

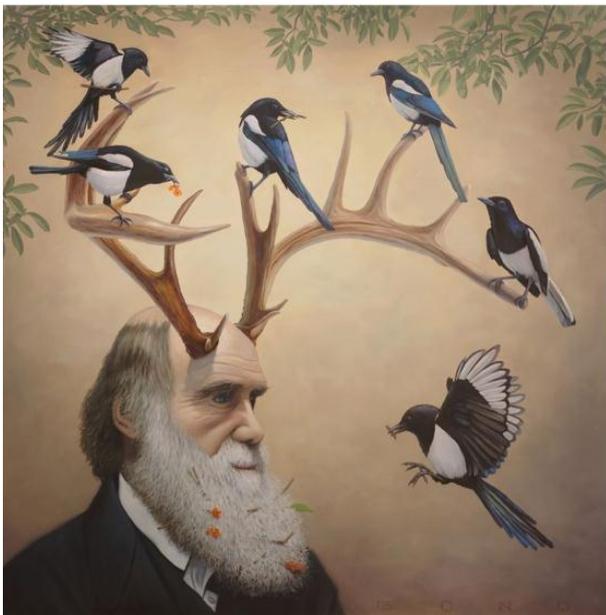
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# **Weapons Carrying Crime during the Participation in the Anti – Government Demonstrations. Comparative Study**

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## **Abstract**

**The Crime of the weapons carrying during the demonstrations, was stated in the weapons law number 51 for Year 2017 where to achieve this crime, its pillars must be available and which is represented by the material pillar where the criminal behavior in it and based on the Article (24/Fourth) is carrying the weapon which must be a firearm. There also must be available is the moral pillar which takes the form of the criminal intention because it is an intentional crime. This is in addition to the availability of its own pillar which takes the form that the weapon is carried during the participation in the demonstration. Therefore this crime does only occur if the doer carries the firearm during the demonstration i.e. carrying the weapon only takes place during the time period expanding from the start of the demonstration until its end and it is not used to carry the weapon at any other time. This Crime is an offense which is punished by the law by imprisonment for a period of not more than three years and by fine of not less than one million and not more than five million Dinars and contains a severe condition where the penalty is by imprisonment if the criminal was not permitted to carry the weapon when participating in the demonstration.**

## **Armas Portadoras De Delitos Durante La Participación En Las Manifestaciones Antigubernamentales. Estudio Comparativo**

### Resumen

El delito de portar armas durante las manifestaciones, se declaró en la ley de armas número 51 para el año 2017 donde para lograr este delito, sus pilares deben estar disponibles y está representado por el pilar material donde se encuentra el comportamiento criminal en él y basado en el El artículo (24 / Cuarto) lleva el arma que debe ser un arma de fuego. También debe estar disponible el pilar moral que toma la forma de intención criminal porque es un delito intencional. Esto se suma a la disponibilidad de su propio pilar que toma la forma de portar el arma durante la participación en la demostración. Por lo tanto, este crimen solo ocurre si el hacedor lleva el arma de fuego durante la demostración, es decir, llevar el arma solo se lleva a cabo durante el período de tiempo que se extiende desde el comienzo de la demostración hasta su final y no se usa para llevar el arma en ningún otro momento. Este delito es un delito que es castigado por la ley con prisión por un período de no más de tres años y una multa de no menos de un millón y no más de cinco millones de dinares y contiene una condición severa donde la pena es de prisión si el criminal no tenía permitido portar el arma cuando participaba en la manifestación.

### Introduction:

#### First: Definition of Research Subject:

Today, the right for the peaceful demonstration became among the important general freedoms which is influencing the society and therefore the constitutions were deliberate to rationalize this right to become a constitutional right. The importance of this right is that among the main outlets through which the nation can expresses his right in the political and non-political matters. As the demonstrations going out to the street, is an effective mean in expressing the opposite opinion where some demonstrators carry the fire weapons in the demonstrators against the government. Here, the legislator criminalized this action where the demonstrators which are misused are considered among the dangerous means through which playing with the souls and the destruction of the country's institutes are

done through it.

**Second: Importance of the Research:**

The importance of this research in this subject is that the crime of carrying the weapons in the demonstrations is considered among the important subjects which didn't get the sufficient attention from the researchers despite the abundance referring to the demonstrators. But what is reached to the justice, doesn't represent the actual number for this crime. Therefore, we desired searching in this subject to clarify the rules which organize the crime (weapons carrying during the demonstrations) which were committed in abundance lately with the individuals referring to the demonstrating in the society and to show the scope of the sufficiency of the criminalized protection provided by the legislator in the law of the penalties.

**The Research Problem:** The research problem concentrates on the weapons carrying crime in the demonstrations against the government in due to the weak and confusion of the legislative processing for this crime in the Iraqi Legislation. Also, the legislator didn't introduce executions from the penalty despite their becoming dangerous.

**Fourth: The Research Methodology:**

The Methodology used in this research is the comparative Analytical Methodology through analyzing the legislative texts for the Iraqi Legislator to get the results which the research aims at reaching at and comparing it with the Egyptian Legislation.

**Fifth: The Research Scope:**

The Scope of our research is defined by studying the crime of carrying the firearm during the demonstrations which stated by the legislator in Article (24.Fourth) from the Weapons Law Number (51) for Year 2017. Our research is limited only to the subjective aspects.

**Sixth: The Research Plan:**

The research Plan is divided into three requests where the first request covers the (Concept of the Crime) but the second request covers Carrying Firearm Crime's Pillars during the participation in the demonstrations. The third request, is the crime's penalty and this research ends with an Epilogue which includes the Conclusions and the Suggestions.

**First Requirement**  
**The Concept of Firearm Carrying Crime during**  
**Participation in the Demonstrations**

To through understand the subject of our research, we must understand the definition of this crime in Section One and then showing the basis and the legal nature for the crime in the Second Branch.

**First Branch**  
**The Definition of Firearm Carrying Crime during**  
**Participation in the Demonstrations**

The crime of carrying the firearm during the participation in the demonstrations needs a precise scientific definition where this necessitates the Linguistic Definition First and then the Terminological Definition:

First: Definition of the Crime (Language): The crime of carrying the firearm during the participation in the demonstrations consists of several words where each is defined linguistically as follows:

- 1) Crime: The Crime is a name which means the offense. In Law, when the individual became a criminal, then the law accused him with his crime or proved his crime.
- 2) Carrying: The word (Carry) in the language means what is carried on the back.
- 3) Weapon: The weapon is the name used for the war equipment in the land, sea and air where some individuals allocated it to the tools made of iron. The Plural is weapons which is either male or female i.e. people who keep the fortified cities from the enemy.
- 4) Fire: The word (Fire) is a natural element which is represented in the light and the burning heat. It is said: with iron and fire which means with the force of arms.
- 5) Demonstrations: To demonstrate language wise means the cooperation and the demonstration means the cooperation. The word (Demonstration) in the language refers to the cooperation of the demonstrators between themselves against a person or showing their satisfaction or dis-satisfaction from something.

Second: Definition of Crime Conventionally:

The definition of the firearm carrying crime during the participation in the demonstration is searched in the laws and then the justice and then the criminal doctrine.

To start with, the Iraqi Legislator didn't define the firearm carrying crime in the demonstrations leaving this to the doctrine where it is not among the tasks of the legislator introducing the definitions but the legislator defined the demonstration. As for the justice, we didn't find any judicial conventionally decisions because the justice tasks is the issue of the judicial rules because the crime is among the relatively modern crimes. No search is done by the Iraqi doctrine where we didn't find a doctrine definition for it. We can define it as (A Positive criminal behavior concerning with carrying a firearm regardless of its type during the participation in a demonstration regardless of its types).

### **Second Branch**

#### **The Basis & Legal Nature for the Firearm Carrying Crime During the Participation in the Demonstrations**

First: The Legal Basis for the Crime: The Legal Basis for this crime is represented in the legal texts which it provided as follows:

a) The Constitutional Base: The Constitution states the rights in strengthening the constitutional document and then the legislator places the detailed organizational rules for this right. The Iraqi Constitution stated that the right to the peaceful demonstrating in Article (38/Third) which stated that the Country is committed not to violate the public order and the literatures. Third: The freedom of meeting and peaceful demonstrating which are organized by Law". The text states that the Iraqi Legislator stated clearly about the right to demonstrate and guarantee the right for peaceful demonstrate. He gave great attention to this right and considered it among the main freedoms which must not assault it and provided it a strong protection as it was stated in the constitution and defining its organization through the legislative authority by a law. As for the Egyptian Legislator, he organized this right in Article (73) which stated " The Citizens has the right to organize the General Meetings together with the demonstrations and all forms of peaceful protests not carrying weapons of any type through a statement as organized by the law ..... " Therefore, the Egyptian Legislator guaranteed the freedom of the civil demonstration for the citizens who were not carrying the weapons where he considered the demonstrations among the legal means which express them of what goes in public in our minds. <sup>1</sup>

b) The Basis in the National Laws: The Iraqi Legislator organized

this crime in Paragraph (Four) from Article (24) from the Iraqi Weapons Law Number (51) for Year: 2017 which stated that he is: Punished by imprisonment for a period which doesn't exceed three years and with a fine which is not less than (1,000,000) million Iraqi Dinar and not more than (5,000,000) million Iraqi Dinars for everybody who possessed the firearm and carried it during his participation in demonstrations against the government. The penalty is by imprisonment if carrying the weapon was without permission". This was ordered by the demonstration regulation law in the Iraqi Kurdistan Region Number (11) for Year 2010 in Article (7/ First) which stated that: "Arms are prohibited from possession or carrying by the participants in the demonstration even if they were legally licensed to possess or carry them during the demonstration". The Temporary Alliance Authority Order Number (19) for Year: 2003 also included what is called (Meeting Freedom) in Article (6/1/A) where in any March or meeting, it is prohibited to bring or carry the following items: "Firearm of any Type".

As the Egyptian Legislator, it is regulated by the Weapons Law Number (394) for Year: 1954 in Article (26) which stated "with the non-violation of the second Topic rules repeated from the Penalties Law, the punishment is done by the severe or life imprisonment and a fine which doesn't exceed 20,000 Egyptian Pounds to those who possessed by the self without licensing a weapon from the weapons that they stated in the Two Tables ( 2 & 3 ) from this Law or its ammunition which are used in the stated weapons which occurs in one of the locations of assembly. The Penalty is by execution if possessing or carrying these weapons or ammunition or explosives were means to be used in any activity which violates the general order or security or to influence the ruling system or the constitution principles or with the main systems for the social institute or with the national unity or the social peace". With the exception from the rules of Article (17) from the Penalties Law where penalty for the previously-stated crimes in this article must not be lowered. This Article amended by the Laws 546 for Year 1954, 26 for Year 1978, 165 for Year 1981, 6 for Year 2012". Also, regulated in Law Number (107) for Year 2013 (Law to regulate the right in the meetings and the peaceful demonstrations) where Article (17) from it stated "To be punished by severe imprisonment for a period which is not less seven years and by imposing a fine which is not less than one hundred thousand Egyptian Pounds and doesn't exceed three hundred thousand Egyptian Pounds or by one of these penalties for each individual who

possessed or carried weapons or explosions or ammunitions or burning materials during their participation in the Public Meeting or the Demonstration or the March”.

Second: The Legal Nature for the Crime:

It is necessary to know the nature of this crime either from its Material or Moral aspects and as follows:

a) From its Material Aspect: For each crime there is a criminal behavior which is the first element from the elements of the material aspect. The criminal behavior based on the appearance it takes can be either a positive or negative activity and the positive criminal is an administrative activity executed by the criminal in the external world to achieve a certain desire which violates a prohibition imposed by a criminal base and is called the positive crimes which is the majority of the crimes because the penalties law prohibits more than order. Therefore, the crimes are either positive or negative<sup>2</sup> where when the actor does perform one of the legally un-permitted actions then his behavior is positive. But if the Law ordered committing a certain behavior and the individual resisted to perform this, then this behavior takes the form of the negative criminal behavior. The Refusal is an external behavior which conflicts with what he had to do i.e. not doing what must be done<sup>3</sup>. In this case, the crime is defined as the Negative Crime in which the activity which forms its material corner to be negative which means prohibiting performing an action ordered by the law and those who doesn't do that is imposed to penalty which is resulted in the distinction between the positive and negative crimes which is not imaging getting into the negative crimes<sup>4</sup>. The crime covered by the research is considered among the positive crimes because it requires from the criminal to carry the weapon. The Crimes divides the harm which occurs to the money or the interest covered by the legal protection to harmful crimes and dangerous crimes<sup>5</sup>. The Crime covered by the research is considered as among the dangerous crimes. In terms of the timing of the behavior and its continuation, the crimes are divided into (Temporary Crimes) and (Continuous Crimes). The temporary crimes occur once the occurrence of the criminal behavior but the continuous crime is that crime which consists of a behavior with its continuous<sup>6</sup> nature. Through concentrating on the legal text for the crime, we find that it is considered among the continuous crimes. As for the isolation of the behavior and its repetition, the crimes are divided into (Simple Crimes) and (Habituation Crimes) where the criminal behavior in the simple crime consists of one material action

which can be either positive or negative. As for the habituation crimes, their material pillar consists of more than one action where each action forms a risk but this risk doesn't reach the limit which necessitates the interference of the legislator until it is repeated where the criminal gets used to doing these actions. As for the Time Separator between one action and the other among the actions which constitute the crime then it must not exceed the legally decided on time for the drop of the right in setting up the Lawsuit<sup>7</sup>. The Crime covered by this research, is considered as a crime method and not a habitual crime.

As for the Nature of the Crime in terms of the Consequence, the modern criminal legislations criminalized some actions once the action is committed without waiting to see if the action results in a material criminal consequence. The problem here is that it considered these actions form a danger on the interests which are protected by the law. In contrast to this is (The Harm Crimes) where the legislator requested that an actual harm occurs in the protected interest but we must point out the legal consequence must be achieved in both the harm and danger crimes<sup>8</sup>. The crime of carrying the firearms during the demonstrations is considered among the danger crimes with legal consequence because the legislator didn't request the occurrence of material consequence to be done so as to guarantee the protection for all the individuals in the demonstrations.

b) In terms of the Moral Aspect:

The responsibility of the crime committer varies according to the moral aspect where the criminal is deliberately responsible if he committed his crime deliberately to cause the action and its consequence. But if the actor committed the action because a mistake as the consequence of negligence or not paying attention to the laws and didn't want its consequence, then here we become in front of un-intentional mistake<sup>9</sup>. Concerning the crime covered by this research, it is considered among the intentional crimes which requires the legislator to perform the general intention where the criminal must know the material requirements as he wants to show the criminal behavior and its sequence and consequently the criminal must carry a firearm during the demonstrations.

## **Second Requirement The Crimes Pillars**

For each crime pillars where the achievement of this crime depends on the

existence of these pillars where either they are general corners which is required for all the crimes (intentional and un-intentional) or it may be special pillars in which these special corners which are a must. In the crime covered by the research, it necessitates general and special corners which is something will be covered in tis requirement as follows:

## **Second Requirements General Pillars**

For each crime there are pillars where the achievement of this crime depends on the existence of these pillars which can either be general pillars which are necessary for all crimes (intentional and un-intentional). This can also be special pillars which are concerned with a crime or a group of crimes. The existence of this crime depends on the achievement of these pillars which are a must. In the crime covered by this research, it needs general and special pillars which is something will be covered in this requirement as follows:

### **First Branch The General Pillars**

The General Pillars are the pillars required to achieve all types of crimes with their various natures. These pillars are represented by the Material and Moral Pillar.

First: The Material Pillar: The Iraqi Legislator defined the Material Pillar in Article (28) Penalties “Criminal Behavior by committing an action which was criminalized by the law or prohibition from doing an action ordered by the law”. This behavior takes the form of committing a certain action or stopping from doing it which represents the crime’s material through which the crime rises to the external world<sup>10</sup>. The criminal behavior for the crime covered by the research is represented through the action of carrying the firearm during the demonstrators. Therefore, it consists of the following two factors:

First: The action of carrying the weapon.

Second: The carried weapon is a firearm and this will be shown in the following two paragraphs:

a) Carrying the Weapons: The Iraqi Legislator defined the activity in this crime through carrying the arms<sup>11</sup>. What is meant by carrying the weapon is raising the weapon which is a positive action and therefore the

crime is considered as a positive crime and doesn't occur with a negative activity. It is not possible that the individual carries the weapon unless he only issued a negative activity such as laziness or not paying attention. As for the crimes which are divided by the nature of harm which occurs to the money or the interest under legal protection, into harm crimes and danger crimes. The harm crimes whose consequence is an actual assault on the right or the institute to which the legislator provides criminal protection because the harm means wasting the right or interest protected by the law<sup>12</sup>. The danger crimes has the consequence which is represented by threatening to cause harm to the right or the interest covered the protection where it is setup once the harm danger is achieved<sup>13</sup>. It is considered as exist once he threat which can affects the right protected by the law<sup>14</sup>. The danger standard means the normal flow of the things and its potential for causing the risk<sup>15</sup>. Since this crime i.e. (Carrying the weapons during the demonstrations is among the crimes whose legal form is completed once the criminal behavior is achieved without requiring another element in the material pillar for the crime. It is classified as among the danger crimes and therefore it occurs once the text is violated without waiting to achieve a certain consequence. The criminal behavior resulted in a danger on the right or the interest covered by the legal protection and without imposing the actual harm<sup>16</sup> and there is no initiation in it because the initiation is a dangerous crime and there is no punishment on the risk on threatening the risk<sup>17</sup>.

The Criminal behavior to the crime may be temporary or continuous where the temporary crime are those in which the criminal behavior is an action which occurs and at which by its occurrence the crime ends after a short time such as killing and theft. Whereas, the continuous crimes are those in which the criminal behavior in a status which bears the continuity such as driving a car driving license or carrying the weapons without permission. The continuous crime is achieved with the availability of the case of continuity and continues as long as the case of continuity exists<sup>18</sup>. Therefore, tis crime is among the continuous crimes as long as the weapons carrying individual continued and as long as his participation in demonstration continued.

b) The Carried Item is a Firearm:

The Weapon is any tool which if used, it touches the safety of the body<sup>19</sup> or it is (Anything which can causes injuries or harms regardless if this was used as an assault or defense tool such as a gun or sword or was used for

other purpose such as the kitchen's knives and used as a weapon in the incident itself)<sup>20</sup>. The weapon was also defined as (Any tool utilized by the human being in defending himself or increasing his potential to assault where he adds to his physical potential another force taken from using the tools where using it touches the safety of the victim)<sup>21</sup>. Every tool can add a new potential to the individual's body potential to harm the others and which are called weapons where weapons are of two types<sup>22</sup>:

The nature of the weapon is a tool prepared specifically to be used in the assault on the safety of the body and has no other specialty such as guns and swords, etc.<sup>23</sup> The weapon is any tool prepared to be used in one ordinary purpose especially that weapon to be used to perform certain purposed life affairs such as household or agriculture or industry applications<sup>24</sup>. It is not considered as a weapon unless the criminal meant to be used actually if this becomes necessary<sup>25</sup>. Once the weapon is carried, the crime is then achieved regardless whether in an apparent or hidden form where Text (M/24) from the Iraqi Weapons Law said "... everything which is permit able to carry the firearm " regardless if this was apparent or hidden. Looking at Article (24) from the weapons law, we find that the text distinguish between whether the individual is licensed to carry the weapon or not where it is clear that this distinguish is only in the penalty without affecting the occurrence to the crime where the crime occurs if the criminal was permitted to carry the weapon or not. There is a difference in the punishment where the penalty to the criminal who is un-licensed to carry the weapon, is worse than the penalty of the criminal who is licensed to carry the weapon<sup>26</sup>. The Legislator doesn't condition that the intention of weapon carrying is to use it during the demonstrations because carrying the weapon increases the insistence of the actor and throws fear in the spirit of the victim carrying the weapons where this weakens his resistance<sup>27</sup>. This in turn eases to the victim reaching its targets and committing its crime. This also shows the intention of the actor in using the weapon when there is the need to overcome any resistance which may occurs<sup>28</sup>. Assaulting on those who wants to control it or those who want to separate him and between executing the crime<sup>29</sup>; even if he carries it for an innocent purpose<sup>30</sup>. Looking at the text of Article (24) from the weapons law, we find that it pointed at that the firearm defined by the Iraqi Legislator in Article (1) from the weapons law by saying: "The Firearm: The Gun, rifle, hunting rifle, doesn't included the guns which are used in the sports games"<sup>31</sup>. The text defined the weapon and made it limited to the firearm without other weapons stated by the law; but on the other hand, this weap-

on is not conditioned to be loaded or not by the time of holding it during the demonstrations. It didn't condition that it is usable<sup>32</sup> because the legislator realized the risk of the action and therefore he was limited to just carrying the firearm and considered the risk as achieved by carrying it regardless if the weapon was loaded or not, useable or not where this doesn't eliminate the risk emitted from those who carry the weapons. Therefore, the text was sufficient in using the term ".... Those who were permitted to carry the firearm and who carried the weapon during his participation in the demonstrations"<sup>33</sup> " and "<sup>34</sup>For everybody who carried the weapons by specialization where it is outside the scope of criminalization in article (24 / Fourth) from the weapons law because the text conditioned that the weapon must be a firearm other than the other weapons"<sup>35</sup>. The Legislator as a general rule does not consider the time in which the action is committed but this rule only applies steadiness of their occurrence in a certain time. This action doesn't represent a certain risk and therefore the actor's action must be proved that he committed his action presently otherwise the intention is no longer satisfied<sup>36</sup>. Therefore, it is not sufficient that the individual carries the firearm but it is conditioned that he carries the firearm during his participation in demonstrations against the government. This is taken from the logic of text of Article (24/Fourth) from the weapons law which means that there is a contemporary between carrying the firearm and the participation in the demonstration. It is not sufficient that truth that the criminal carried the firearm before the start of the demonstration or after they are finished but it is conditioned carrying the weapon during the period extending from start if the demonstrations until their completion and that proving carrying the weapons is of concern to the subject judge where it is not conditioned catching the weapon with the criminal but it is sufficient to prove this to the court or hiding or denying it<sup>37</sup>. Considering that most of the related laws prohibited carrying the weapons during the demonstrations<sup>38</sup>.

### **Branch Two**

#### **Special Pillar (During Participating in the Demonstration)**

The Alliance Authority Oder Number (19) for Year 2003, didn't define the demonstration whereas the Public Meetings and Demonstration Law Number (115) for Year 1959, defined the demonstration as (Organize crowd which moves in the squares and public roads for a General Purpose)<sup>39</sup>. As for the demonstrations regulation law in the Iraqi Kurdistan Region it defined the demonstration as (organized or semi-organized col-

lection of people who walks officially in the squares, roads and public locations for a certain period of time; which aims at creating a unified public opinion to achieve a certain target<sup>40</sup>. As for the Egyptian Legislator, he defined the demonstration<sup>41</sup> as “A rallying of individuals which occurs in a public location or moves in the roads and public squares. Their numbers exceed ten for their peaceful expression of their political opinions or needs or requests<sup>42</sup>.”

As for the Jurist, he defined the demonstration as (Rallying a collection of the people to express their feelings either through support or condemnation towards the public authority or some political or economic or social actions<sup>43</sup>. It is also defined as (Meeting of several individuals in the path or a place for expressing a collective determination regardless whether these feelings are political or social or economic or religious through yelling or shouting or others<sup>44</sup>).

The freedom to demonstrate is also defined as the right to gather together temporarily for a number of individuals based on previous arrangement in the roads and squares and public sites to protect the shared interests between them or expressing their opinions by yelling<sup>45</sup>. The demonstration consists of a gathering of individuals where mostly that the site of this gathering is in Public Road to express their feelings or desires and their means in expressing this opinion is through shouting or yelling. The demonstrations is one form of forms of freedom of the expressing the opinion where they must inform the public authorities before starting the demonstration<sup>46</sup>. In general, notification is a group of information provided by the individuals to the concerned administration authority to inform them about their intention to practice a certain activity to enable them to monitor and take the required actions which prevents its harm<sup>47</sup>.

The Demonstration is convened in general path where it is characterized of movement and therefore it is movable and not fixed. The demonstration has no discussion or exchange of thoughts and those who participate in the demonstration have no previous relationships with each other. The nature of the demonstrations is that they more threaten the general security and delays the daily life and for the freedom of the individuals in passing and movements and the legislations which concentrate on the necessity to inform the concerned authorities but it is not agreed on a certain period of time where some were defined with (24) hours or at least (2) or (3) days from the beginning of the demonstration. A license must be obtained from the concerned authority where what is meant by licensing is performing a regulatory procedure issued by the administration and which

gives her the right to inspect the activity required to be performed in advance where it is considered among the means for restricting the individual activity<sup>48</sup>.

The Demonstration differs from the Meeting where the meeting involves a temporary gathering of a group of individuals in a certain location to present and discuss the thoughts<sup>49</sup>. The Meeting is characterized by steadiness and stability in a certain location and it is prohibited to convene in the General Road whereas the demonstration convenes in the public road and is characterized by movement<sup>50</sup>. The Meeting is done quietly and peacefully whereas the demonstrations it has several opinions and thought which are expressed by yelling or shouting and that the relationship between the participating in the meeting are characterized by the existence of a relationship between them in contrast to the demonstration where the participants in the demonstration are characterized of non-existence of previous relationships between them<sup>51</sup>. The demonstration also obstructs the movement of the individuals and delays the services because it complicates the public road in contrast to the meeting which doesn't take place in the public roads. Since the text of Article (24) from the weapons law referred to the demonstrations without specifying the type of those demonstrations but stating that they were against the government i.e. the laws which regulate the peaceful demonstration points at the public demonstration only but excluding the private demonstration which are outside the legal organization<sup>52</sup>. But the target of the demonstration is legal because it is represented by expressing the opinion through the objection to a certain decision or demanding the right of the rights which are allocated by the law or to express their opinion in a certain affair<sup>53</sup>. We call the Iraqi Legislator to raise the phrase (... Against the Government .... From Article (24/Fourth) from the weapons law and the inclusion of all types of the demonstrations and not being restricted to the demonstrations against the government. Some of these demonstrations can be a reaction towards a certain event no against or in favor of the government as there are various types of demonstrations such as political or religious. The demonstrations may be legal i.e. are done according to the procedures showed by the Law<sup>54</sup> where he submits a notification or a request for license to the concerned authority otherwise it is illegal. The demonstrations may be spontaneous i.e. occurs due to a certain event regardless if this was happy or sad which occurs suddenly and resulted in the exit of the audience spontaneously to express their feelings towards their expressions towards what happened which can be organized demonstrations such as a certain purpose such as

requesting to improve the services or the criticism of a certain decision where their organizers pre-pared for it and getting the required improvements. This type of demonstrations is the origin and that Article (38) from the Iraqi Constitution guarantee the freedom of meeting and the peaceful demonstration and prohibiting carrying the weapons or masks during the demonstration. The risk is greater is when the demonstrators carry weapons<sup>55</sup> and prohibits the participants in the demonstrations from violating the public order and security or delaying the public utilities and assaulting the peoples spirits or the special or public properties <sup>56</sup>.

Second: The Moral Pillar (The Criminal Intention):

The Moral Pillar in all the crimes takes one of the following two forms: i.e. (Intention or Mistake). Looking into the text (M/24) from the Weapon Law, we find that the Iraqi Legislator used the expression “ ... and carried it during his participating in the demonstrations ...” where carrying the weapons by itself can only be achieved when the administration is allocated to perform it where crime is intentional and doesn’t occur through mistake. The picture which is taken by the moral pillar is the form of the (Criminal Intention) which is defined by the Iraqi Legislator in Article (33) from the Penalties Law as “The achiever directing his will to committing the action which constitute the crime as a target to the consequence of the crime which took place or any other criminal consequence”. The jurist defined it as (Direction of the criminal activity concerning science and administration toward achieving a crime to be punished by the Law<sup>57</sup> ). Does the criminal intention complete with the Public Intention only or does it need to a special intention in this crime where the public intention is the intention which must be available in all the intentional crimes . The General Intention is the intention which must be available in all the intentional crimes<sup>58</sup>. This is achieved by the availability of its factors i.e. (Science & Will) where it may be sufficient to exist in some crimes without the need to presence of a special intention beside it the General Intention to complete the criminal intention where the Public Intention consists of following two factors:

a) The Knowledge: The Knowledge Factor is one of the Public Intention Factors which are achieved with knowledge of the criminal with the details of the crime which are represented by carrying the weapons where this weapon is a firearm and carrying it must be during the individual’s participation in the anti-government demonstrations. This is sufficient by knowledge of weapons carrying and it is not conditioned by the availability in the intention of using it<sup>59</sup>. The Egyptian Appeal Court stated

in one of its decisions that ( ... If he didn't mean to carry the weapon i.e. using or utilizing it<sup>60</sup> ...). But if an individual put a small gun in the coat of one of the individuals participating in a demonstration without the knowledge of this last person, then the general principle necessitates that the criminal intention surrounds the realities on which the crime pillars are based upon<sup>61</sup>. The Iraqi Legislator confirmed this principle in Article (54) Penalties<sup>62</sup>. But if he carried the weapon by chance as if it happened by chance that an individual passed through the place which was not allocated to demonstrate in it and that he passed this location by chance and he was carrying a firearm; then there is no room to implement this text M(24/Fourth) from the weapons law.

b) The Willpower: The factor of knowledge alone, isn't sufficient to build the idea of the Public Intention where there must be available the willpower factor on his side so can be said that the intention is available<sup>63</sup>.<sup>64</sup> But knowledge proceeds the existence of the willpower factor where the willpower which is directed to achieve a certain purpose where willpower must be issued covering the awareness and realization<sup>65</sup>. The willpower converts the decision to reality and specifies the execution of the thing we want to achieve. This thing to be achieved either takes the form of causing real or probable harm with a legitimate interest protected by the law and defined with (Crime Consequence) with the legal implication for the criminal consequence<sup>66</sup>.

Through a careful look to Article (24/Fourth) we find that the Legislator has clearly stated carrying the weapon during his participation in the demonstrations where once he carries the weapon, this is sufficient for the crime commitment even if he carried the weapon has no relation to his participating with the demonstration as if he was living in a remote area which made him carry the weapon continuously. Therefore, the legislator didn't condition the availability of the Private Intention to complete the Criminal Intention for his crime in addition to the General Intention. The Iraqi Legislator was limited to the Public Intention and didn't condition the availability of special intention in this crime because can in turn narrow the criminal protection which the legislator wants to achieve. Therefore, the law always aims at achieving a wider scope of protection for the legitimate interests.

Among the main rules in the criminal intension must conform to the criminal behavior which is an essential condition to setup the criminal responsi-

bility<sup>67</sup>. The Egyptian Appeal Court stated (Is conditioned to talk frankly and independent in the ruling about the criminal intention in the crime but it is sufficient that it is utilized from it<sup>68</sup>.

### **Third Requirement**

#### **Penalty of Weapon carrying Crime during the Demonstrations**

The Penalty is “The Penalty decided by the criminal law for the interest of the society to execute a judicial rule on those on which responsibility is proved to prevent re-committing the crime by the criminal himself or by others<sup>69</sup>. The Penalty involves the factor of Al-Elam for the criminal which is achieved through reducing its rights or interests. This only applies to the individual with complete validity and his responsibility is confirmed on a certain crime.

The Contemporary concept for the crime, doesn’t only mean an assault on the victim but it is an assault on the society as a whole. Therefore, the penalty isn’t imposed in the interest or to satisfy the victim but it is imposed for the interest of the society in the first place. This resulted is prohibiting to perform the non-eligible penalty because among the objectives of the penalty is to put the criminal on a correct path and not to revenge from him<sup>70</sup>. Carrying the weapons during the demonstrations increases the risk of action and also shows the risk of the weapons carrier personality including the nature of this weapon such as the gun or the rifle because the text conditioned that it must be a firearm<sup>71</sup>. Therefore, the penalty here is to achieve the society’s interest through keeping away any danger which threaten him and to halt the criminal where this is the target of the penalty. The Penalty has more than one type which is something we show in this requirement.

### **First Branch**

#### **The Original Penalty**

In general, the Original Penalty is penalty associated originally to the crime<sup>72</sup> which is the main penalty stated by the legislator and its appreciation to the crime<sup>73</sup>. This must be ruled with it when the criminal condemnation is proved where the judge must state it frankly in the ruling. It must not be imposed on other penalty where the original penalties in the Iraqi Law were stated in Article (85) Penalties<sup>74</sup>. The Original Penalty in this crime is the imprisonment penalty based on Article (24 Paragraph / Fourth) from the Weapons Penalty Number (51) for Year 2017. The Iraqi

Legislator based on the article stated above, differentiated between following two types of penalties over the weapons carrying crime during the demonstrations:

1) If the weapon barrier was permitted to carry the firearm which he carried during his participation in the government demonstrations, then the penalty is through imprisonment for a period which doesn't exceed here years and with a fine which is not less than (1,000,000) Million Iraqi Dinar and doesn't exceed (5,000,000) five Million Dinars. Remember that Article (Fourth / Second) from the weapons law<sup>75</sup>. The Article prohibited carrying the firearm unless according a permission from the issue authority. Knowing that Article Two from the Law excluded the architectural and souvenir weapons from the rules of this law. Article Five from the Law, showed types of these permissions related to the weapons where these permissions were limited only to on the firearm. As for procedures for granting the permission, Article Six granted according to a request submitted to the issue authority where what is meant by the issue authority as stated on Article (1 / Sixth) from above quoted law who is the Interior Minister for the issue of permissions stated in the law after the availability of the conditions required to grant these permissions<sup>76</sup>.

The decided upon Penalty for this crime can be the severe imprisonment when the court rules on the criminal by imprisonment for more than one year but if it was for a year or less then it will be a simple imprisonment based on the Article (88, 89) Penalties. In addition to the imprisonment penalty, there is he fine penalty which is defined by Article (91) "Which is committing the criminal to pay the general budget which is the specified in the ruling ..."<sup>77c</sup>.

2) If he was carrying the firearm which is un-licensed to be carries, then the weapons law enforced the penalty to imprisonment only. Imprisonment here means the temporary imprisonment based on Article (87) from the penalties law which stated that : "If the law released the word prison, then it is meant a temporary prison". Article M(87) Penalties defined the Prison as "Leaving the accused in one of the penalized institutes which is allocated legally for this purpose ...". The Period of the temporary imprisonment is between five and ten years unless otherwise stated by the law<sup>78</sup>. Hence, this crime is in case to strengthen the penalty which is of type of offence because its penalty is the temporary imprisonment where the judge can issue a penalty on the accused by imprisoning for a period which ranges between five years and fifteen years. As for the Egyptian

weapons, its Article (26) penalized either by imprisonment or life imprisonment and a fine which doesn't exceed (20,000) Egyptian Pounds to those who possessed a weapon without any license or weapon from the firearm stated in the Tables numbers (2, 3) or ammunition which are used for the stated weapons or explosives in one of the Means of Public Transport or locations of worships. The penalty is intensified to execution if possessing these weapons or ammunitions to be used in any activity which violates the Public Security or violating the ruling order or principles of the constitution or the national unity or the social peace and the exclusion from the rules of Articles (17) from the Egyptian Penalties Law where penalty isn't allocated for these crimes<sup>79</sup>. As for the right regulation law in the public meetings and the Egyptian Demonstrations Number (107) for Year: 2013 where it was stated in Article (17) that he is punished by imprisonment of a period of not less than seven years and with a fine which is not less than (100,000) Egyptian Pounds and doesn't exceed (300,000) Egyptian Pounds and with a fine or with one of these two penalties for every individual who possessed a weapon or ammunition or fire materials during his participating in the public meeting or the demonstration<sup>80</sup>; and the severe imprisonment according to the Article (14) Egyptian Penalties .... The Penalty of the severe imprisonment mustn't be less than three years and mustn't exceed fifteen years ...<sup>81</sup> “ Therefore, the test stated in the right regulation law Number (107) for Year 2013 is applied in case of processing a weapon during his participation in the demonstration because this was stated frankly concerning holding the weapon during the participation in the demonstration. This way, it is considered as a special text which overcomes the general text. Notice that possessing is achieved by carrying the weapon or without holding it that is the conditions of possession does not include carrying the weapon. Therefore, those who carry the weapons, then they possess the weapons but the person who possesses the weapon doesn't necessarily carries it. In addition to this, the Egyptian Legislator used the word (Weapon) in the right regulation Egyptian law in the general meetings and demonstrations but without defining it by the firearm similar to what was done by the Iraqi Legislator and therefore this includes all types of weapons. We think that the Iraqi Legislator made the penalty as equal whether the criminal was successful in specifying the weapon with the firearm only. The other remark is that the Egyptian Legislator equate in the penalty whether the criminal was permitted to carry the weapon or not which is in contrast to the Iraqi Legislator who distinguished in the penalty between them and as stated above.

## Second: The Secondary Penalties:

The Secondary Penalties means the consecutive and complementary penalties where a separate paragraph is assigned to each of them:

1) The Consecutive Penalties: These Penalties were stated in Articles (95-99)<sup>82</sup> from the Iraqi Penalties Law where Article (95) Penalties defined them as “Attached the victim with the judgment of the law without the need to be stated in the judgment”. These Penalties are (Deprivation from some rights, features & monitoring the Police<sup>83</sup>). Concerning monitoring the police, then the crimes in which they are imposed are limited as shown in Article (99) Iraqi Penalties and Article (28) Egyptian Penalties and that this crime is not among these crimes some rights and features in Article (96) . Therefore, we shall search for deprivation with some rights and features in Article (96)<sup>84</sup> penalties showed that “Sentencing with life imprisonment is followed by the law ruling and from the date of its issue and until releasing the victim from the prison by depriving it from the rights and the following features ...etc. Also, Article (97) Penalties which stated the deprivation of the victim with the life imprisonment from managing his monies or disposing the monies without the permission from the concerned court from the day of issuing the ruling until the completion of executing the penalty. Therefore, there is no scope to implement these articles stated above in case of penalizing the criminal who is permitted to carry the firearm during participating in the demonstration because the maximum penalty is imprisonment for not more than three years. The deprivation from right and features follows the penalty of imprisonment but what deprives the criminal from these rights and features if the criminal was not permitted to carry the weapon and participated in the demonstration. Then, the penalty becomes the imprisonment and consequently, once a ruling is issued to imprison him regardless of its duration, then this is followed by depriving these rights and features stated in Article (96) Penalties from day of issue of the 1) ruling until releasing him from prison. This deprivation occurs during his existence in the prison; and depriving him from managing his monies base on Article (97) Penalties. Concerning the penalty of separation from a job which was stated in the Egyptian Penalties Law within the consecutive penalties where Article (26) penalties defined it as “The deprivation from the job itself and from the salaries allocated to this job”. Whereas the Iraqi Legislator didn't state it within the consecutive penalties.

**The Complementary Penalties:**

The Law mentioned the (Complementary Penalties) in the Article (100 – 102) Penalties but without placing a definition for it. But they conform to the consecutive penalties that they cause original penalty but it differs from it that it doesn't occur to the victim unless this is stated by the ruling that is these penalties can't be imposed unless it is in addition to original penalty which is:

**The Deprivation of Some Rights and Features:**

Article (100) stated that “When the court sentence for the life or temporary imprisonment or imprisoning for a period which doesn't exceed one year as was decided to deprive the victim from the right or more of the stated rights for a period which doesn't exceed two years starting from date of completion the execution of the penalty. This penalty can be imposed on the criminal regardless if the criminal was permitted to carry the weapon or not where the court may find it necessary to prohibit the criminal from some rights and features. That is, can apply the deprivation penalty from the rights and features as a complementary penalty when for example the penalty in the crime involves imprisonment for not more than one year and that the deprivation period doesn't exceed two years starting from date of completion of the execution of the penalty where this penalty is optional and is applied after the completion of execution of the original penalty. In case of the interaction between the deprivation penalty from the similar rights and features which are executed in the right of the criminal the longest period of these penalties where the period of this penalty doesn't exceed two years. After six months from date of exiting from the prison, the criminal can submit a request to the offences Court demanding reducing or cancelling the deprivation period stated by the court decision.

**The Confiscation<sup>85</sup>:** This is the capture of the criminal's money and the transfer of its ownership to the country without any compensation<sup>86</sup> where the Iraqi Legislator pointed at the confiscation in Article (101) Penalties and when ruling for condemnation in an offense without the violation and to rule for the confiscation of the things obtained from the crime or those used in committing the crime or those things which were ready to be used in the crime. This is all done without the violation of the others rights. For example, if an individual borrowed a weapon from other person for the purpose of guarding, but carrying this weapon during his participation in the demonstration, then the weapon here will not be confiscated because

its owner has good intention. Therefore, the confiscation is a financial penalty which is applied on the monies where confiscation can be either general or private where it concentrates on certain money which can be the mean by which the crime is committed<sup>87</sup>.

IN the framework of this crime, the confiscation can be applied it in where the crime is an offence when taken place by an individual who is not allowed to carry the firearm; but considered as an offense when it is committed by an individual who is not permitted to carry the weapon. Article (101) Penalties permitted the court to control by confiscation of the seized items which were obtained from a crime or which was used when committed or were prepared for use provided it doesn't touch with the others rights of good intention<sup>88</sup>. If the weapon is carried during the demonstrations and this weapon is captured and according to the Article (101) Penalties it is permitted to confiscate it even though Article (26) from the Iraqi Weapons Law permitted and stated frankly about the confiscation of the firearm in case of smuggling it<sup>89</sup> which was stated in Article (24/First & Second) of the Law.

Considering the others rights of good intention where the weapon must not be confiscated if it was taken from its owner by theft or without his knowledge or he ignored its use or carrying it during the demonstrations or carrying it during the demonstrations. Here, we can say that it is possible to confiscate the firearm which is carried during the demonstrations based on Article (101) Penalties because it is the General Text and Article (26) weapons which is considered a special text because the weapons law was free of the text covering the confiscation of the firearm in case of carrying it during the demonstrations. This doesn't prohibit the confiscation of the weapons based on the public rules in the penalties law and the Egyptian weapons and ammunitions law which stated the confiscation of weapons which is the subject of the crime on (M/30)<sup>90</sup> and Item (22)<sup>91</sup> from the right regulation law in the general meetings and the Egyptian demonstrations which stated on the confiscation of the materials or monies used in one of the crimes stated in this law. Consequently, if the weapon was seized during the participation in the demonstrations then the court can confiscate the weapon. Also, the Egyptian Penalties Law in Article (30) permitted the judge if penalized with an offence related to the confiscation of the captured items collected from the crime scene and the weapons captured from the crime scene. Consequently, the court can rule with confiscating the weapon in this crime as it is considered as consecutive but not complementary penalty<sup>92</sup>.

### The Spread of the Ruling:

The Court by itself or based on the demand of the Public Attorney to order to spread the final ruling issued by insulting in an offence. Also, based on the victim request concerning the crime of the insult<sup>93</sup>. The weapons Law didn't point out to this and by concentrating on the Article (102) penalties, we can say that there is no scope to implement the penalty of spreading the ruling in this crime because it is considered as an offence if it occurred by an individual who is permitted to carry the weapon. But the text put the condition that it must be an offence to spread the ruling by the court. Remains one case in which if the court found that this crime isn't permitted to carry the weapon, then the penalty is by imprisonment. But if the court found out this crime contains a dangerous threat to the public security, then it can order to spread the ruling by itself or based on an order issued by the General Attorney where the court decides this in each case separately if he found what justifies the issue of a decision concerning the spread of the ruling<sup>94</sup>. If it is proved to the court that carrying the weapon was for the purpose of inciting the fear between the individuals and for the sake of achieving illegals purposes by the criminals.

### Third Branch

#### The Conditions & Excuses for the Crime Penalty

The Conditions are the severed legal conditions and the achieved judicial conditions as for the excuses which mean the pardoned excuse of the penalty. As for the strict legal conditions, as they are the reasons stated by the law and which makes the criminal responsibility great and consequently results in extending the penalty on his right<sup>95</sup>. There are those defined the severe conditions that those conditions specified by the law and which are related to the crime or with the criminal which resulted in strengthening the penalty decided by the crime to more than the upper limit which strengthen the decided penalty on the upper limit decided by the law to the penalty in this crime<sup>96</sup>. The restricted legal conditions in this crime is only a case if the criminal was not permitted to carry the weapon where the penalty is by imprisonment alone according to the last Paragraph of the Article (24) from the fourth paragraph of the Iraqi Weapon Law. The Prison means the temporary prison whose period isn't more than (15) years. As for the general severed conditions which apply to all the crimes which were stated in (13) Penalties where we can rely on it and the penalty is stressed I this crime especially of the criminal exploited his

character as an employee or misused his authority which are obtained from his task in committing the crime<sup>97</sup> where the court can stress the penalty in this crime and can control more than the upper limit for the decided penalty for the crime if the crime penalty is the temporary imprisonment or imprisonment for a period which doesn't exceed (25) years in all cases and ten years if the penalty was by imprisonment<sup>98</sup>. The Egyptian weapons and ammunitions Law intensified the penalty to imprisonment and a fine which doesn't exceed 500 Egyptian Pounds for each of possessed without a license a weapon according to Article (26). As for the weakening judicial conditions where by depending on Article (132 & 133)<sup>99</sup> Iraqi Penalties where the court can reduce the penalty if it sees that the crime conditions or the criminal necessitates the sympathy. This is permissible it issues a ruling by imprisonment alone or the fine alone based on Article (131) Penalties. But if the criminal was no permitted to carry the weapons, then the court has the right to imprisonment for a period which is not less than six months i.e. the Temporary Imprisonment (Article 132 / 3 Iraqi Penalties).

As for the decided upon legal executions for this crime, then the weapons law didn't state about any pardon especially with this crime even if the Article (22) Iraqi Weapons stated pardoning everybody who informed his possession of a weapon without a prevention from penalty. As for the Egyptian Legislator, he was pardoned from the penalty based on the Articles (31 & 32 Repeated) from the weapons and ammunitions law where it is permitted for those to possess weapon in a way which violates the rules of this law on date of working with it if they requested the licenses during one month from date of working with it or they delivered it if were delivered to the concerned authority during a period which ends on 15th of November of Year 1954 before seizing it.

As for the punishment lowering pardons, then if the criminal lacks the realization and or the willpower at time of committing the crime, then this is considered as an excuse which reduces the penalty based on Article (60) Iraqi Penalties. The court can reduce the penalty on the criminal if it found his realization or willpower as insufficient or weak. The court can issue a ruling by the penalty of the imprisonment for a period of not less than six months if the criminal was not permitted to hold the weapon then the penalty will be either by imprisonment or by imposing a fine only . IN addition to the penalties stated in the weapons law, the court can govern by the fines imposed by the Customs duties offices which is something stated by Article (26 / First) from the weapons law and therefore this crime either takes place perfectly or doesn't occur because it is among the formational

crimes.

## The Epilogue

First: The Conclusions:

1) The general pillars alone are not sufficient to achieve this crime but there must be available a pillar specific to it which is carrying the firearm (during the participation in the demonstration).

2) The Criminal Behavior in this crime and based on Article (24 / Fourth) from the weapons law number 51 for Year 2017 is represented by: (Carrying the Firearm) but the law concerned with carrying the weapon didn't and didn't give us a definition for it and that the weapon must be a firearm and nothing else.

3) The Egyptian Legislator in the Right Regulation Law in the Public Meetings, Marches & Peaceful Demonstrations Number (107) for Year: 2013 when criminalized this crime, used the term ( ... got ...) instead of (carried the weapon). We think that possession is of wider scope than carrying the weapon. Also, the Egyptian Legislator didn't specify the weapon but only stated that prohibiting carrying the weapons without defining this weapon.

4) It is a positive crime because it occurs with a positive action and doesn't occur by a negative action i.e. by prohibition. It is also among the continuous crimes and also occurs perfectly once the text is violated.

5) The Crime is achieved once the firearm is carried regardless it this was apparent or hidden or useable or not and whether he possessed or not or whether it was loaded or not.

6) We should coeval between carrying the weapon and the participation in the demonstration.

7) The Laws which regulate the demonstrations make it compulsory for the demonstrations organizers to inform the concerned authorities to make the demonstrate starts before a certain period of time. This period of time was specified by one or two or three days before the start of the demonstration.

8) This crime was found to be on purpose and its moral pillar takes the form of the criminal intention which is complemented with the general intention without the need for the private intention and that the criminal intention must coeval with the action of firearm carrying during the participation with the demonstrations.

9) The Iraqi Legislator is considered as stressing the penalty and

make it as (Imprisonment) when the criminal doesn't carry the weapon; whereas the Egyptian Legislator didn't distinguish between them in estimating the penalty.

10) The Criminal is allocated a consecutive penalty which is the deprivation from the rights and features if the penalty was the imprisonment. This also occurs when the criminal didn't have a permission to carry the weapon (M/24/Fourth) the weapon law. Some of the complementary punishment can be added such as the deprivation from the rights and features and the confiscation of the weapon.

11) Among the pardons which reduce the penalty is if the criminal lacks the manpower according to the Article (60) Penalties.

#### Second: The Recommendations

1) The Iraqi Legislator is invited to replace the criminal behavior in this weapon carrying crime with ( ... Possessed ... ) a weapon because carrying the weapon is limited only to the case of carrying the weapon on the one hand and from the other hand the possession of the weapon is wider term than the term of weapon carrying.

2) We recommend that the legislator to amend Article (24 / Fourth) and criminalizing all types of the weapon carrying.

3) We propose that the Iraqi Legislator to raise the phrase (Against the Government) stated in Article (24/Fourth) from the weapons law and making the criminalization for weapon carrying in all types of the demonstrations regardless of their purposes.

4) Pardoning the criminal from the Penalty if he informed or delivered the weapon to the concerned authorities and intensifying the penalty if the purpose of weapon carrying is using it to violate the security and the public order.

5) Withdrawing the weapon carrying license together with confiscating it for each who carried the weapons during his participation in the demonstration.

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76. Look at Article (6) from the Iraqi Weapons Law Number (51) for Year 2017.
77. Article (6) from the Iraqi Weapons Law Number (51) for Year: 2017 (To know those conditions required to grant a permission for carrying the Firearm”.
78. Look at Article (87) Article (87) Iraqi Penalties which is matched with Article (16) Egyptian Penalties.
79. Look at Article (26) from the Egyptian Weapons & Ammunitions Laws.
80. Look at Article (17) from The Egyptian Public Meetings Regulation and Demonstrations Law.
81. Look at Article (14) from The Egyptian Penalties Law.
82. Look at Articles (24-31) of Egyptian Penalties.
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