



Criminal Policy for Malicious Complaints: A Comparative Study between Iraqi and French Legislation

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Abstract. This article focuses on how to balance the constitutionally guaranteed right to litigation with protecting individuals and the judiciary from malicious abuse. Through an analysis of procedural texts and judicial applications in Iraqi legislation, it becomes clear that the effectiveness of this approach depends primarily on scrutinizing reports during the preliminary investigation phase and activating the role of the investigating judge before resorting to coercive measures. The study also highlights the precise distinction established by the Court of Cassation between release due to insufficient evidence and proven malicious intent, which warrants prosecution. It further emphasizes the right of the aggrieved party to compensation and concludes by stressing the need to enforce the legal oath and expand investigative procedures to curb malicious reports.

Keywords: Criminal policy, malicious complaint, preliminary investigation, discriminatory judiciary, compensation.

1. Introduction

Judicial protection is one of the most important pillars of the rule of law and institutions. The constitutional and legislative systems in modern societies guarantee all individuals the right to access justice and to report crimes and criminal offenses to the appropriate authorities. However, this legitimate constitutional right can be distorted from its noble purpose if some use it with malicious intent and for revenge. In such cases, the right to litigation is transformed from a means of protecting rights into a tool for harming

others and overwhelming judicial and administrative authorities with false reports.

Hence, the research problem lies in the disparity of criminal policy between contemporary legislations in addressing the phenomenon of malicious complaints or false reports. How did the Iraqi legislator and the French legislator succeed in managing a delicate equation that balances between not intimidating individuals and encouraging them to report crimes to protect society on the one hand, and deterring the malicious complainant and protecting the innocent from the evils of false accusations and the confiscation of their freedoms on the other?

This research article addresses the subject through two main sections. The first section is devoted to studying the theoretical basis of malicious complaints and the criminal policy governing them, while the second section is devoted to procedural mechanisms and judicial applications in Iraqi and French legislation, based on the comparative analytical approach and the judicial rulings issued by the Iraqi Federal Court of Cassation and the French Court of Cassation.

Section One

The theoretical basis for malicious complaints and the criminal policy governing them.

This section is divided into two sub-sections. The first sub-section deals with the concept of malicious complaint and distinguishes it from related concepts. The second sub-section explains its criminal structure and legal elements.

Sub-Section One

The Concept of Malicious Complaint, and its Distinction from Related Concepts.

Understanding the nature of a malicious complaint requires deconstructing the legal concepts that have framed it in jurisprudence and legislation. It then necessitates drawing the lines between it and other forms of exercising rights, both to protect the right to report crimes and to prevent abuse and arbitrary use of judicial procedures.

Branch One: The Concept of Malicious Complaint in Jurisprudence and Advanced French Legislation

First, the concept of malicious complaint in Iraqi legislation and jurisprudence. The Iraqi legislator did not provide a comprehensive definition of the term "malicious complaint" in the amended Iraqi Penal Code No. 111 of 1969. Rather, it chose to criminalize the physical act of making a false report in Article (243). Iraqi criminal jurisprudence defines it as "a false claim based on bad faith, presented by the complainant before investigative authorities or courts, with full knowledge of the accused's innocence, with the intent to harm his person, property, or position.

Second: The concept in French legislation and jurisprudence. The French legislator moved towards adopting a more precise and meaningful term, calling it "the crime of false reporting" in Article (226-10) of the French Penal Code. French jurisprudence defines it as "the voluntary reporting to a judicial or administrative body with disciplinary authority of an incident that could lead to the imposition of criminal or administrative penalties on a specific person, with the reporter's certain knowledge of the falsity of this incident at the time of submitting the report.

Branch Two: Discrimination against malicious complaints, regarding what is suspected.

Criminal policy requires striking a balance between protecting individuals' right to report crimes and preventing the abuse or misuse of this procedural right. To achieve this balance, legal scholars and the judiciary distinguish between malicious complaints and similar forms of complaint.

First: The right to due process. Access to the courts is a constitutionally guaranteed right.

The difference between this right and a malicious complaint lies in the element of good faith. A decision to close an investigation or to acquit does not

necessarily mean that the complaint was malicious, as long as the complainant acted based on a reasonable belief. In contrast, malicious criminal intent requires absolute bad faith and certain knowledge of the falsity of the accusation.

Second: False information. A person may report an incident that later proves to be false due to misjudgment or suspicion. In this case, there is no liability because there is no criminal intent. This is unlike a malicious complaint, which involves certain knowledge of the falsity of the incident and gross misrepresentation of the facts.

Third: The crime of defamation. This differs in its nature, as a malicious complaint requires submitting the report to an official body (judicial or administrative) with the authority to investigate or impose punishment.

In contrast, the crime of defamation is committed by publicly disparaging the incident before the public without requiring its submission to an official body.

Sub-section two

Manifestations of criminal policy in the face of malicious complaints

Criminal policy in addressing malicious complaints manifests itself through two branches: the first focuses on defining the legal grounds for preventing the over-criminalization of the right to litigation, while the second focuses on imposing penalties sufficient to deter malicious complainants.

Branch one: The criminal structure and legal elements.

First: The material element (slander and attribution) of a malicious complaint is based on providing information or a complaint that includes attributing a false criminal act to a specific person, and it is required that the report be directed to a judicial or administrative body that has the authority to take legal action against the person complained about.

Second: The mental element (criminal intent). The mental element requires the presence of general intent, which is the perpetrator's knowledge of the falsity of the report and their will to submit it, in addition to specific intent, which is the intention to harbor malice and harm others. This intent is negated if the complainant believed in good faith that their report was true.

Branch two: Punitive policy and measures of confrontation and deterrence.

Modern criminal policy is embodied in its delicate balance between deterring malicious complainants and protecting the guaranteed right of individuals to litigation, through the adoption of graduated penal sanctions and the coordination of civil compensation to redress the harm.

First: Comparative Criminal Penalties (Iraqi and French Legislation).

The Iraqi and French legislators agreed to criminalize this act, but they differed in the nature and extent of the punishment. In Iraqi legislation, Article (243) of the Iraqi Penal Code criminalizes providing false information and imposes a punishment that reaches the maximum limit for the alleged crime, provided that it does not exceed temporary imprisonment for a maximum of ten years, even if the falsely attributed incident warrants the death penalty or life imprisonment.

On the other hand, French legislation adopts a strict judicial stance towards false reporting in accordance with Article (226-10) of the French Penal Code, which stipulates a prison sentence of up to 5 years and a fine of 45,000 euros, directing criminal policy towards protecting the justice system and individuals once a final decision is issued to reject the charge or close the case.

Second: the procedural and civil mechanisms for protecting the affected party.

Criminal policy was not limited to punitive deterrence; it also enabled the victim to claim civil compensation for material and moral damages resulting from a malicious complaint. This was based on the general rules of tort liability stipulated in Articles 202 and 204 of the Iraqi Civil Code, in addition to the principle of prohibiting the abuse of the right to litigation, as stipulated in Article 7 of the same law.

This principle is equivalent in comparative legislation to Article 361 of the French Code of Civil Procedure. Furthermore, legal opinions have tended to strengthen the principle of prior prevention by activating the legal oath during the preliminary investigation stage and reviewing rehabilitation rulings to limit the exploitation of procedural loopholes.

Section two

Procedural mechanisms and judicial applications of criminal policy.

The effectiveness of criminal policy depends on the procedural mechanisms and judicial applications implemented in practice. To highlight the practical dimensions of this topic, this section is divided into two parts. The first part deals with procedural safeguards during the preliminary investigation stage, while the second part addresses judicial applications and proving bad faith before the Court of Cassation.

Sub-Section One

Criminal procedural safeguards in the preliminary investigation stage

The preliminary investigation stage constitutes the first line of defense against malicious complaints, as it is the responsibility of the investigating authorities to scrutinize the reports to ensure their seriousness before taking any action that affects the freedom of the accused, through two main branches:

Branch One: The investigating judge's authority to review the complaint and conduct investigations

The provisions of the Iraqi Code of Criminal Procedure No. 23 of 1971, as amended, grant judges' discretionary power to verify the accuracy of information before hastily issuing an arrest warrant or summons. Sound criminal policy at this stage requires not relying solely on the complainant's statement, but rather tasking judicial officers with conducting swift and thorough investigations that reveal the seriousness of the report or uncover any suspicion of malicious or retaliatory intent.

Branch two: Activating the legal oath as a deterrent standard.

On the other hand, criminal jurisprudence emphasizes the importance of administering a legal oath before recording the complainant's statement in detail, especially in cases lacking physical evidence and relying entirely on oral testimony. This step places the complainant directly under criminal liability and serves as a procedural deterrent, limiting the inundation of the judicial system with malicious reports.

Sub-Section Two

Judicial applications and legal adaptation of compensation for damages

Criminal policy is embodied in the rulings of the discriminatory judiciary, which sets precise standards for proving malicious intent on the one hand, and paving the way for the victim to obtain his rights on the other. We will address this in the following two branches:

First branch: Trends in the Iraqi-French Court of Cassation in proving malicious intent.

The Iraqi Court of Cassation and the French Court of Cassation did not stop at simply issuing a ruling that there was "no grounds for prosecution" or releasing the accused due to insufficient evidence. Rather, they considered that this alone was not enough to prove the malicious intent behind the complaint. Therefore, the Federal Court of Cassation, in agreement with the French Court of Cassation, requires conclusive proof of bad faith and the invalidity of the accusation. The Federal Court of Cassation ruled that civil compensation is due for a malicious complaint, according to Articles 7 and 202 of the Iraqi Civil Code, whenever the invalidity of the accusation is proven and a final decision is issued to dismiss the case. This is consistent with the directive of the French Court of Cassation, which stipulates that an unfair complaint must include an element of bad faith, which is proven upon reporting, in order to prevent hesitation in reporting crimes.

Second branch: Criminal Consequences and Compensation for Malicious Complaints.

Filing a malicious complaint has two legal consequences. The first is a criminal consequence, which is the initiation of criminal proceedings against the false complainant, based on the provisions of Article (243) of the Iraqi Penal Code and its equivalent in Article (226-10) of the French Penal Code. The second is a civil consequence that arises after the criminal judgment becomes an acquittal or a final decision is issued to dismiss the case, as the aggrieved party has the right to claim compensation for the material and moral damages resulting from the malicious complaint, based on the provisions of Article (202) of the Iraqi Civil Code and Article 91 of the French Code of Criminal Procedure.

Conclusion

In conclusion, this research shows that criminal policy in dealing with malicious complaints seeks to achieve a delicate balance between preserving the constitutionally guaranteed right to litigation and preventing the exploitation of the courts to harm others. Based on the above, we have reached a number of conclusions and proposals.

First: Conclusions.

1. Protecting individuals from the negative effects of malicious complaints depends on the extent to which the judge's authority to investigate and scrutinize reports before making coercive decisions is activated.
2. The Iraqi Federal Court of Cassation clearly distinguished between releasing the accused due to insufficient evidence and proving the malicious nature of the complaint and its connection to the complainant's bad faith.
3. Civil compensation is a means of redressing moral and material damages, but it remains conditional on the issuance of a final criminal judgment proving that the report was false or malicious.

Second: Proposals.

1. We suggest that the Iraqi legislator activate a procedural provision that requires the complainant to take the legal oath when recording his statements in minutes and reports that rely solely on oral attribution.
2. We suggest urging investigating judges not to rush into issuing arrest or detention orders unless investigations confirm the accuracy of the information and its freedom from suspicion of revenge.
3. We propose to expedite the filing of a criminal case against the malicious complainant based on Article (243) of the Iraqi Penal Code No. (111) of 1969, as soon as his bad intention is proven, in order to deter anyone who tries to exploit the justice system unlawfully.

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