender of fraud in human or animal foods, drugs, medicinal plants, medicines, agricultural crops, natural products or industrial products intended for sale.

The second feature is that the offender committed fraud by making or selling materials, packaging or casings, which are used to cheat human or animal food, drugs, medicinal plants, medicines, agricultural crops, natural products or industrial products in a manner that remains to be used Project (The article 2/1).

The third feature is the act of cheating by importing or bringing to the country human or animal food, drugs, medicinal plants, medicines, agricultural crops, natural products or industrial products. Such food or plants ... etc. are adulterated, corrupt, or ended The date of his validity with his knowledge of this (The article 3 bis).

The Consumer Protection Act of Lebanon has criminalized consumer fraud and criminal behavior in multiple forms:

The first feature is that the offender committed fraud by cheating the consumer on food or animal products or cheating on drugs, drinks or industrial, agricultural or natural products(The article 109).

The second feature is that the perpetrator committed the act of fraud by cheating the contractor with regard to the nature of the goods or service, the essential characteristics of the goods or services, their composition, the quantity of the useful ingredients, their type or source. Under the agreement and customs, the type or source was the main reason for the sale or its validity for the use prepared for it.

The third Feature is the perpetrator committed the fraud by means of fraudulent or unbalanced weighing tools or equipment with his knowledge of the matter.

The fourth feature is that the perpetrator committed fraud by placing a counterfeit mark on a third party's crops or a commercial good or selling or displaying a crop bearing a stolen or counterfeited trademark, knowing that he is cheating the buyer.

The fifth feature is the perpetrator cheated the consumer by the acquisition or use of calipers or pails or other than the number of weight or the amount in the shop or store or in vans or other places for trade and these are different from the words and the agents specified in the law or unmarked.

The sixth feature is the perpetrator cheated the consumer by the acquisition of caliber or pail or the number of weight or kilo forged or unchecked in the store or shop or in vans or other places intended for trade (The article 111,113 -116).

Iraqi law also criminalized the criminal behavior of consumer fraud in the Penal Code and the Consumer Protection Act.

The Iraqi Penal Code criminalized the criminal conduct of consumer fraud, an act of "fraud" whether it was a fraud in the fact of the goods, a change in its essential characteristics or a change in the elements involved in the composition, type, source, number, size, scale, weight or weight of the goods. ... etc. (The article 467).

The Consumer Protection Act of Iraq has criminalized consumer fraud with "positive" behavior and negative behavior, "abstinence" and multiple images:

The first feature is the perpetrator by cheating and fraud and conceal the fact of the articles constituting the specifications approved in all goods and services.

The second is that the perpetrator committed fraud by producing or selling goods and services contrary to public order and public morals.

The third is that the offender guilty of committing a negative act. He refrains from recording the full components on the packaging of the goods that he sells, producing them or goods, or omitting warnings about the goods, if any, and the date of commencement and expiry.

The fourth is that the perpetrator committed the act of fraud in the form of concealing, altering, removing or distorting the validity date.

The fifth is that the offender cheating in the form of repackaging damaged or expired products with containers that have a different validity and are misleading to the consumer (The article 9/first, third, fourth and fifth).

- **The criminal result** ;The question that arises here is what is the criminal consequence of the perpetrator (the seller, the provider, the supplier) or the failure to carry out legally defined obligations? Is it a result of a criminal offense or a dangerous consequence? If a criminal consequence is harmful, it is a criminal consequence Specific harm or not?

The Law on the Suppression of Egyptian Fraud and Deception (amended) makes the criminal result of positive criminal behavior a harmful result, which he defined as "harming human or animal health" in the picture in Article (2) Of the crime of consumer fraud when a harmful criminal result is achieved: "permanent disability" or "death of one or more persons" in article 4 thereof.

The Consumer Protection Act of Lebanon also makes the criminal result of consumer fraud a harmful consequence, and sometimes the punishment of this crime is aggravated when a harmful criminal result is achieved: "a consumer has been poisoned or has been disabled for at least ten

days" Act to the spread of an epidemic disease or to cause the death of a human being "in Article 110 of it.

The Iraqi consumer protection law did not require a specific criminal result to be achieved, but as long as the criminal offense has been criminalized, the criminal result is a detrimental consequence. When the criminal behavior is negative, the criminal result is a serious consequence.

Both the Egyptian and Lebanese legislators were in favor focusing on the penalty of consumer fraud when the criminal behavior of "consumer fraud" resulted from a certain criminal offense, so I suggest that the Iraqi legislator follow the example of the Egyptian and Lebanese legislators to amend (Article 10 paragraph first) "Any person who contravenes the provisions of Article (9) of this Law shall be punished by imprisonment for a period of not less than (3) months and a fine of not less than one million dinars." If this crime results in the death of one or more persons or in case of permanent disability.

A2. The moral element of the crime of consumer fraud

The second pillar of the crime of consumer fraud is the moral element. The question here is whether the moral element is achieved in the form of criminal intent, whether the crime is intentional or whether the intention is achieved in the form of error, so the crime is not intentional? Is it required to achieve a specific purpose or just the availability of general purpose? To answer these questions, we must refer to the comparative laws as follows:

For the Egyptian Suppression Fraud and deception Law (amended), the availability of criminal intent in the case of two elements knowledge and will in the intentional crimes in the picture in article 2 and 3 thereof, and the crime of cheating the consumer was achieved if the crime occurred in the form of error), Article 6 (bis) of the above law stipulates that "without prejudice to any more severe penalty stipulated in the Penal Code or any other law if the act is in violation of the provisions of Articles 2, 3 and 3 bis of this law in a manner of negligence or lack of precaution and precaution or violation of the duty of control shall be the punishment).(The article 113).

This law did not require special intent, but only general purpose.

The Lebanese consumer protection law did not state whether a crime of deliberate consumer fraud was always committed or could be unintentionally committed.

This law is intended to require the availability of a special purpose in only one of the forms of this crime. The third is that "the offender bribes the buyer by using fraudulent or fraudulent tools.

While the Iraqi consumer protection law did not provide for the image of the moral component of the crime of cheating the consumer, nor did it require the availability of a specific purpose, but only the availability of the general criminal intent with the flag of knowledge and will.

B. The special elements of the crime of consumer fraud: Having identified the general elements necessary for the crime of cheating consumer, the question arises whether it is sufficient to achieve this crime of its general elements or are there special elements required by law to be available to achieve this crime? Through reference to comparative laws found that there are special elements must be available to investigate the crime of cheating the consumer, namely three pillars:

B1. The element of the crime location: The first private pillar required by the comparative laws is the shop. The Egyptian Fraud and Fraud Suppression Law (amended) stipulated that the crime should be located in a specific place: "human food, animal food, drugs, medicinal plants and medicines, Natural products, industrial crops, counterfeit products, corrupt or expired products "(The article 2/1,2 and bis).

In addition, the Consumer Protection Act of Lebanon stipulates that the crime of consumer fraud is to be replaced by "animal or animal products, drugs, beverages, industrial products, agricultural products, natural products", "goods", "Tools, gear, pens, calipers and these tools are forged or not controlled "(The article 111,112,114).

The Iraqi Penal Code (amended) stipulates that the crime of fraud provided for in this law falls on a particular place (goods).

The Consumer Protection Act of Iraq also stipulates that the crime of consumer fraud is to be the subject of a particular place (goods, services, expired and damaged products).

B2. The element of character of the offender: Some laws on consumer protection require the availability of another special corner as well as the corner of the crime of consumer fraud is the corner (the character of the offender), the Lebanese consumer protection law provided that the offender "professional" or "service plant" or "service provider "In the picture contained in this Act. (The article 113).

While the Egyptian Fraud and deception Prevention Law (amended), and the Iraqi Penal Code (amended) the availability of a special character in the offender.

However, the Iraqi Consumer Protection Law provided that the offender had a special status, either to be "equipped" or "supplied" (The article 7).

B3. The element of the crime's status: The Egyptian fraud and fraud prevention law (amended) did not require the availability of a special status for the victim, whether he is a consumer.

The Lebanese consumer protection law stipulates to provide for the special status of the victim to be a "contractor to the offender" in the second and third images of this law (The article 111).

In the fourth and fifth features, stipulates to be the victim (buyer) (The article 112).

The Iraqi Penal Code (amended) requires that the crime of fraud be a victim of contracting with the offender (The article 467).

The Iraqi Consumer Protection Act stated that it is not to require that a victim have a special status except to be a "consumer", whether natural or legal.

2.1.2 The Sanctions against perpetrators of consumer fraud

By referring to the consumer protection laws, the sanctions imposed on the perpetrators of the crime of consumer fraud are criminal sanctions, such as penalties or precautionary measures, which I will explain in two consecutive points:

A. Penalties: To clarify the penalties provided for by the comparative laws of consumer fraud, this point should be divided into two paragraphs. The first shall be allocated to the penalties for deprivation of liberty, while the second paragraph shall be the statement of financial penalties as follows:

A1. Penalties Deprivation of liberty: Comparative laws generally resort to freedom-related penalties for offenses committed in violation of consumer rights, including "consumer fraud", which may amount to imprisonment and hard labor, as well as imprisonment.

The Egyptian Fraud and Remediation Law (amended) stipulates that a penalty of imprisonment for a period of not less than (1) years and not exceeding five (5) years shall be imposed with the fine specified for any person who commits the crime of consumer fraud in the first picture (The article 2/1).

The law equated the person who commits the crime of consumer fraud with the first and the person who commits it to commit the offense.

The Egyptian legislator also decided in the above law to impose the same penalty on the person who commits the crime in the picture stated in article 2 (2) of this law. He commits the penalty between the person who commits the crime of cheating the consumer as an actor and the person who commits him as a partner in the crime, An instigator or an accomplice.

The penalty for this crime is that it is a crime to cheat the consumer if the food, drugs, medicinal plants, medicines, or products, products, or products that have expired or are outdated, or if the substances used in the fraud are harmful to human or animal health by making them imprisonment for a period not less than two years, and not more than seven years with a penalty of fine.

The penalty stipulated in article (2/1) of this law shall be punished by the same penalty stipulated in Article (3 bis).

It is worth mentioning that the Egyptian legislator tightened the punishment of this crime in the above images according to the result of the criminal result thereof. If the result of the crime of cheating the consumer is - the injury of a person with permanent disability - the penalty is imprisonment with the fine specified amount or equivalent value of the subject of the crime whichever is greater.

If the criminal consequence of the crime of consumer fraud is the death of one or more persons, the penalty is hard labor with a fine or the equivalent of the value of the subject of the crime, whichever is greater.

The Egyptian legislator also stressed the penalty of the crime of cheating the consumer in case of repetition that the penalty is imprisonment for a period not less than (5) five years with the fine specified by the text of the law or equivalent value of the subject of the crime, whichever is greater (The article 9).

In the event that the offender unlawfully cheats the consumer, either by negligence or lack of precaution or by a breach of the duty of supervision, he shall be punished by imprisonment for a term not exceeding (1) years with the penalty specified in this law or with both penalties (The article 6 bis).

The Lebanese consumer protection law differs in determining the penalty for the crime of consumer fraud according to the crime scene. The perpetrator is punished if the crime is committed in the form of fraud in articles dedicated to human or animal food, with a penalty of imprisonment for a period of not less than 3 months. If a consumer is poisoned or a consumer suffers from a disease that causes him to be disrupted for at least 10 days, the penalty shall be increased to imprisonment for a period not less than one year and not more than three years. An epidemic disease or cause death of a human being "the penalty has been intensified to become Imprisonment for a period not less than (3) years and not more than (10) years with double the amount of fine (The article 109-110).

If the offender commits the crime in the form of fraud in the nature of the goods or service, he shall be punished by imprisonment for a period of not less than one month and not more than one year with a penalty of fine (The article 111).

The legislator emphasized this penalty by making it confinement for two years and doubling the fine when one of the two cases is achieved. The first is that the offender resorted to maneuvers or plots designed to spoil the analysis of the goods by making changes in their quantity, weight, weight or size.

The second is that the offender uses fraudulent data designed to convince the contract that the goods have been subjected to analysis and to ensure their integrity (The article 112).

A person who commits a crime of cheating the consumer by means of fraudulent or fraudulent or unregulated tools of imprisonment shall be punished by imprisonment for a period of three months not to exceed two (2) years with a penalty of fine (The article 113).

The penalty of an offender who commits this crime in the form of a counterfeit mark shall be imprisonment for a period of not less than three (3) months and not exceeding three (3) years with a penalty of fine(The article 114).

The law makes the penalty for the use or possession of the wrongdoing by the offender to be illegal or unjustified and the number of weight is imprisonment for a period not less than ten (10) days and not more than one month with a fine. Pair or number of loose or unbalanced weight or kilograms (The article 115-116).

It should be noted that the Lebanese consumer protection law requires a double penalty for the offender in case of return. Article 121 states that "the penalties provided for in this law shall be doubled in case of repetition."

With regard to the Iraqi legislator, the Iraqi Penal Code (Amendment) went into the introduction of penalties for deprivation of liberty, making the penalty of a person who commits a crime of consumer fraud stipulated in this law a penalty of imprisonment for a term not exceeding two (2) years with either a fine or one of these two penalties (The article 467) .

In addition, the Iraqi legislator in the Consumer Protection Law took the penalties of deprivation of liberty as a penalty for committing the crimes of consumer fraud mentioned in Article 7 and 9 and limited the sentence to imprisonment without penalties for other freedom, Three months with or one fine (The article 10-11) .

A2. Financial penalties: The penalty of fine and the penalty of confiscation.

The fine: Most consumer protection laws took the penalty of fine as one of the penalties imposed on the perpetrators of the crime of consumer fraud as well as the penalties for deprivation of liberty or as an alternative punishment. (2/1 and 2), as well as punishment of imprisonment penalty of not less than (10) ten thousand pounds and not more than (30) thirty thousand pounds or equivalent value of the subject of the crime, whichever is greater.

The Egyptian legislator stressed the penalty that, in addition to the penalty of imprisonment, a penalty of not less than (20) thousand pounds and not more than (40) thousand pounds or equivalent value of the subject of the crime, whichever is greater if the food or drugs or medicinal

plants or medicines or crops Or products that are adulterated, corrupt or have expired, or the substances used in fraud are harmful to human or animal health (The article 2).

This law went into the imposition of the penalty of fine in the picture in Article (3 bis) in addition to the penalty of imprisonment, which is not less than (25) thousand pounds and not more than (100) thousand pounds or equivalent value of the subject of the crime whichever is greater (The article 3 bis). A penalty of not less than (25) twenty-five thousand pounds and not more than forty (40) thousand pounds or the equivalent of the value of the subject of the crime, whichever is the greater. If the crime results in the death of one or more persons, the penalty in addition to hard labor shall be a penalty of not less than (50) fifty thousand pounds and not more than (100) one hundred thousand pounds or equivalent value of the subject of the crime whichever is greater (The article 4).

In case of repetition, the legislator stressed the penalty of this crime by imprisonment for a period not less than (5) years with a fine of not less than (30) thirty thousand pounds and not more than (60) sixty thousand pounds or equivalent value of the subject of the crime whichever is greater (The article 10).

The legislator also went on to impose the penalty of committing a crime of cheating the consumer in one of the forms criminalized in this law unintentionally is imprisonment with a penalty of not less than (1000) thousand pounds and not more than half the maximum prescribed for the fine provided for in this law or one of them (The article 6 bis).

The consumer protection law in Lebanon is also punishable by a fine. The perpetrator of the crime of consumer fraud is punished in the first and second forms, as well as imprisonment for a fine of not less than 25 million Lebanese pounds and not more than 50 Lebanese pounds (The article 109).

When a criminal offense is achieved, the penalty shall be aggravated by the fact that it is punishable by aggravated imprisonment and a fine of not less than 50 million Lebanese pounds and not more than 75 million Lebanese pounds. If the act leads to the spread of an epidemic disease or causes the death of a person, A penalty of not less than 75 million Lebanese pounds and not more than 150 million Lebanese pounds (The article 110).

The perpetrator shall be punished with a fine of not less than 30 million liras and not more than (50)fifty million Lebanese pounds when committing such a crime in the form of fraud in the nature of the goods or service(The article 111). A person who commits a crime of cheating the consumer in the form of the use of counterfeit or unbalanced weighing tools.(The article 113).

Anyone who commits this crime shall be punished in the form of a mark of distinction, as well as imprisonment of a fine of forty (40) million Lebanese pounds to (75) fifty million Lebanese pounds (The article 114). The penalty of cheating, (4) Four million Lebanese pounds and not more than ten million Lebanese pounds. The same penalty shall be imposed on the person who commits the crime of cheating the consumer by means of caliber or pimp, Controlled (The article 115-116).

It should be noted that the Lebanese consumer protection law requires that one of the penalties be "imprisonment" or "fine" when one of the cases is achieved. First, if the harm caused by the crime of consumer fraud is negligible, the second case is that the benefit intended by the accomplice is negligible, and the third case if the damage caused by the crime was completely removed before the case was referred to the Court (The article 100).

The amended Iraqi Penal Code (Penal Code) provides for the punishment of a person who commits a crime of fraud in the form he has provided, as well as imprisonment for a period not exceeding two years, of a fine not less than two hundred thousand dinars and one not exceeding one million dinars or one (The article 467).

The Consumer Protection Act of Iraq also penalizes those who commit a crime of consumer fraud in the form described in Article (9) of the penalty of imprisonment and penalty of not less than one million dinars or one of these penalties.

If this crime is committed in the form described in Article (7), then the penalty shall be imprisonment or a fine not exceeding one million dinars or both (The article 10/ first, second).

The Iraqi legislator in the Consumer Protection Law makes the penalty fine optional and is disproportionate to the seriousness of the crime of consumer fraud, and I believe that the Iraqi legislator should have made the fine punishable by amending article 10 as follows: First, (3) Three months and a fine of not less than (1000000) million dinars, whoever violates the provisions of Articles (9) of this law).

Confiscation: Consumer protection laws may provide for the penalty of confiscation, together with the penalty of fine as a financial sanction.

In the case of the Egyptian Suppression and Fraud Law (amended), this penalty shall be taken by saying: "In all cases, the judgment must be taken by the confiscation of the materials, drugs or proceeds that constitute the object of the crime (The article 7).

The Lebanese consumer protection Act also took the penalty of confiscation as one of the penalties that the perpetrators of the crime of consumer fraud are expected to punish. Whereas it

allowed the court to order the confiscation of the counterfeit goods and the number of counterfeit or unbalanced weight or quantity or measurement at the expense of the convicted person. This law shall be passed to the competent administration if these goods are usable for distribution to associations of public benefit. The goods shall revert to the Treasury Department if the goods are not confiscated and the owner is not required to retrieve them within six months from the date of issuance. For the final judgment(The article 125- 127).

While the Iraqi penal code (amended) did not provide for the penalty of confiscation, but only the fine. As well as the penalty of deprivation of liberty (imprisonment), and did not provide for the penalty of confiscation Iraqi consumer protection law.

B. The precautionary measures : In addition to sanctions, precautionary measures can be imposed to provide adequate consumer protection against (the closure of the facility under guard, the prohibition of activity, the denial of certain rights and privileges, the publication of the conviction), and the question is whether these measures consumer protection laws?

Through reference to consumer protection laws, I found that they differed in their position on precautionary measures, There are those who took precautionary measures along with sanctions as a sanction to the perpetrators of the crime of cheating consumers and there are laws that did not take precautionary measures and punishable.

The first community- which took precautionary measures alongside sanctions the Egyptian fraud and deception law (amended) where the facility is closed but in a contractual manner, and in case of return for a period not exceeding one year, It also authorized the court to revoke the license of the establishment without prejudice to the rights of the workers before the establishment (The article 10).

In order to do so, the Cairo Economic Misdemeanor court (... and the closure of the facility used by the accused in committing the crime for six months ...)(Judgment No. 293 of 2015).

This law was also taken by another precautionary measure, namely(suspension of the activity of the establishment or suspension of the legal person), stating that (...the court may terminate the activity of the criminal person for a period not exceeding one year, For a period not exceeding five years or the revocation of the license to engage in the activity definitively)(The article 6 bis).

The Egyptian suppression fraud and deception law (amended) provided for the publication of the ruling, stating that (the court shall, in the case of convictions in one of the crimes set forth in the

preceding articles, publish the judgment in two daily newspapers at the expense of the convicted person)(The article 8). While not deprived of some rights and privileges.

The Lebanese consumer protection law also took precautionary measures alongside penalties. These measures are to publish the ruling. Article 122, entitled (publishing the ruling in the press and affixing it in some places), stipulates that (the competent court may order the publication of the whole sentence or publish its salvation in newspapers appointing at the expense of the convicted person. Summary of judgment on the doors of places where the professional, manufacturer, service provider or activity is practiced.

The same law also regulates the prohibition of the activity of the establishment or its temporary or final closure (Article 123), entitled (preventing the violator from practicing his activities) and stated that (the court may order that the violator be prevented from exercising his activity permanently or for at least five years, even if the practice is not dependent on obtaining an authorization from the authority. This is the case by closing the places where the convicted person is temporarily or permanently closed.

The second group, which did not take precautionary measures, is subject to sanctions. It is represented by the Iraqi Penal Code (amended) and the Iraqi consumer protection Law. It seems that the Iraqi legislator has only made the penalties stipulated in these two laws. In achieving the special deterrence of the perpetrators on the one hand, and to achieve an integrated penal protection integrated with consumers on the other.

2.2 consumer protection against the crime of misleading advertising

To indicate the objective criminal protection of the consumer the of false advertising crime, It is necessary to delve into its aspects and then to declare the sanctions imposed on the perpetrators of this crime in two consecutive sections as follows:

2.2.1 The elements of the crime of misleading advertising to the consumer

Deceptive advertising is an advertisement made by any means, dealing with a good or service, and contains a false presentation, statement or allegation, or it is formulated in terms that directly or indirectly lead to deception or misleading of the consumer.... (The article 11).

The crime of misleading advertising is known to the consumer as (the perpetrator's presentation, allegation, false statement or failure to comply with legally defined obligations or any other order that creates an unrealistic impression on the consumer and pays for the acquisition of the good or service.)

To clarify the consumer protection of the crime of the false advertising, it is necessary to research the pillars of this crime in to two consecutive points as follows:

A. The general elements of the crime of misleading advertising to the consumer: The general pillars of this crime are the physical and moral foundations.

A1. The physical elements of the crime : The material element of the crime of misleading advertising is the two elements of criminal behavior and criminal result.

-The criminal behavior: The first component of the crime of misleading advertising to the consumer is the criminal behavior and raises the question here whether this crime is a positive criminal behavior (commit) or can occur by a negative behavior (abstention) as well? What are the images of this behavior? To answer these and other questions, reference must be made to the laws on consumer protection.

The Lebanese consumer protection Law went to criminalize misleading advertising to the consumer in a positive manner only and three images mentioned, for example. Without limitation, meaning that this crime can occur when the perpetrator committed the criminal behavior in any form, although not images mentioned above. Conduct directly or indirectly to mislead or deceive the consumer.

The first feature is either the presentation of a good or service or statement or false claim or claim formulated in terms that lead to deception or misleading the consumer, which means that any presentation of a product or service or statement or false claim or wording in terms that mislead the consumer or mislead this crime. This law does not specify how the offender any conduct the above criminal conduct, whether directly or indirectly, as long as it leads to deceit or misleading the consumer.

The second form of criminal behavior is that the advertiser goods for which he falsely credits himself with obtaining official or private awards, certificates, endorsements or medals, or claims that there are scientific grounds, while they are not available.

The third feature is the advertisement by the advertiser of items that include the use of a logo or mark without a right or the use of a counterfeit or mark.(The article 11)

The consumer protection Act is intended to criminalize the passive behavior of the advertiser. The advertiser is guilty of the misleading advertising offense of the consumer when he refrains from fulfilling the legally defined duty of supplying the consumer with incorrect information about the nature of the product or its characteristics, False or misleading impression by the consumer, confusion or error, except that the information contained in the advertisement is technical and cannot be verified by the usual advertiser.(The article 6).

It also found that the executive regulation of the Egyptian consumer protection law has made criminal conduct of the (declared) offender a false statement, allegation or any other order, when it would directly or indirectly create a false or misleading impression on the consumer.(The article 17).

The Iraqi consumer law also criminalized the misleading declaration of positive and negative behavior with images mentioned exclusively and specifically:

The first feature is the perpetrator of the declaration of goods and services by fraud, deception and concealment of the fact of the articles constituting the specifications adopted in goods and services.

The second feature is the offer of the offender to goods and services that are contrary to public order or public morals or to publicize them.

The third feature is that the offender presents goods that have not been marked or clearly marked by their full ingredients or warnings, if any, and the date of commencement and expiration of the declaration.

The fourth feature is the perpetrator's announcement of goods that have been altered, hidden, removed, or delineated.

The fifth feature is that the offender advertises defective products or expired products after being repackaged in containers or casings with different validity and misleading to the consumer (The article 9/ I,III, IV,V).

The sixth image is negative behavior (abstention), because the negative behavior in Article (7) of it (the duties of the provider and the advertiser) is prohibited. The advertiser is prohibited from promoting by any means of media, publishing and advertising of the goods or services that do not meet the accepted local or international standards(The article 7/ V).

I would like to see that the Iraqi legislator criminalized the criminal behavior of the crime of misleading advertising to consumers in the images provided by the Lebanese consumer protection law and the Egyptian consumer protection law and its executive regulations in order to provide integrated criminal protection for the consumer.

-The criminal result: the second component of the physical components of the crime of misleading advertising to the consumer is the criminal result. The question is whether it is sufficient for the perpetrator to commit the criminal conduct or should it be criminal or harmful? To answer this question, reference should be made to the consumer protection laws as follows:

The Lebanese consumer protection law went into the requirement of investigating a particular criminal result (... which would directly or indirectly lead to deceit or mislead the consumer(The article11).

Moreover, Egyptian law in the executive regulations of the consumer protection law went on to stipulate a specific criminal result by saying (create a false or misleading impression on the consumer)(The article 17).

The Iraqi consumer protection law also defined the criminal result of the crime of misleading advertising, which misleads the consumer by stating (misleading the consumer)(The article 9/5).

A2.The moral element of the crime: The second component of the crime of misleading advertising to the consumer is the moral pillar, and by reference to the laws on consumer protection comparison found that it did not specify the image of the moral element of this crime, nor did it require the availability of special intent, General knowledge of the science and will of the advertiser(provider or supplier) and knowledge that the goods and services that are declared corrupt or adulterated or expired date of validity or non-conformity to the specifications required... etc, and the direction of his will to announce it A world in its truth. in other words, the moral element of this crime is achieved in the direction of the will of the advertiser, a scientist to deceive the consumer in order to induce and contract with him.

B. The special elements of the crime of misleading advertising consumer: There are special elements, namely, (the corner of the place of crime, the consumer of the status of the victim, the corner of the offender).

B1. The element of the crime's location: The laws related to consumer protection went to comparison to the elements of crime's location as a special element because it stipulated that the crime of misleading advertising of the consumer should be (product, service, product, etc.) of the other names. The crime is based on a specific place of (commodity, service). The executive regulation of the Egyptian consumer protection law uses the term (product) which focuses on one of following elements:(nature of the commodity or its kind, etc). The corner of the crime shop is a special pillar, (product, goods, services).

B2. The element of the victim's status: The laws on the protection of consumer comparison required the availability of a certain characteristic in the victim is to (consumer whether a natural person or moral) , which means that when this is not available we do not face the crime of misleading advertising to the consumer.

B3. The element of the offender's character: All consumer protection laws required the availability of the character of the offender for the crime of misleading advertising to the consumer is to be (advertised for the product or service) or (the supplier of the product or service) .

2.2.2 Punishment of the crime of misleading advertising to the consumer

It is not enough to investigate the definition and the element of the crime of misleading advertising to the consumer. Rather, it is necessary to state the penalties imposed on the

perpetrators of this crime, and by reference to the laws on the protection of consumer comparison it was noted that it was limited to the provision of two types of penalties, namely, penalties for freedom, so I will divide this section to the first two points I will set the penalties for freedom, while the second point of penalty will be fine as follows:

A. Penalties against freedom: By reference to consumer protection laws, it is noted that some laws on the protection of consumer comparison went to the introduction of penalties for deprivation of liberty, but they differed in their terms on the one hand, and differed in making them a penalty or a substitute for fines. The consumer protection of Lebanon shall be subject to the penalties of deprivation of liberty and the penalty of a person who commits the crime of misleading advertising to the consumer in the form stated in article 11 shall be imprisonment for a period not less than one month and not more than three months with the fine specified therein or one of these penalties (The article 105). And has at the repetition of the perpetrator of this crime (The article 121). while the Egyptian consumer protection law did not provide the executive regulation with penalties for deprivation of liberty.

The consumer protection Act of Iraq has taken penalties for deprivation of liberty, but it has distinguished the penalty among the images of the commission of the crime of misleading advertising to the consumer. If the (declared) offender commits the crime in the form described in Article 7 with negative conduct, the penalty is imprisonment for a period not exceeding (3) three months with a fine or one.

While Article (9) of the Iraqi consumer protection Act shall be punishable by a positive conduct of imprisonment for a period of not less than (3) months with the fine or either of these two penalties (The article 10 /first , second).

The consumer protection Laws have been compared with the penalty of fine as well as the penalties for freedom or as an alternative punishment as punishment for the perpetrators of the crime of the deception of the consumer. The Lebanese consumer protection law stipulates that the penalty shall be less than 10, And not more than (50) million Lebanese pounds (The article 105).

The Egyptian consumer protection law provided for the penalty of a fine as a single penalty and set it a minimum of (5,000) pounds and a maximum of not more than (100,000) pounds. Accordingly, the Cairo Misdemeanor court sentenced the defendant for his deceptive announcement of being a certified service center for the product zanussi with a fine of (20,000) pounds and publishing the judgment at his expense in the newspapers of Al-Ahram and the news (Judgment 392 for 2015).

The punishment of the crime of misleading advertising to the consumer is emphasized in case of the circumstance of the repetition by increasing the penalty by its lows and higher limits(The article 24).

The consumer protection Act of Iraq also took the penalty of fine as an alternative punishment for the penalty of imprisonment for a different amount according to the image of the crime of the misleading declaration of the consumer committed by the offender. If the offender commits the crime in the picture stated in Article 7 of this law, While the penalty of the offender at the time of committing the crime of misleading advertising to the consumer in the picture stated in Article (9) of this law is in addition to the penalty of imprisonment penalty of not less than one million dinars or one of these penalties (The article 10 / first , second).

It would have been better for the Iraq legislator in the consumer protection law to impose the fine and the penalty of imprisonment for the wrongful profits of the perpetrator of this crime and to provide effective and appropriate protection against the seriousness of the crime. I propose that article 10 of the above law be amended as follows (any person who contravenes the provisions of Articles 7 and 8 of this Law shall be liable to imprisonment for a term not exceeding three (3) months and a fine of not less than million dinars).

VI. DISCUSS THE RESULTS AND RECOMMENDATIONS:

Through our research on the subject of (Consumer Protection in Iraqi and Comparative Law) we reached some conclusions and proposals, including:

VII- RESULTS

1. The consumer protection can be defined as "the set of procedures and necessary measures to preserve the rights of the consumer acts and convictions for dangerous and harmful acts by following the criminal procedures specified by law and tracking the perpetrators and impose punishments or legal measures provided by law."

2 – The consumer protection was not the result of modern legislation, but has a clear roots in the old legislation, whether directly or indirectly implicit or explicit, but it was not as it is at present because most of the world followed one of the two approaches whether to privatize special consumer protection materials in the core of punitive laws or to enact a special law of the Consumer Protection Regulates that regulates everything related to it.

3. The objective protection provided by the Iraqi legislator in the Consumer Protection Law was not integrated and consistent with the seriousness of the attacks against the consumer because it did not criminalize all such attacks as other legislations, especially Egyptian law, and because the sanctions that provided are sanctions, in particular the penalty is

disproportionate to gravity Crimes and does not achieve deterrence in both public and private.

VIII. RECOMMENDATIONS :

1. I propose to the Iraqi legislator to amend article (1 / item 5) of the Consumer Protection Law to be as follows: " Every person whether natural or moral "Legal" shall acquire a commodity or service to satisfy its personal or family needs or the needs of others without any association with the practice of its profession or activity, whatever the method of supply).

2. The Egyptian legislator has been successful in increasing the penalty of consumer fraud when criminal behavior (consumer fraud) is the result of a specific crime (consumer death) or (permanent disability) . I suggest that the Iraqi legislator follow the example of the Egyptian legislator, (first) shall be punishable by imprisonment for a period of not less than (3) three months and a fine of not less than one million dinars, whoever contravenes the provisions of Article (9) of this Law , and punished by imprisonment If this crime results in the death of one or more persons or in the event of permanent disability).

3. I propose to the Iraqi legislator to criminalize by the Consumer Protection Law all the misleading images to the consumer as the Egyptian legislator did in the Consumer Protection Law and its executive regulation and the Lebanese consumer protection law in order to provide integrated and effective protection for the consumer.

4. I propose to the Iraqi legislator that the penalty of fine in the offense of misleading advertising to the consumer should be included in addition to the penalty of imprisonment for the unlawful profits of the perpetrator of this crime , to provide effective and appropriate protection against the seriousness of the crime, to be the amendment of Article (10) as follows , Second: A penalty of imprisonment for a period not exceeding three (3) months and a fine of not less than (1000000) million dinars, whoever violates the provisions of articles (7, 8) of this law.

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