

## Change and Modification of the Legal Description of the Charge

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### Abstract:

Changing and amending the legal description of the charge is a pivotal issue in the justice system, as it aims to ensure that legal texts are consistent with the acts attributed to the accused. This procedure forms part of the central role of the judiciary in achieving justice and ensuring the parties' right to a fair trial. Amending the legal description means reformulating the charge in a manner consistent with the evidence and facts established during the investigation or trial stages. This procedure may be necessary to adapt the charge to the elements of the legal crime, especially when new data are revealed that change the nature or circumstances of the crime.

**Keywords:** change and amendment, legal description, charge

### Introduction:

The legal description of the charge refers to the legal framework established by the legislator in the Penal Code or any other punitive law. It defines specific acts as crimes under particular conditions and elements, resulting in a corresponding punishment. The legal description serves as a means to determine the punishable act or to assign the incident the most suitable legal designation without being too restrictive or overly broad. The act subject to the charge must align with this legal description.

### Research Significance:

The importance of changing and modifying the legal description of the charge lies in its role as a fundamental pillar for ensuring justice in legal systems. It aims to address contradictions or errors that may arise in the legal classification of the crime, enabling the charge to align with the proven facts and the evidence presented in the case.

### Research Problem:

The research problem highlights the need to address the formulation of legal texts governing the change and modification of the legal description of the charge. Currently, these texts suggest that the court can only change or modify the charge after the charge is formally brought against the accused. However, it is possible to carry out these changes both before and after the charge is officially directed.

### Research Methodology:

To address the issue, the study will employ analytical, applied, and comparative approaches. The analytical approach will focus on analyzing legal texts and jurisprudential opinions. The applied approach will involve the examination of judicial decisions related to the change or modification of the charge. The comparative approach will analyze the relevant provisions of Iraqi legislation in comparison with the corresponding provisions of Egyptian and French legislation.

### Research Structure:

This research is divided into two main sections. The first section addresses the concept of changing the legal description of the charge and its instances. The second section delves into the concept of modifying the legal description of the charge and its instances.

### Section One: The Concept and Instances of Changing the Legal Description of the Charge

This section is divided into three subsections:

Definition of Changing the Legal Description of the Charge

Instances of Changing the Legal Description of the Charge

## Conditions for Changing the Legal Description of the Charge

### Subsection One:

#### Definition of Changing the Legal Description of the Charge

The change in the legal description of the charge is a procedure whereby the trial court assigns a new and more appropriate legal designation to the criminal act, distinct from the description provided in the referral order. This change represents an application of the law, as it involves aligning the presented facts with the most fitting legal provision<sup>(1)</sup>. The change grants the judiciary the authority to exercise discretion, reflecting the significance of its role as a guardian of people's rights, lives, and interests. This role necessitates giving the judiciary sufficient authority to alter the legal classification to ensure that it aligns with the case before it.<sup>(2)</sup>

The Iraqi Code of Criminal Procedure does not explicitly define the legal description of the charge, though it refers to the concept in some of its provisions<sup>(3)</sup>. Legal scholars have defined the legal description of the charge as "the legal framework established by the legislator in the Penal Code or any other punitive law, under which certain acts are considered crimes if they meet specific conditions and elements, warranting a corresponding punishment".<sup>(4)</sup> Another definition states that the legal description is "the name assigned by the law to the crime and the elements that the penal provision identifies for it, even if the law does not provide it with a specific name".<sup>(5)</sup>

These definitions reveal that the competent court possesses the authority to change the legal description of the charge if it finds that the original description was incorrect. The court is free to choose the appropriate legal classification that aligns with the facts of the case and the available evidence.

In Iraq, the legislator has granted the court the authority to change the legal description of the charge, and it is not bound by the description assigned to the act by the investigative authority<sup>(6)</sup>. This power is rooted in the recognition that the court plays a critical role in ensuring justice. Article 187(b) of the Iraqi Code of Criminal Procedure stipulates that the legal description of the crime must be specified in the arrest warrant or the summons order.<sup>(7)</sup>

However, we believe that the legislator's wording of this article is inaccurate. The arrest warrant or summons order is primarily a means to compel the accused to appear before investigative authorities, not to provide a detailed legal classification of the crime. Typically, these documents only mention the relevant legal provision and the type of crime, with no explicit reference to the legal description, unlike the referral order, which must specify the legal description of the crime as one of its essential elements.

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<sup>(1)</sup> See: Dr. Raouf Obaid, *Important Practical Problems in Criminal Procedures*, Dar Al-Fikr Al-Arabi, Egypt, 2015, p. 215.

<sup>(2)</sup> Ibid., p. 223.

<sup>(3)</sup> Articles 187 and 224 of the Iraqi Code of Criminal Procedure No. 23 of 1971 (as amended) refer to the legal description. Article 187 states: A. The charge is written on a special document bearing the name and position of the judge, including the name of the accused, their identity, the place and time of the crime, and its legal description... B. The court is not bound to adhere to the legal description of the crime mentioned in the arrest warrant, summons, or referral order. Article 224, Paragraph A, states: A. The judgment or decision shall include the name of the judge(s)...

<sup>(4)</sup> See: Dr. Jawad Al-Ruhaimi, *The Legal Qualification of the Criminal Case*, Al-Maktaba Al-Qanuniya, Iraq, 2006, p. 188.

<sup>(5)</sup> Ghalib Obaid, *Accusation: Direction and Amendment*, Ph.D. Dissertation, College of Law, University of Baghdad, Iraq, 1996, p. 104.

<sup>(6)</sup> See: Dr. Jamal Mohammed Mustafa, *Explanation of the Code of Criminal Procedure*, Al-Maktaba Al-Qanuniya, Egypt, 2005, p. 128.

<sup>(7)</sup> It was stated that: "The court is not bound to adhere to the legal description of the crime mentioned in the arrest warrant, summons, or referral order."

Despite this, the Iraqi legislator has allowed the court to change the legal description of the crime. The court is not bound by the legal description assigned to the act by the investigative authority. Nevertheless, the Code of Criminal Procedure requires the court to change the legal description if, during judicial investigations, it becomes clear that the accused has committed a crime with a description different from the one initially assigned.

The process of changing the legal description is a "legal procedure undertaken by the competent court when reclassifying the criminal elements of the case before it, with the aim of determining the legal provision that should be applied to it". <sup>(8)</sup>

The Egyptian legislator has provided a specific provision granting the court the right to change the legal description of the charge, as it is the authority responsible for adjudicating the case by applying the law.<sup>(9)</sup> The court holds this power based on the facts presented before it. This right to change is not considered a departure from the rule requiring the court to adhere to the facts on which the case is based, since the legal description is not an essential element of the case. Rather, it is the attribution of a label to the presented facts, which the court has the authority to change according to what is presented to it to properly apply the law. "Moreover, the court's right to change the legal description of the charge is not an exception to the principle of the specificity of the case, nor does it contradict it. This is because the court's fundamental role is to interpret and apply the law<sup>(10)</sup>, which necessarily requires the court to analyze the facts presented to it in order to classify them under a particular legal description. If the court finds that the incident before it, as proven by the investigation and mentioned in the referral order or the summons, has been given an incorrect legal description, there is no doubt that it is not only the court's right but also its duty to correct this description". <sup>(11)</sup>

The Egyptian judiciary has also recognized the court's authority to change the legal description, making this authority not just a right but an obligation on the court. Accordingly, the Egyptian Court of Cassation ruled in one of its decisions that: "If the criminal court does not apply the correct legal description to the incident, it will have erred in applying the law. This error is not remedied by the possibility that the appeal may be rejected on the grounds that the penalty imposed is justified under the law". <sup>(12)</sup>

In France, Article 351 of the French Code of Criminal Procedure states: "If it becomes apparent from the discussions that the act presented to the court entails a different characterization, the presiding judge must direct one or more supplementary questions to the jurors, incorporating the description that the court deems logical for the acts attributed to the defendant, even if it differs from that in the indictment document"<sup>(13)</sup>. The description

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<sup>(8)</sup> See: Dr. Hatem Hassan Bakar, Protection of the Defendant's Right to a Fair Trial, Mansha'at Al-Maaref, Egypt, 2004, p. 273.

<sup>(9)</sup> Article 308 of the Egyptian Code of Criminal Procedure No. 150 of 1950 (as amended) states: "The court may change in its judgment the legal description of the act attributed to the accused, and it may amend the charge by adding aggravating circumstances proven during the investigation or trial, even if not mentioned in the referral order or summons."

<sup>(10)</sup> See: Dr. Majid Khudr Ahmed Al-Sabawi, The Problem of Error in Crime Facts, Dar Al-Kutub Al-Qanuniya, Egypt, 2015, p. 90.

<sup>(11)</sup> See: Dr. Jalal Tharwat, Criminal Procedures: The Criminal Dispute, Dar Al-Matbouat Al-Jami'iyya, Egypt, 2002, p. 166.

<sup>(12)</sup> See: Dr. Ahmed Hussein Hussein Al-Jadawi, The Court's Authority to Amend and Change the Charge, Dar Al-Jami'a Al-Jadida, Egypt, 2010, p. 396, Egyptian Court of Cassation Decision No. 6460 of 199, dated 3/8/1993.

<sup>(13)</sup> Article 351: If it results from the deliberations that the act involves a legal qualification other than that provided by the indictment decision, the president poses one or more subsidiary questions.

under which the case is brought is, by nature, provisional and does not prevent the court from changing it at any time to the legal description that it considers accurate.<sup>(14)</sup>

Some French jurists, such as Alain Plantey and Federic Suder, have argued that the classification of facts is a fundamental and necessary judicial function. The reasoning is that classification is solely a judicial task. When a judge classifies an incident according to its legal description, they create a legal and technical domain that pulls the incident upward to a level of classification. Simultaneously, the law is "brought down" from its abstract heights to this level. In this space, the judge facilitates the convergence of reality with the law, thus enabling the application of the appropriate legal rule to the incident<sup>(15)</sup>.

Regarding the French judiciary, it is crucial to note the close relationship between the discretionary power legally granted to the judge and the legal classification, which is the judge's prerogative. This relationship exists because the judge's assessment and preparation of the elements of the dispute before them, in order to apply the law to those elements, is what the judge's classification of the dispute ultimately depends on.<sup>(16)</sup>

## Section Two

### Cases of Changing the Legal Description of the Charge

The court may change the legal description while maintaining the facts. Moreover, it is even more justified for the court to change the description based on the exclusion of certain facts due to insufficient evidence or their proven non-attribution to the accused. This can occur in three specific cases:

#### **1- First Case:** Changing the Description of the Incident Due to the Exclusion of One of the Elements or Components of the Original Incident

This case occurs when a criminal case is brought before the court on the basis of a completed crime, but the court considers it to be merely an attempted crime due to the exclusion of the result or the causal link. For example, if a criminal case is brought for a charge of fraud, but the court considers it to be an attempted fraud by excluding the result or causal link. Another example is changing the legal description from a charge of premeditated murder to a charge of assault leading to death by excluding the intent to kill. Similarly, a change from attempted murder to a charge of threat may result from the exclusion of the intent to kill.<sup>(17)</sup>

#### **2- Second Case:** Changing the Legal Description Due to the Exclusion of an Aggravating Circumstance

The court has the right to change the description of the charge by excluding an aggravating circumstance. For instance, if a criminal case is presented before the court with a charge of premeditated murder with premeditation and ambush, and the court finds that the element of premeditation or ambush is absent, it can change the legal description of the incident to a charge of premeditated murder only. The change in the legal description of the incident presented to the court is thus based on the court's exclusion of an aggravating circumstance. In this case, the court is not required to notify the defendant of this change, especially since the change is in their favor. Such a change is not considered a violation of the defendant's right to defense.<sup>(18)</sup>

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<sup>(14)</sup> See: Dr. Mahmoud Saad Abdel-Meguid, Refusal to Execute Judicial Rulings and the Misuse of Official Authority in Hindering Their Execution: The Crime and Responsibility, Dar Al-Kutub Wa Al-Dirasat Al-Arabiya, Egypt, 2018, p. 121.

<sup>(15)</sup> See: Dr. Mahmoud Abdel-Rabih Mohamed Al-Qiblawi, Adaptation in Criminal Matters, Alexandria, Dar Al-Fikr Al-Jamii, 2003, p. 79.

<sup>(16)</sup> See: Dr. Mahmoud Sherif Bassiouni, Criminal Procedures in Arab Legal Systems and the Protection of Human Rights, Dar Al-Ilm Lilmalayin, Lebanon, 2009, p. 116.

<sup>(17)</sup> See: Dr. Mourad Ibrahim Abdullah Al-Sabri, The Court's Authority to Change the Legal Description, a published research in Journal of Research and Scientific Studies, Yahia Fares University in Medea, Issue 1, Algeria, 2024, p. 21.

<sup>(18)</sup> See: Dr. Qouda Hanan, The Restriction of Criminal Lawsuit Boundaries, PhD dissertation, Hajj Lakhdar University, Batna, Algeria, 2023, p. 125.

**3- Third Case:** Changing the Description Due to the Court's Exclusion of a Fact Connected to the Facts of the Case and Involved in Determining the Legal Description

This case occurs when the change in the legal description of the charge results from the exclusion of one of the facts that, along with the facts of the case, form a single legal description<sup>(19)</sup>. Here, the legal description of the charge involves several criminal acts that collectively form one incident and one description. The court may exclude one of these acts as long as the main fact on which the case is based remains unchanged and no new elements are added to it<sup>(20)</sup>. For instance, the legal description of the criminal incident presented in the case might be a robbery with violence or coercion. The incident may consist of two acts: theft and assault. If the court finds that the elements of the theft are absent but that the elements of assault are proven and attributable to the accused, the court's judgment will be sound if it excludes the theft incident and convicts the defendant solely for the crime of assault. <sup>(21)</sup>

**Section Three**  
**Conditions for Changing the Legal Description**

The conditions for changing the legal description are as follows:

**First: No Addition of New Facts**

The general rule is that the court is bound by the substantive limits of the case and may not try the accused for a new fact that was not mentioned in the referral order or the summons. However, the legislator has made an exception to this rule, allowing the court to change the legal description. Nevertheless, the court is not permitted to use its exceptional power to change the description as a means of adding a new fact or involving any new party not included in the original case <sup>(22)</sup>.

Accordingly, the court may not, under this pretext, alter the material structure of the fact and attribute to the accused an act other than the one for which the case was filed; otherwise, it would exceed the objective limits of the case<sup>(23)</sup>. The Egyptian Court of Cassation affirmed this principle by ruling that the court's authority to change the description is contingent on "ensuring that no new fact is added against the accused and that this authority does not go so far as to alter the essence of the material fact". <sup>(24)</sup>

In another decision, the Court of Cassation stated, "Accordingly, the prohibited change for the court is that which adds new acts that serve as the foundation for the charge, as opposed to changes that merely involve adding details intended to inform the accused about the subject matter of the accusation and how the crime was committed" <sup>(25)</sup>.

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<sup>(19)</sup> See: Dr. Ahmed Hussein Hussein Al-Jadawi, The Court's Authority to Amend and Change the Charge, previously cited source, p. 437.

<sup>(20)</sup> See: Dr. Mahmoud Najib Hosni, Explanation of the Criminal Procedures Law, Dar Al-Nahda Al-Arabiya, 1995, p. 904.

<sup>(21)</sup> See: Dr. Mamoun Mohamed Salama, Criminal Procedures, Dar Salama for Publishing and Distribution, Egypt, 2022, p. 125.

<sup>(22)</sup> See: Dr. Suleiman Abdel Moneim, Referral of Criminal Cases from the Investigative Authority to the Adjudication Authority, New University House, Alexandria, 2002, p. 236.

<sup>(23)</sup> See: Dr. Mahmoud Najib Hosni, Explanation of the Criminal Procedures Law, Dar Al-Nahda Al-Arabiya, 1995, p. 904.

<sup>(24)</sup> Egyptian Court of Cassation Ruling, 18/4/1957, Compilation of Cassation Rulings, Vol. 8, p. 367, No. 1/6/1965: 18, p. 16, p. 538, No. 108: 25, 1/1974, Vol. 5, p. 769, No. 166.

<sup>(25)</sup> Egyptian Court of Cassation Ruling, 27/12/1987, Compilation of Cassation Rulings, Vol. 38, p. 1156, No. 211.

### **Second: Adherence to Jurisdictional Rules**

This condition means that the criminal court may not change the legal description of the fact attributed to the accused unless the case falls within its jurisdiction according to the description of the crime stated in the referral order or the summons. If the case is mistakenly brought before a misdemeanor court based on a description in the summons that classifies the act as a felony, that court may not change the description to one that classifies the act as a misdemeanor. This is because the court's jurisdiction is determined by the claim submitted to it, and in such cases, it must rule on its lack of jurisdiction.<sup>(26)</sup>

On this matter, the Egyptian Court of Cassation held that determining jurisdiction is based on the legal description under which the case was filed. However, if the description given to the fact falls within the jurisdiction of the court, and the court later finds that the description is incorrect, it must change it and adjudicate on the basis of the new description, provided that the new description does not exceed the court's jurisdiction.<sup>(27)</sup> For instance, the court may change the description from theft to concealment of stolen items<sup>(28)</sup> or from being the principal offender to being an accomplice.<sup>(29)</sup>

Moreover, the court may impose a more severe description on the act, one that would place it outside its jurisdiction. In such a case, the court must declare its lack of jurisdiction based on the new description.<sup>(30)</sup>

Nonetheless, a criminal court may reclassify the legal description of an offense from a felony to a misdemeanor, especially if it only realizes that the description is that of a misdemeanor after conducting the investigation<sup>(31)</sup>. In this scenario, the court is not required to declare its lack of jurisdiction, as reclassifying the description to a lesser offense does not strip the court of its authority to hear the case, in line with the rule that "he who has jurisdiction over the greater also has jurisdiction over the lesser."

### **Third: Elements Relied Upon by the Court in Changing the Description Must Be Part of the Investigation**

Accordingly, the court may not derive new elements that it adds to the original criminal fact unless they are found in the case documents, such as investigation reports, preliminary investigations, or the investigation conducted by the court.<sup>(32)</sup> The court may not attribute to the accused any fact that lacks a basis in the documents available to the litigants. For instance, if the public prosecution presents documents to the court during the period in which the case is reserved for judgment, and these documents were not part of the pleadings nor seen by the litigants, the court may not rely on them<sup>(33)</sup>.

## **Section Two**

### **The Concept of Amending the Legal Description of the Charge and Its Cases**

To fully understand the concept of amending the legal description of the charge, this section is divided into three sub-sections. In the first sub-section, we define the amendment of the legal description of the charge. In the second sub-section, we discuss the cases in which the amendment of the legal description of the charge

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<sup>(26)</sup> Compilation of Egyptian Court of Cassation Rulings, Vol. 28, p. 835, No. 173, Cassation 10/10/1986, Compilation of Cassation Rulings, Vol. 37, p. 670, No. 137.

<sup>(27)</sup> See: Dr. Adly Abdel-Baqi, Explanation of the Criminal Procedures Law, Vol. 2, Egyptian Universities Publishing House, Egypt, 1953, p. 153.

<sup>(28)</sup> Egyptian Court of Cassation Ruling, 10/4/1997, Compilation of Cassation Rulings, Vol. 48, p. 449, No. 66.

<sup>(29)</sup> See: Dr. Mahmoud Abdel-Rabih Mohamed Al-Qiblawi, Adaptation in Criminal Matters, previously cited source, p. 246, and Compilation of Egyptian Court of Cassation Rulings, Vol. 16, p. 101, No. 24, 6/6/1971, Vol. 22, p. 435, No. 107, compare with 23/11/1931, Compilation of Rules, Vol. 2, p. 360, No. 292.

<sup>(30)</sup> Egyptian Court of Cassation Ruling, 6/12/1948, Compilation of Rules, Vol. 7, p. 665, No. 404, 25/1/1965.

<sup>(31)</sup> Egyptian Court of Cassation Ruling, 15/5/1933, Compilation of Rules, Vol. 3, No. 122, p. 180, 10/10/1977.

<sup>(32)</sup> Article 131(b) of the Iraqi Criminal Procedures Law corresponds to Article 382(2) of the Egyptian Criminal Procedures Law and Article 174(3) of the Egyptian Criminal Procedures Law.

<sup>(33)</sup> See: Dr. Abdel-Azim Wazir, Indivisibility and Connection between Crimes and Their Impact on Judicial Jurisdiction, Dar Al-Nahda Al-Arabiya, Egypt, 1988, p. 122.



occurs. Finally, in the third sub-section, we outline the conditions for amending the legal description of the charge, as follows:

#### First Sub-Section

##### Definition of Amending the Legal Description of the Charge

"The legal description under which the case is brought is, by its nature, temporary and does not prevent the trial court from amending it at any time to the description it deems correct. Therefore, what matters is the description the court attributes to the criminal act, not the description assigned by the investigative authority, as the court is more capable than the investigating judge of providing the correct legal classification of the facts".<sup>(34)</sup>

"Amending the legal description of the charge is not merely a right of the court but a duty dictated by the proper legal application of statutory texts to the established facts of the case".<sup>(35)</sup>

"While the court is bound by the facts mentioned in the referral order, it is not bound by the description of these facts. The court is entitled to subject the facts to scrutiny and reclassify them according to the correct legal framework".<sup>(36)</sup> However, the court must not attribute to the accused any facts other than those that formed the subject matter of the crime. Moreover, the material fact contained in the referral order and presented during the hearing must be the same fact used as the basis for the new classification.<sup>(37)</sup>

From the above, it is clear that the court has the discretion to amend the charge and reclassify the legal description of the criminal act. The only constraints on the court's authority are its conscience, the facts before it, and its understanding of the legal texts to correctly apply them to the case.

Based on the above, and after analyzing and examining the wording of Articles 187(b) and 190(a)(b) of the Code of Criminal Procedure regarding the court's authority to change or amend the legal description of the charge, the following observations are noted:

- 1- The Iraqi legislator was not successful in drafting the aforementioned articles. The legislator did not dedicate one of the articles specifically to "changing the description" and the other to "amending the description." Moreover, the two articles are not consecutive, even though they both fall within the same chapter of the Code of Criminal Procedure. It would have been more appropriate for the legislator to devote a single article with two distinct paragraphs—one for "changing the description" and the other for "amending the description"—using clear and explicit language.
- 2- Article 190(a) of the Code of Criminal Procedure, although related to amending the charge as indicated by legal scholars and jurists,<sup>(38)</sup> does not explicitly mention the phrase 'amendment of the charge'.
- 3- The legislator linked the court's ability to amend the charge under Article 190(a) to the scenario in which the court withdraws the charge and then directs a new charge against the accused, considering this to be an instance of amending the charge. We believe that limiting the amendment of the charge to this scenario is unrealistic and contrary to the law. If the court finds grounds to amend the charge, it may alter its essential elements in one or more aspects, draw on other elements, consider a new fact, or add an aggravating circumstance. The court has the authority to do so when directing the charge, as evidenced by Article 187(b), which addresses the court's authority to direct the charge. It states that "the court is not bound by the legal description of the crime as stated in the arrest warrant, summons, or referral order."

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<sup>(34)</sup> See: Dr. Ahmed Fathi Sorour, *The Mediator in Criminal Procedures Law*, Vol. 1, Dar Al-Nahda Al-Arabiya, Egypt, 2014, p. 1318.

<sup>(35)</sup> See: Dr. Ghaleb Obaid, *The Charge: Direction and Amendment*, previously cited source, p. 106.

<sup>(36)</sup> See: Dr. Saeed Hasballah Abdullah, *Explanation of the Code of Criminal Procedures*, Dar Al-Hikma, Iraq, 1990, p. 305.

<sup>(37)</sup> See: Dr. Ghaleb Obaid, *The Charge: Direction and Amendment*, previously cited source, p. 108.

<sup>(38)</sup> See: Dr. Ramses Behnam, *Criminal Procedures: Foundations and Analysis*, Mansha'at Al-Maaref, Egypt, 2008, p. 399.

The term "determine the legal description" mentioned in the above article is broad enough to cover both changing and amending the description. We believe that the provision in Article 190(a) allowing the court to withdraw the charge after it has been directed is intended for situations where, after the charge is directed and during the proceedings, the court finds it necessary to amend the charge. This may happen after hearing the defense witnesses and reviewing the evidence, upon discovering that the crime attributed to the accused differs in its legal description. As a result, the court withdraws the previously directed charge and amends it accordingly.

There is no legal impediment preventing the court from changing or amending the legal description of the charge on which the accused was referred for trial, even before directing the charge. All that the legislator did was to empower the court to amend the legal description, even after the charge had been directed, by granting it the authority to withdraw the charge. <sup>(39)</sup>

### **The Second Requirement**

#### **The Concept of Amending the Legal Description of the Charge and Its Cases**

To fully understand the concept of amending the legal description of the charge, this section is divided into three subsections. The first subsection defines the amendment of the legal description of the charge. The second subsection addresses the cases in which the amendment occurs. The third subsection outlines the conditions for amending the legal description of the charge, as follows:

#### **Section One: Definition of Amending the Legal Description of the Charge**

The Federal Court of Cassation in Iraq stated in one of its rulings:

"Amending the charge means altering its structure, which was used to initiate the case and was brought before the court, by modifying any of its elements. This can be done by adding new elements to it, provided that the investigation has included these elements. In other words, the amendment of the charge is achieved by incorporating additional elements into the charge upon which the case was initiated." <sup>(40)</sup>

In Egypt, Article 308 of the Criminal Procedure Law emphasizes that the court has the authority to alter the legal description of the act attributed to the accused. The court also has the power to amend the charge by adding aggravating circumstances that are proven through investigation or trial, even if these circumstances were not mentioned in the referral order or the summons to appear. The court must alert the accused to this change and grant them time to prepare their defense accordingly if they request it. <sup>(41)</sup>

Most legal scholars in Egypt assert that the court's right to amend the legal description of the charge does not constitute an exception to the principle of the specificity of the criminal case. This is because the legal description of the act is not considered one of its elements but rather a name given to it by the law. The basis of

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<sup>(39)</sup> Article 187 of the Iraqi Code of Criminal Procedures stipulates: A. The charge is documented in a separate paper bearing the name and position of the judge and includes the name, identity, location, and time of the crime, its legal description, the name of the victim, the object of the crime, and the instrument used. It is dated and signed by the court president or judge. B. The court is not bound by the legal description of the crime stated in the arrest warrant, summons, or referral order.

<sup>(40)</sup> See: Dr. Sami Al-Nasrawi, A Study on the Origins of Criminal Procedures, Vol. 2, 1st edition, Dar Al-Salam Press, Baghdad, 1974, p. 26; and Dr. Saeed Hasballah Abdullah, Explanation of the Code of Criminal Procedures, previously cited source, p. 128.

<sup>(41)</sup> Article 190 of the Iraqi Criminal Procedures Law stipulates: A. If it becomes apparent that the charge against the accused warrants a harsher punishment than the original charge, or if it differs in description, the charge must be withdrawn and a new charge issued. B. The court must notify the accused of any change or amendment to the charge and give the accused sufficient time to prepare a defense if requested. C. The decision to withdraw a charge has the same effect as an acquittal.



this right lies in the court's fundamental role in interpreting and applying the law. This role cannot be fulfilled unless the court examines the facts presented before it and classifies them under an appropriate legal description.<sup>(42)</sup>

If the court finds that the act presented before it, as established by the investigation and included in the referral order or summons, was given an incorrect legal description, it undoubtedly has the right — and even the obligation — to correct this description and apply the corresponding legal effect, as long as it is based on the same facts presented before the court. The court is responsible for examining all the facts and their legal descriptions. This principle has been highlighted by the Egyptian Court of Cassation in several instances.<sup>(43)</sup>

**In French law**, the legislator emphasized in the Code of Criminal Procedure that:

"If discussions reveal the presence of one or more aggravating circumstances not mentioned in the referral decision, the presiding judge raises one or more questions regarding the modification or alteration of the charge."<sup>(44)</sup>

From the above, it can be concluded that amending the charge is both a right and a duty of the court. It allows the court to assign the act its correct legal description based on the facts presented before it. This underscores the court's ability to reassess the case based on the evidence and testimonies provided, ensuring the achievement of justice.

Although the Iraqi legislator was not successful in drafting clear and distinct provisions regarding "change" and "amendment" of the legal description — as previously highlighted — juristic interpretations and judicial rulings emphasize the importance of accurate legal classification. On the other hand, the Egyptian Criminal Procedure Law clearly addresses this concept in an explicit legal provision.

## **Section Two: Cases of Amending the Legal Description of the Charge**

The trial court may amend the legal description of the charge in several instances, which will be discussed as follows:

### **First: Amendments Related to the Material Element of the Crime**

The court may amend the factual elements that constitute the material structure of the crime, which consists of three main elements: the act (conduct), the result (outcome), and the causal link between them. Such amendments may serve to complete the essential elements of the original act or to establish the legal elements of the crime.<sup>(45)</sup>

The amendment may also extend to the instrument used in committing the crime. For example, if the accused is referred for the charge of simple murder, but the court discovers that the crime was committed using a poisonous substance, the charge may be amended to murder with the use of a toxic substance. The amendment may also involve altering the criminal conduct itself. For instance, if the accused is charged with counterfeiting certain categories of currency, the court may amend the charge to the crime of using counterfeit currency.<sup>(46)</sup>

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<sup>(42)</sup> Federal Court of Cassation Decision No. 12539 of 2010, dated 12/12/2010, Decision No. 12693 of 2010, dated 14/12/2010, and Decision No. 4241 of 2011, dated 2/5/2011, all unpublished decisions.

<sup>(43)</sup> Article 308 of the Egyptian Criminal Procedures Law in force.

<sup>(44)</sup> See: Dr. Galal Tharwat, *Criminal Procedures: Criminal Litigation*, New University House, 2002, pp. 165-166; and the same author, *Systems of Criminal Procedures*, previously cited source, pp. 507-508; and Dr. Ahmed Fathi Sorour, previously cited source, p. 784; and Dr. Mamoun Salama, *Criminal Procedures in Egyptian Legislation*, Part 2, previously cited source, p. 158; and Dr. Hassan Al-Jokhdar, *Explanation of the Code of Criminal Procedures*, 1st edition, 1992, p. 479.

<sup>(45)</sup> See: Dr. Mayada Mohamed Ahmed, *The Legal Adaptation of Facts in the Criminal Lawsuit*, Academic Publishing Center, Egypt, 2021, p. 245.

<sup>(46)</sup> See: Dr. Majid Hamoudi Ali, *The Constitutionality of the Criminal Court's Authority to Change or Amend the Charge*, *The Islamic University Journal*, Issue 59, 2021, p. 591.

### **Second: Amendments Related to the Mental Element of the Crime**

Amending the charge in relation to the mental element occurs when the court alters the charge to reflect a different intent or mens rea. Examples of this include:

Changing the charge from simple murder to premeditated murder.

Amending the charge from attempted premeditated murder to assault resulting in permanent disability.

Modifying the charge from assault not intended to kill but resulting in death to manslaughter.

Amending the charge from attempted murder to assault resulting in permanent disability.<sup>(47)</sup> The amendment may also involve adding the element of intent, such as amending the charge from “assault leading to death” to “manslaughter” or amending the charge of “attempted murder” to “assault causing permanent disability.”<sup>(48)</sup>

These cases highlight the authority and discretion of the court to adjust the legal description of the charge according to the evidence and facts presented. The amendments ensure that justice is served by aligning the charge with the reality of the criminal act, while also respecting the rights of the accused to defend themselves against the amended charge.

### **Third: Amendment related to the status of the accused as a participant in the crime**

The court has the authority to change the status of the accused from a principal perpetrator to an accomplice or vice versa, as long as it relies solely on the facts included in the investigation, which formed the basis of the charges and the proceedings. The amendment of the charge concerning the status of the accused as a participant in the crime occurs when, for instance, the court considers the first accused a principal perpetrator in a murder felony and the second accused a principal perpetrator in an attempted murder and an accomplice in the murder.<sup>(49)</sup>

The amendment of the charge concerning the assumed element of the crime occurs if the amendment involves adding a new element related to a legal condition that the legislator takes into account when forming the material element of a crime. This element may not have been mentioned in the indictment or the summons. Adding it leads to a modification of the charge itself. An example of this is changing the charge from felony theft to felony embezzlement of public funds by adding the status of the accused as a public employee or designating the stolen items as public property.<sup>(50)</sup>

The amendment of the charge concerning the subject of the crime occurs when, for example, the court modifies the charge from assault on private property to assault on public property if the status of the property as public is established. Similarly, the court may change the charge from falsifying an official document to falsifying a private document<sup>(51)</sup>.

### **Fourth: Amending the charge in a way that increases the severity of the punishment of the accused**

In this case, the court adds aggravating circumstances to the crime that were not present when the charge was first directed. This requires withdrawing the initial charge and filing a new charge against the accused. For example, the court may add the element of "committing the theft at night" to a charge of simple theft or introduce one of the aggravating factors listed in Article 406(1) of the Iraqi Penal Code to a charge filed under Article 405.

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<sup>(47)</sup> See: Dr. Mahmoud Saad Abdel-Meguid, Refraining from Enforcing Judicial Rulings and the Use of Job Authority to Obstruct Their Implementation: The Crime and Responsibility, previously cited source, p. 137.

<sup>(48)</sup> See: Dr. Ma'moun Mohamed Salama, Criminal Procedures, previously cited source, p. 160.

<sup>(49)</sup> See: Dr. Mahmoud Saad Abdel-Meguid, Refraining from Enforcing Judicial Rulings, previously cited source, p. 137.

<sup>(50)</sup> See: Dr. Ma'moun Mohamed Salama, Criminal Procedures, previously cited source, p. 160.

<sup>(51)</sup> See: Dr. Majid Hamoudi Ali, The Constitutionality of Changing or Amending the Criminal Court's Description of the Charge, previously cited source, p. 592.

The Iraqi Federal Court of Cassation stated in one of its rulings:

"The accused may not be convicted of a crime with a punishment more severe than that of the crime listed in the indictment unless the original charge is withdrawn and a new, more severe charge is filed against them".<sup>(52)</sup>

In another ruling, the court held:

"If the court intends to convict the accused of a crime with a more severe punishment than the one specified in the original charge, it must withdraw the initial charge and direct a new charge under a different legal provision".<sup>(53)</sup>

We believe that this does not prevent the court from amending the charge if it becomes aware—before the formal charge is directed—that the crime being prosecuted involves aggravating circumstances. In such cases, the court may amend the charge before formally directing it to the accused, without needing to withdraw and refile it.

### Section Three

#### Conditions for Amending the Legal Description of the Charge

To enable the court to exercise its right to amend the legal description of the charge, certain conditions must be met. These conditions are as follows:

**First: The preliminary investigation or hearing must address the new elements or circumstances**

The criminal court's right to amend the charge requires that the new elements or circumstances have been addressed in the preliminary investigation or established through the hearing. This means that these elements or circumstances should not be introduced as sudden inputs into the course of the defense or the proceedings. If this occurs, it constitutes a violation of public order. As such, the facts attributed to the accused must be based on the case file that was under the scrutiny of the parties and around which discussions and deliberations were conducted<sup>(54)</sup>.

**Second: The elements or circumstances must be related to the facts of the case**

The criminal court's right to modify the method of committing the crime or the means used to commit it requires that these means or other related facts are not considered essential components of the original charge. For example, amending the method of committing murder from using poison to using a firearm or a bladed weapon would be impermissible, as this would change the material elements of the charge or the associated punishment.<sup>(55)</sup>

In this context, the Dhi Qar Court of Appeal, in its capacity as a cassation court, ruled in multiple decisions that: "The criminal court's right to amend the charge requires that the circumstances added be related to the original facts and not constitute an independent crime separate from the original incident".<sup>(56)</sup>

This principle has also been confirmed in Egyptian judicial practice, where the Court of Cassation ruled that: "If the public prosecution files a case against the accused on the charge of assault, the court may not add the charge of insult".<sup>(57)</sup>

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<sup>(52)</sup> Decision of the Federal Court of Cassation No. 882 of 2012, dated 29/8/2012, unpublished decision.

<sup>(53)</sup> Decision of the Federal Court of Cassation No. 76 of 2014, dated 7/6/2014, as cited in: Sardar Ali Aziz, *The Rule of Limiting the Court to the Scope of the Criminal Case*, College of Law and Political Science, published in the Journal of the University of Human Development, College of Law and Political Science, Sulaymaniyah, Iraq, Issue 3, 2016, p. 68.

<sup>(54)</sup> See: Dr. Mohamed Zaki Abu Amer, *Criminal Procedures*, Al-Halabi Legal Publications, Lebanon, 2010, p. 231.

<sup>(55)</sup> See: Dr. Mahmoud Mahmoud Mostafa, *Explanation of the Criminal Procedures Law*, Dar Al-Nahda Al-Arabiya, Egypt, 2000, p. 404.

<sup>(56)</sup> See: Dr. Mohamed Eid Al-Gharib, *Explanation of the Criminal Procedures Law*, Golden Eagle Publications, Egypt, 1996, p. 991.

It also ruled that:

"If the charge against the accused is forging a specific receipt, the court may not prosecute the accused for forging a different receipt that was not included in the original indictment". <sup>(58)</sup>

The French judiciary also endorsed this principle in its rulings. The French Court of Cassation held that:

"The trial court has no authority to consider legal facts other than those listed in the indictment or summons". <sup>(59)</sup>

The court also ruled that:

"If a person is charged with fraud, the court may not convict them as an accomplice in another fraud committed against a different victim". <sup>(60)</sup>

### **Conclusion**

After completing this research, we have reached several conclusions and recommendations, which are as follows:

#### **First: Conclusions**

##### **1- Distinction between Changing and Amending the Legal Description of the Charge**

Changing the legal description of the charge differs from amending it. Changing the description means giving the incident its correct legal characterization, whether the resulting punishment is more severe, lighter, or of a different nature than the one that initially formed the basis of the case.

By contrast, amending the charge involves either adding a new aggravating circumstance to the crime that was not mentioned in the indictment or modifying the charge itself by altering the material facts of the case, possibly by introducing new elements. This does not necessarily worsen the position of the accused.

2- The provisions set forth by the Iraqi legislator in Articles 187 to 190 of the Code of Criminal Procedure give the court the authority to amend or change the charge, whether before or after formally directing it to the accused.

3- Accurately and carefully amending the legal description of the charge reduces the likelihood of appeals being lodged against court rulings before higher courts due to errors in the legal classification of crimes.

#### **Second: Recommendations**

1- We call on the Iraqi legislator to amend the Iraqi Code of Criminal Procedure to explicitly state that amending or changing the legal description of the charge grants the accused the right to request the adjournment of proceedings. The accused should be given sufficient time and opportunity to reorganize their defense based on the new description.

2- It should be mandated that every change or amendment to the legal description of the charge be accompanied by a written legal justification. This justification must clearly explain the legal and factual basis for the change, supported by a specific legal provision.

3- We recommend that Article 187 be dedicated to regulating the change of the legal description of the charge, while Article 190 should be allocated to the amendment of the charge itself. Additionally, a separate provision should be included to regulate the procedure for withdrawing the charge and re-directing it with the new description.

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<sup>(57)</sup> Decisions of the Federal Court of Appeal of Dhi Qar, in its capacity as a Court of Cassation, Decision No. 32 of 2009, dated 27/4/2009; Decision No. 15 of 2012, dated 17/1/2012; and Decision No. 53 of 2012, dated 31/1/2012. All decisions are unpublished.

<sup>(58)</sup> See: Dr. Hassan Rabie, *Criminal Procedures in Egyptian Legislation*, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 91.

<sup>(59)</sup> Decision of the Egyptian Court of Cassation No. 9843 of 1958, dated 27/5/1958, *Collection of Cassation Rulings*, No. 148, Egypt, 2005, p. 578.

<sup>(60)</sup> Article 350: If the debates reveal one or more aggravating circumstances not mentioned in the referral order, the president raises one or more special questions.