

Ambiguity of The Criminal Provision: Methodological Insights from the American Supreme Court and the Kuwaiti Constitutional Court

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Abstract

This research paper examines the inherent ambiguity within criminal provisions, exploring the methodological approaches employed by the American Supreme Court and the Kuwaiti Constitutional Court in interpreting and adjudicating cases involving ambiguous criminal statutes. The study delves into the complexities surrounding legal ambiguities, the challenges they pose to the rule of law, and the divergent approaches taken by these two legal systems. The study showed that this principle restricts legislative authority when formulating criminal laws, which is that they must be understood by those who are addressed according to the standard of a normal person abiding by the law. This study followed the comparative analytical approach for the research to increase its richness and scientific value, as it includes rulings of comparative constitutional courts and then an analysis of those rulings about the criteria for determining ambiguity. Finally, this study suggested the adoption of a clear approach and specific, fixed, measurable, and applicable standards by the Kuwaiti Constitutional Court when imposing its oversight on ambiguous penal texts, to ensure the integrity of the legal structure and to reach clear, consistent results.

Keywords: Ambiguity, Criminal Provisions, Comparative Analysis, American Supreme Court, Kuwaiti Constitutional Court.

Introduction

Some human behaviors can be described as incompatible with moral rules or harmful or both, and at the same time these behaviors are legally criminal and punishable, but the circle of ethics - as is known - is broader than the circle of criminalization, so this is not necessarily always achieved, for the individual to be punished legally, there must be a criminal legal text that gives the behavior an illegal character and determines the penalty that the perpetrator of the behavior deserves so that the competent authorities can punish him alone, and so that The penalty prescribed for him is carried out exclusively by the competent authority as

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well, and it represents what is known as the "principle of penal legality" that recognized in national and international level (Aleissa et al., 2023).

The principle of legality of crimes and penalties has constitutional value by the constitutional provisions in both the United States of America and the State of Kuwait, as it was stipulated in the First Amendment of the US Constitution and also the Kuwaiti Constitution in Article 32 thereof, where this principle achieves legal security and guarantee, and ensures the achievement of the principle of equality before the law, which is a basic principle of the rule of law.

The principle is increasingly important in practice, as it guarantees the protection of individual rights and freedoms so that it defines crimes and clearly defines the penalties prescribed for them without leaving gaps in the law, which can be exploited as a means of dominating the public authority (De Lamy, 2009), especially when there is disagreement like conduct, whether it is criminal or permissible, and therefore only legal texts can put an end to such disputes, which, as mentioned, strengthens the rule of law and the unity of the judiciary in the State (Al-Fawara, 1970).

The legislature, as the sole representative of the interests of individuals and the natural guardian of the social order, must issue clear and unambiguous laws so that everyone can easily understand them and understand what is forbidden to them and what is permissible (Al-Hamdani, 2017). The clarity of legislation and understanding its meanings generates confidence among those addressed by it achieves stability in transactions, gives individuals a sense of legal security, and enables them to apply legislative rules and adhere to them to the fullest, and thus achieve the goal that the legislator aimed to achieve behind the text of this legislation, as a result of its activation by the addressees, and on the other hand, vague and ambiguous legislation means the escape of its texts from the controls and the ambiguity of its orders and prohibitions and the multiplicity of its interpretations, and then that legislation will not achieve legal security and stability in transactions and cannot The persons addressed are bound by its provisions or the implementation of its provisions (Habes, 2017).

The legislative text is tainted with jurisprudential ambiguity if its phrases are not clear so as to bear interpretation and interpretation and this can be deduced by reading them with more than one meaning, and it is also defined as the ambiguity of the text and the ambiguity of its meanings (Bashar, 2008), and also it is "the text whose wording does not indicate the meaning or provision intended by it, but the understanding of this meaning or judgment depends on something outside the phrase of the text and its formula" (Adel, 2017), and determining whether the text is ambiguous or clear is a relative issue, differing according to different points of view That is, her evaluation is personal, and it depends on the

intellect of the interpreter, what a judge sees as ambiguous may not be seen by others as such (Sharif, 2022).

In this regard, a distinction must be made between the two images of ambiguity of the text; the first, which is the image of simple ambiguity, which is when the text is formulated in an incorrect or wrong way, affecting the meaning radically, however, access to the intended text and its true meaning is easy, and the second is the image of great ambiguity, which is in the absence of a clear definition of the text, as if words or phrases with a broad meaning and bear several interpretations, and in this case of ambiguity is on The judge made an effort to reach the will of the legislator (Osmani, 2005).

Here, it is the responsibility of the constitutional judge to search on the one hand for the real meaning intended by the legislator, through the interpretation of the legal text, which is an intellectual process aimed at deriving the understanding and true meaning intended by the legislator, and then the text becomes applicable to the facts before the judiciary, and on the other hand to search for the will of the legislator in the legal text by analyzing its words and showing their meaning and the social purpose that the legislator wanted by setting the text, and asking him to do so without neglecting the principle of Penal legality so that the judge must abide by the narrow interpretation of ambiguous texts, whether in terms of criminalization or punishment or the ruling that they are unconstitutional (Babah, 2021).

Hence, the importance of this research as the constitutional protection of the principle of criminal legality imposes that the constitutional courts monitor the penal texts in terms of drafting and subject matter, as it has a degree of privacy that distinguishes it from other texts since it is linked to individual rights and freedoms as we mentioned, and this privacy is greatly reflected in the ways and methods of drafting penal texts, the ambiguous text is the text that was written without taking into account the rules of penal privacy, and therefore does not lead to understanding the addressee, and leads To the control of the public authority and judges and their threat to rights and freedoms, and we mean in this study the objective texts that include criminalization and punishment.

Study Methodology and Plan

We have chosen to compare the role of the US Federal Court and the Kuwaiti Constitutional Court to show the extent of disparity and similarity in legislative and constitutional trends in this regard, especially with the total difference between them due to the belonging of the American legal system to a different legal family from the family to which Kuwaiti law belongs. The research problems have been addressed through the presentation of judicial applications in

the United States and Kuwait for cases of ambiguity of the text in the first section, and then stand on the position of the Kuwaiti Constitutional Court on the idea of ambiguity by reviewing some of the judicial rulings issued by it in the second section.

Criteria for Considering Text Ambiguous

The principle of legality of crimes and penalties has a constitutional value by the constitutional and legislative texts in both the United States of America and the State of Kuwait, and the recognition of this value of the principle of legality of crimes and penalties entails the commitment of the legislative authority itself to it, which necessarily requires that the legislator not to issue legislation that violates the provisions of the Constitution and that it (i.e. the legislative authority) alone develops the provisions of the criminal law, This requires them to formulate texts in a clear and specific manner, away from ambiguity, so that they are understandable to those who address them according to the standard of the usual law-abiding man.

The reality has proven in many cases the existence of unclear legal texts and their words are incomprehensible and inconsistent with the pattern of the texts contained in the chapter, which forces the criminal judge to interpret the text, to search for the meaning that the legislator aims to behind the words used in it, and he may use all means that enable him to analyze the words of the text to determine the will of the legislator, such as linguistic, logical or teleological interpretation. of the text (Babah, 2021).

Any interested party also has the right to challenge the unconstitutionality of a vague text or law that may lead to the repeal of the text or law in its entirety by the Constitutional Court of the State, taking into account the consequent instability of the legal environment.

The control over legislative drafting by the Constitutional Court is based on the principle of legal security, as the good drafting of legislative texts leads to the understanding of the addressees of their content, thus ensuring their implementation to the fullest, thus achieving legal security and providing stability and stability for the rules. The constitutional judiciary can also rely on its role in protecting rights and freedoms, as vague and vague legislation is usually a threat to the rights and freedoms of individuals and opens the door to abuse of power and control from the rejected judiciary (Habes, 2017). On the arbitrary and discriminatory application of the law by the state (whether the police or prosecutors) (*City of Chicago v. Morales*, 1999).

I. The Concept of Clarity of The Criminal Text¹

The instrument by which the legislator translates his will is legislative drafting, and it is also how the legislator transmits this will to the persons addressed by it (Habes, 2017). While acknowledging that the guarantees of personal freedom require that the provisions of the penal laws be drafted in a way that cuts off any controversy regarding the truth of their content "so that certainty reaches a level where it is difficult to argue about it", this calls for the need to take into account the accuracy and clarity in the pronouncement and meaning, and that the criminal text does not involve a legislative deficiency such as the omission of the word or one or more letters in it, which leads to an imbalance of meaning, and also to avoid broad terms that may carry more than one interpretation, as it is a matter of criminalizing acts and drawing a separation between what is permissible and what is criminalized and linking this to the rights and freedoms of members of society (Al-Badrani, 2022).

It is certainly easy to argue that there must be reasonable clarity of the legal text, but it is difficult to apply the condition that the legal text must fulfil, and in this context, Federal Supreme Court Judge Felix Frankfurter stated that the principle of legality "is itself undefined, so the determination of the fairness of informing individuals of the content of the legal text because of the clarity of the text or not depends or depends on the subject matter to which it relates" (Winters v. New York, 1948). In practice, to determine the amount of clarity required in the legal text, federal courts consider several factors, including the social purpose of the text (i.e., the societal interest that the text seeks to achieve) and whether ambiguity is necessary to advance the legislative goal or purpose.

This is what we will address in the following two sections to reconcile the requirements of clarity required by the principle of penal legality with the practical application of constitutional and federal courts in this regard.

I.I. The Extent of Ambiguity of The Penal Text and its Necessity to Achieve the Purpose of The Text

The legislative text is tainted with jurisprudential ambiguity or ambiguity if its phrases are not clear enough to tolerate interpretation and interpretation, and this can be concluded by reading them in more than one meaning.

As for the courts, in determining the meaning of ambiguity, they consider that the criterion of ambiguity is governed by the standard of people's circles, but the court does not adopt measurement tools to understand the people's circles, but rather makes itself the body that decides what the people believe, and in that the Constitutional Court in the State of Kuwait decides that: "What is meant by the ambiguity of the penal text is that the legislator is ignorant of the acts he has committed, so that its statement is not clear and clear, nor its definition is

conclusive, nor its understanding is straight with its phrases, but rather vague and hidden among the people, with their differences about The content of the penal text that criminalizes these acts, its significance, the scope of its application, and the reality of its aims, so that the enforcement of that provision becomes linked to personal criteria due to the discretion of those in charge of its application, and to replace its real objectives with their own understanding of its purposes" (Constitutional Appeal No. 1, 2005).

It can be said that "the origin of the notion of ambiguity is a rough notion of justice"(Colten v Kentucky, 1972) and there is no doubt that complete clarity of the legal text is not required (Ward v, Rock Against Racism, 1989). However, fairness is required only in the sense that "there must be sufficient warning to those who intend to abide by the provisions of the law that they are approaching the restricted zone".² As the House of Lords of England has put it, "a person who skis on thin ice cannot expect to find a sign indicating the exact place where he may be located"(Regina v. Fucks, 1973). Thus, the law is not null and void "simply because it requires conformity with an imprecise standard of clarity"(Eanes v. State, 1990). Justice Holmes also noted that "the law is full of situations in which a man's fate depends on his proper assessment, that is, as subsequently assessed by the jury" (Eanes v. State, 1990).

The matter is not limited to the constitutional judge only, but the criminal judge must also search for the real meaning intended by the legislator, through the interpretation of the legal text, which is an intellectual process aimed at deriving the understanding and true meaning intended by the legislator, and then the text becomes applicable to the facts before the judiciary, and the criminal judge is also asked to search for the will of the legislator in the legal text by analyzing its words and showing its meaning and the social purpose intended by the legislator in drafting the text, and he is required to do so without neglecting the principle of penal legality, so that the criminal judge must adhere to a narrow interpretation of ambiguous texts, both in terms of criminalization and punishment (Babah, 2021).

It is not a violation of the principle of legality if a law-abiding judge still has to guess the meaning of the law after conducting research into its meaning, for example, if a law provides that "whoever commits a crime against nature, whether with man or animal, will be guilty of a felony", these statements, while on the face of it, are somewhat vague, and may have to guess the meaning of the decisive phrase "crime against nature".³ However, a law is not contrary to the Constitution if its meaning can be ascertained by reading case law⁴ or by examining the social purpose sought by the legislator in approving the ambiguous provision.

In this regard, the Constitutional Court of the State of Kuwait ruled on the Law on Assemblies that "the existence of a legislative purpose for regulation is

one of the important factors for adding the idea of constitutionality to the text in question, but this purpose alone is not sufficient to rule on the constitutionality of the text" (Constitutional Appeal No. 1, 2005).

U.S. courts are usually reluctant to rule on the unconstitutionality of a criminal provision because of its ambiguity, so it can be argued that judges are unwilling to reward those who have an unreasonable or acceptable misunderstanding of the legal text, and are aware of "the practical difficulties in establishing criminal laws that are general enough to take into account a variety of human conduct and specific enough to provide fair warning that certain types of conduct are prohibited or criminalized".⁵ We believe that this is the position in the State of Kuwait. Since its establishment in 1973, the Constitutional Court has ruled the text unconstitutional due to its ambiguity except in a limited number of cases, not exceeding ten texts, while the share of substantive criminal texts did not exceed the fingers of one hand.

In this section, we have dealt with the first factor that the Federal Supreme Court considers determining the amount of clarity required in the legal text, and in the second section, we deal with the second factor, which is the extent to which the vague law affects the protected rights of individuals.

I.II. The Impact of The Law on the Protected Rights of Individuals (Avoid Broad Discretion as an Application of Ambiguity)

The ambiguity of a piece of legislation and the lack of clarity of its provisions is a serious threat to rights and freedoms, as the ambiguity of the legislative text would leave ample room for the arbitrariness of the authority, which will determine its meaning and the extent to which it is appropriate to give it to the text.

It can be argued that a law that lacks clarity not only provides adequate notice or information to law-abiding and respectful persons but is also subject to arbitrary or racist application by the relevant authorities, and in this context, the Supreme Court noted in (*Cullender v. Lawson*, 1983) that the legislation or its implementing regulations must "establish the minimum guidelines necessary to regulate the application of the law". In the absence of such guidelines, the court warned that "the criminal code may allow broad and undefined power for police, prosecutors, and jurors to carry out or give precedence to their personal preferences in the exercise of their assigned duties." Notably, the principle of due process prohibits the promulgation of any law that "gives almost complete discretion to the police to determine whether a suspect has met [suspicion requirements]." (*Cullender v. Lawson*, 1983).

In this regard, the Constitutional Court of the State of Kuwait agrees with the Supreme Court of the United States of America, where the Constitutional Court decided in a statement of the absolute power granted by the text to the police that "... Whereas Article (4) of the Decree-Law, if it stipulates that it is not permissible to hold or organize a public meeting except after obtaining a license to do so from the Governor in whose jurisdiction the meeting will be held, as well as preventing and adjourning any meeting held without a license, and prohibiting the calling, managing, publishing or broadcasting news about any public meeting before obtaining such a license, and making this provision the original in public meetings is prevention, and allows it as an exception, and establishes this The exception on the same basis is the absolute authority of the administration towards such meetings without a limit to which it is bound, a restriction under which it is descended, or a disciplined objective criterion that must always be observed, which is vested in this text with unrestricted competence to assess whether or not to approve the authorization thereof, and without a compelling necessity estimated at its value, and with it the restrictions resulting from it exist and non-existence, so that the authority of the administration eventually results in an authority free from any restriction that is neither commented nor restricted." (Constitutional Appeal No. 1, 2005).

The so-called vagrancy laws in the United States of America are prime examples of such impermissible legislation. For example, in (*Papachristou v. City of Jacksonville*, 1972), state law prohibited everyone from being a "vagabond". Under the law, "loafers in public places", "ordinary drunks", "people who wander or wander from one place to another without any legal purpose", "habitual loafers" and others apply to the term "vagrant".

Undoubtedly, this legislative language is ostensibly vague: who are the loafers in public? And what makes a person a "habitual"? But worse than its inaccuracy is that the law gives the police almost unrestricted discretion to determine who the vagrant is, and according to the court decision in *Papachristou's* case, such laws, "although long common in Russia, are incompatible with the American constitutional order." These laws are also represented by these laws A major concern is that the trial as a means "may be merely a cloak — a conviction that cannot be obtained on real grounds — of undisclosed arrest" (*Papachristou v. City of Jacksonville*, 1972) and to illustrate, for example, the term "vagrant" may be an African-American person "walking" in a white community, a poorly dressed person in a wealthy business area, or a person whose legal conduct abused the feelings of the arresting police officer.

From this judicial precedent, it is noted that the Constitutional Court of the State of Kuwait agrees with the conduct of the United States Supreme Court in

examining and scrutinizing the vocabulary of the text to determine its clarity (Constitutional Appeal No. 1, 2005).

The Federal Court ruled that another law was unconstitutional on similar grounds in the case of (*the City of Chicago v. Morales*, 1999). To curb street criminal gang activity, the City of Chicago legislature passed a law stating that "any time a police officer observes a person reasonably believed to be a member of a criminal gang hanging out in any public place with a person or other persons, he (the policeman) may order all such persons to disperse and move away." about the region." The law defined "loitering" as "staying anywhere without a clear purpose." The law also provided that anyone who failed to comply "expeditiously" with the separation order would be liable to a fine or imprisonment.

In that case, three members of the Supreme Court stated in the Court's decision statement that the aforementioned law is unconstitutionally vague and, based on this, these judges pointed out that it is unclear to what extent the, once ordered to disperse, should move away from each other, and how long they must remain separate before they can meet again. 'But the most important problem, according to six members of the court, is that the law gave police officers absolute discretion to determine which activities constitute loitering. Based on the language of the law, the judges add that "it doesn't matter whether the reason why a gang member and his father, for example, might hang out near a celebrity location whether the purpose of being there was to steal an unsuspecting fan or just look at a celebrity presence in that place" Therefore, the court expressed concern that "in both cases, if the purpose of the presence is not clear to the nearby policeman, he can... to order them to disperse." Thus, the police can enforce the law to attack a completely innocent activity.

Thus, it can be said that: the mechanism of law enforcement by deciding that a member of the street gang and another in the same place "without a clear purpose" - is "subjective in nature because its application depends on whether there is some clear purpose for the policeman at the scene". The law thus allows a policeman to take arbitrary action towards certain innocent objects, "perhaps the purpose of being in the place by someone to have a conversation with others or simply to enjoy a cool breeze on a warm evening, which is something "So trivial that it can't be obvious to a policeman if he suspects a different [criminal] motive."⁶

An example of ambiguous legislation in the State of Kuwait, which the Constitutional Court has ruled unconstitutional because of its ambiguity, is Article 198 of the Penal Code (Constitutional Appeal No. 5, 2021).

Another legislative application in the United States is the Los Angeles Act, which states that "no person shall use a vehicle parked or parked on any street

in the city... as places to live either overnight, day after day, or otherwise." In *Desertren v. City of Los Angeles*, the Federal Court of Appeals (Ninth Circuit) declared "this legislative language is unconstitutionally vague and reinforces the arbitrary application of the law by violating the rights of the homeless." The question may arise as to what is wrong with this law. This law has been determined by the court to be the source of its flaws in that it does not specify "living places", or specify the duration - and when - "otherwise" Does this law make an act other than Eating in the car, keeping a sleeping bag in the trunk, or staying in the car for hours because it was raining? The court held that the ruling "raises the same concerns about the racial application as the law that came up with the Papachristou case".

We conclude from the above that the ambiguity of the legislative text has always been historically linked to the capacity of the use of power for it, so the legislator needed to follow new approaches in drafting away from vague or distinct phrases loaded with more than one meaning, the lack of clarity of the vocabulary of the text opens the door to multiple interpretations by the authority and each interpretation will be applied to a category of society differently, and therefore ambiguity inevitably leads to abuse of authority and discrimination between individuals when applying the law as well as Violation of rights and freedoms We have seen how the rulings of the Federal Supreme Court, as well as the Constitutional Court, have established that the existence of a legitimate purpose of legislative regulation, although it is a requirement to say constitutional, is not sufficient in itself.

I.2. Evaluating the Position of The Kuwaiti Constitutional Court on the Idea of Ambiguity

It should be noted that this study to assess the position of the Constitutional Court on the idea of ambiguity of the criminal text as a defect in the texts to eliminate unconstitutionality, but it was limited to a certain period, which is the period between 2005 and 2021, given that this period was characterized by political mobility that made the executive authority use criminal texts on more than one occasion to limit this movement, which made these texts subject to constitutional challenges (constitutional challenges) on the one hand, as This period was also characterized by the abundance of legislation issued by Parliament, which made the possibility of defects in the drafting of this legislation and its ambiguity greater on the other hand.

This study also limited the scope of evaluation to substantive criminal texts only, on which there were many constitutional challenges based on the defect of ambiguity only and related to the laws of subsequent participation, the Press

and Publications Law, Articles (4) and (25) of Law No. (31) of (1970) amending some provisions of the Penal Code, the Conflict of Interest Law, the text of Article (230) of the Penal Code on lending with obscene usury, the text of Article (198) of the same law on imitating the opposite sex, and the number of lawsuits presented to the court. Constitutional (10) lawsuits four of which the court ruled unconstitutional due to ambiguity.

Through the study, we have found several observations that we analyze successively, starting with the fact that the court does not rely in determining the unconstitutionality due to ambiguity on the element of application of the text by considering the extent to which there is a difference between the trial courts regarding the interpretation of the text, but rather on the element of violating the constitutional provisions themselves, and this has become clear to us by examining the arguments presented before the Constitutional Court as well as the court's establishment of its various rulings.

It has been noted that there is almost unanimity in the presentation of arguments, as in the majority of lawsuits arguments based on ambiguity are based on the constitutional provisions relating to personal freedom and the principle of legality and personality of punishment mentioned in articles 30 (32) (33), such as the appeal against subsequent participation "Whereas this argument is valid, since the stipulation in Article 30 of the Constitution that "personal freedom is guaranteed" and in Article 32 thereof that "there shall be no crime or punishment except on the basis of a law." 33) of it that the "punishment is personal" indicates that although the authority of the legislator in the field of establishing crimes and determining the penalties that suit it is a discretionary power, but this power is limited by the rules of the Constitution" as well as the provision on imitating the opposite sex, where the court responded to the argument that (and since this argument is valid, as the stipulation in Article (30) of the Constitution that "personal freedom is guaranteed" and in Article (32) thereof that "there is no crime or punishment except on the basis of a law...." It indicates - and what has been done by the judgment of this court - that the principle of legality of the crime and punishment that entitles the legislator under his discretion - which he exercises in accordance with the Constitution - the right to establish crimes and determine the penalties that suit them, and although this principle of ensuring personal freedom is taken as a structure for its approval, and as a basis for its affirmation, but this same freedom is what restricts its content and content, so that its enforcement is only to the extent necessary to ensure its preservation, and it is necessary that the sinful acts must be specific in a way that. Since the principle in penal texts that are drafted within narrow limits is a definition of the acts that criminalize them, and specifically what they are, to ensure that ignorance of them

is not a home for violating the rights guaranteed by the Constitution) (Constitutional Appeal No. 6, 2007). In this regard, we have found that the Court links the idea of ambiguity to the principle of legality of crimes and penalties regulated by Article 32 of the Kuwaiti Constitution.

It was noted that during a certain period, the court adopted the idea or principle of explanatory case law, as this was evident in the constitutional challenges related to the text of article 49 of the Penal Code about subsequent criminal complicity, where the judicial rulings in those appeals were similar in terms of wording, arguments, and results.

Moreover, it was noted that the court, in determining the constitutionality of the text in cases of negating the defect of ambiguity, explained the vocabulary of the texts - as is the case in lawsuits related to the provisions of the State Security Law, Article (4), Article (25) and the text of Article (230) on lending with obscene usury - without indicating the basis for this understanding or explanation, and the explanation extended in some cases to an element of the crime that is not usually included in criminal texts, which is the moral element in the crime, as is the case in the appeal for the extent of Constitutionality of Article (25) Penal Code (State Security Law).

It has been noted that to determine the ambiguity of the text, and except for the lawsuit concerning the texts of subsequent participation, the Constitutional Court does not take into account the contradiction of the challenged text with provisions contained in other laws on the one hand, and the Court, on the other hand, does not take into account jurisprudential and judicial theories related to the adaptation of facts when it decides ambiguity, as the Court ignored the theory of multiple crimes and the theory of apparent conflict of texts as solutions for adaptation and conflict between texts in cases of subsequent participation texts.

One of the factors used by the Court in its methodology to determine the ambiguity of the text is the ambiguity of the text in terms of application with another text, in which the Court decides that: "There is no doubt that the criminalization of the act of concealment of the offender in the rules of complicity in the crime after the fact, which is considered general rules, in addition to its criminalization under those special provisions, would lead to an irreconcilable legislative double criminalization of the act of assisting the escape from justice by concealing the accused of committing the crime. It also leads to confusion among those who are addressed by the provisions of these special texts as to their limits and prohibitions, in addition, justice refuses to equate punishment between a person who participated with the offender in the commission of the crime in all its details before it occurred and a person who played no role in it and only did it to

harbor the offender after the completion of the fact (Constitutional Appeal No. 6, 2007).

What is taken against the court in this judicial precedent is that it was not successful in the issue of double application between the text of Article (132) and the text of Article (49/I), since the second text is more applicable than the first text, since the second text includes accused persons, whether or not arrest warrants have been issued against them and whether they are arrested or not, contrary to the text of Article (132), which requires the issuance of arrest warrants or arrest. Therefore, the ruling on the unconstitutionality of the text of Article 49 (I) resulted in a legislative vacuum regarding cases of disappearance that took place before the issuance of an arrest warrant or before the arrest of the accused.

It should be noted that the Constitutional Court added the double application factor between the texts contested as unconstitutional and other provisions in this jurisprudence and in another case that came on the occasion of the same text (article 49) but in its second paragraph, and this factor did not help it in the third case, which came about the same text (article 49), but in its third paragraph.

We affirm that it has not been proven through the study that there is an impact of political, societal, or media consideration on the Court's decisions in those cases, but we have found that the formulation of judicial decisions issued by the Constitutional Court was not characterized by a clear and specific methodology, perhaps for a main reason, as it was found that the members of the Court differed during the period under study.

Conclusion

This paper concludes by emphasizing the importance of methodological clarity in interpreting ambiguous criminal provisions. The Constitution itself has entrusted the task of ensuring its protection from all forms of aggression to the constitutional courts in States by imposing judicial control over any constitutional defect in the texts that lead to their repeal. The authority to oversee the constitutionality of laws in the United States is concentrated in the hands of the Federal Supreme Court, and in Kuwait in the hands of the Constitutional Court, and the research was limited to explaining the role of the two courts in establishing the principle of legality of crimes and penalties through their exercise of constitutional jurisdiction, which is unique to these two courts from other courts in those countries. The research problems in this paper have been addressed by presenting judicial applications in the United States and Kuwait for cases of ambiguity of the text, and then stand on the position of the Kuwaiti Constitutional Court of the idea of ambiguity by reviewing some of the judicial rulings issued by

it in the second section. We have reached the conclusions i.e. ambiguity occurs when the legislator uses words or phrases that have more than one meaning. One of the most important consequences of the principle of legality is that the legislator is committed to developing criminal texts with clarity and specificity, and that the ambiguity of the criminal text is a constitutional defect that would overturn the criminal text and consider it as if it were not in the Kuwaiti and American legal systems alike. The factors and criteria used by the U.S. Federal Court and Kuwait's Constitutional Court to determine the amount of clarity required in a text varied. Finally, by reviewing the lawsuits before the Kuwaiti Constitutional Court and the resulting rulings, it can be said that the Court did not adopt a specific methodology or mechanism to determine the unconstitutionality of a criminal provision because of its ambiguity, nor was it affected by political and societal considerations in cases related to the constitutionality of criminal texts.

Recommendations

- The legislator must adopt the legal drafting of texts that involve a degree of flexibility in the hope of absorbing and confronting what is new in the world of crime and its methods, to alleviate the severity and rigidity of the principle of legality and to avoid ruling on unconstitutionality, through the use of experts from the competent language, judges and university professors, so that the wording is correct and flexible.
- We recommend that substantive criminal texts be subject to previous control over their constitutionality, thus achieving legal security and stability of transactions, including increasing discussions of criminal legislation, revising it, and modifying its wording in the work of internal committees before approval.
- Calling for the adoption of a clear approach and specific, fixed, measurable, and applicable standards by the Kuwaiti Constitutional Court when imposing its control over ambiguous penal texts, to ensure the integrity of the legal structure and to reach clear fixed results, written for the principle of judicial precedents, which is based on fixed, specific, and declared factors to determine the extent of the ambiguity of the text.

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Notes

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- ¹ See generally Robert Batey, *Vagueness and the Construction of Criminal Statutes — Balancing Acts*, 5 Va. J. Soc. Pol’y & L. 1 (1997).
 - ² *Winters v. New York*, 333 U.S. at 539 (Frankfurter, J., dissenting) (emphasis added); see also *State v. Downey*, 476 N.E.2d 121, 122 (Ind 1985) (A statute “need only inform the individual of the generally proscribed conduct, [and] need not list with itemized exactitude each item of conduct prohibited.”).
 - ³ In case you wondered, in its broadest meaning, the crime consists of consensual or nonconsensual oral or anal sexual relations between persons of the same or opposite sex, or sexual relations between a human being and a “brute beast.”
 - ⁴ *Wainwright v Stone*, 414 U.S.21 (1973) (per curiam); see also *In re Banks*, 244 S.E.2d 386 (N.C. 1978) (holding that a statute prohibiting “peep[ing] secretly into any room occupied by a female” was not vague in light of prior judicial interpretations of the statute).
 - ⁵ *Colten v Kentucky*, 407 U.S 104, 110 (1972); (“Laws can be precise, but a legal system with no vague laws is impossible. The reason is that any legal system needs to regulate a variety of human activity in a general way.”).
 - ⁶ Model Penal Code Section 250.6 (“Loitering or Prowling”), drafted prior to *Papachristou and Morales*, provides in part that a person commits a violation if she “loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals, under circumstances that warrant alarm for the safety of persons or property in the vicinity.” Except when it is impracticable (e.g., the suspect flees), the Code requires a police officer, prior to arrest, to “afford the actor an opportunity to dispel any alarm which would otherwise be warranted.” The Code provision further provides that a person may not be convicted if the officer failed to comply with this requirement or if the explanation given by the actor was true and, if believed, would have dispelled the alarm. Courts that have considered statutes patterned on Section 250.6 have reached conflicting conclusions as to their constitutionality under the Due Process Clause. Compare *Fields v. City of Omaha*, 810 F.2d 830 (8th Cir 1987), *City of Portland v. White*, 495 P.2d 778 (Or. Ct. App.1972), and *City of Bellevue v. Miller*, 536 P.2d 603 (Wash. 1975), abrogated on other grounds, *State v. Smith*, 759 P.2d 372 (Wash 1988) (all cases invalidating ordinances based on the Model Penal Code provision), with *State v. Ecker*, 311 So. 2d 104 (Fla.1975), and *City of*

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