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Legal Regulation of Military Missing Persons

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ABSTRACT

The research topic on the missing military and its provisions and I found through the research that the Iraqi legislator did not distinguish between the military and civilian loss only in terms of a advertising missing money and the provisions of the missing wife is unified as well as the Iraqi legislator dealt with the provisions of the return of the missing after the death sentence and fill the legislative deficit by virtue of later.

Keywords: Regulation, military, legislative, provisions.

I. INTRODUCTION

It is known that every human being has a natural personality that is confirmed by his birth alive and ends with his death. However, there is an intermediate state between the two extremes, which is the state in which it is difficult to know whether the person is alive or dead. This is the case of the missing person. Every person has disappeared such that his whereabouts are unknown and it is not known whether he is dead or dead. Alive is considered missing.

This missing person must have money and possessions that do not go out of his possession except by his disposal during his life or by inheritance after his death. How can his money be managed in this case? He is not alive and disposes of himself, nor is he dead until his wealth is divided as his legacy. What applies to his wealth applies to his wife, as she is not the same as a husband who spends on her and takes care of her, nor is she the one whose husband has died from her until the course of her life is determined within the limits of what God Almighty has prescribed. As for the subject of my research, it is specific to the missing person. A soldier who goes missing during or because of military duty.

The Iraqi legislator did not differentiate between the military missing person and the missing civilian person. Rather, the word missing person was used in absolute terms, and it would have been better for him to stipulate in a special article in the law on the care of minors the case of the military missing person.

As for the provisions on missing persons in general, they are not regulated by a specific law,

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but rather by several laws, such as the Personal Status Law, the Law on the Care of Minors, and the Military Retirement Law, in addition to Islamic Sharia, in cases where there is no text, which creates difficulty for the researcher in knowing the provisions on missing persons due to their dispersion in several laws and because the country has been exposed to... Wars and disasters led to the loss of many people without knowing their fate to this day, and this caused the emergence of many problems that needed appropriate solutions. Therefore, I chose this topic, which I divided into three sections: In the first section, I explained the nature of what is missing, as I divided it into two topics: The first is specific to defining what is missing and its types. As for the second, I explain what is absent and distinguishing it from what is lost. As for the second section, I clarify the ruling on loss and its effects, and divide it into two topics: The first is concerned with the procedures for ruling on missing persons, and the second explains the effects of this ruling. As for the third section, it deals with the effects of ruling on the death of a missing soldier and his return alive and dividing it into two demands: The first concerns the effects of ruling on the death of a missing soldier, and the second requirement clarifies the effects of the missing military person appearing alive after his death was ruled.

II. WHAT IS MISSING?

The missing person is the absent person whose news is cut off and whose life or death is unknown. He may go missing in circumstances where death prevails, such as war, or in circumstances where safety prevails. There may be confusion between the concept of the missing person and the absent person, so a distinction must be made between them. Accordingly, I divided this topic into two topics: The first is defining what is missing and its types, while the second is concerned with defining what is absent and distinguishing it from what is lost.

(A) Definition of lost and its types

The missing person is the one who disappears and his trace is cut off and no news is known. It is of two types: either missing in circumstances in which death is likely, such as war, or missing in circumstances in which death is not likely, such as someone missing while traveling for treatment. Based on that, I divided this topic into two branches. The first is specific to defining the missing person. The second explained the types of missing persons.

(B) Definition of missing

in the language: Losing a thing due to loss or loss, i.e. it was lost, and it is also said that the

book, money, and the like were lost, i.e. its loss or lack thereof⁽²⁾In the terminology of jurists, the missing person was defined as the absent person who did not know whether he was alive or dead, so it is not possible to judge him by one of the two matters.⁽³⁾

The Iraqi Civil Code defines missing persons in Article (36/1) as: “Whoever is absent such that it is not known whether he is alive or dead shall be declared missing based on the request of everyone concerned.”⁽⁴⁾ The missing person may be a military man and not a civilian, that is, he goes missing while performing his duty or because of it, and he is the focus of the research. It is defined in the Military Service and Retirement Law, Article (49/7) ((Whoever goes missing and his fate is not known while performing his duty or because of it))⁽⁵⁾.

Here, what I mean by missing civilian is someone with a liberal profession and not an employee or member of the Internal Security Forces or the Ministry of Defense.

(C) Types of missing

The Care of Minors Law No. 78 of 1980, in Article (93) thereof, specifies what is missing between two cases and the following clarification:

First case:

If a person goes missing in circumstances that are likely to be fatal, such as a war, an earthquake, a plane that crashed, a ship that sank, or a house fire, these circumstances are likely to be fatal, so his death is ruled after two years have passed from the date on which he was declared missing.⁽⁶⁾

The second case:

To go missing in circumstances in which death is not likely, such as a missing person on his trip to a country for the purpose of tourism, treatment, or study. In these cases, the death of the missing person is ruled after a relatively longer period of time has passed than the previous one, which is four years, because the suspicion of death is not likely, and this is what the Court of Cassation confirmed in its decision ((it is ruled By the death of the missing person if four years have passed since the declaration of his loss, under circumstances that are not likely to result in death.))⁽⁷⁾In both cases, the judge may not rule on the death of the missing person except after

⁽²⁾Mustafa Ibrahim, *Al-Mu’jam Al-Wasit*, vol. 2, Misr Press, 1961, p. 697.

⁽³⁾Muhammad Jawad Mughniyeh, *Jurisprudence on the Five Doctrines*, 2nd edition, Beirut Press, p. 451.

⁽⁴⁾Iraqi Civil Law No. 40 of 1951, amended.

⁽⁵⁾Military Service and Retirement Law No. 13 of 2010.

⁽⁶⁾Dr. Ahmed Al-Kubaisi, *Personal Status in Jurisprudence, Judiciary and Law*, Part 1, The Legal Library, Baghdad, p. 419.

⁽⁷⁾Court of Cassation Decision Federal Court of Cassation Decision No. 602/First Person/2008 dated 4/13/2008, unpublished.

verifying his life or death by all available means.

Also, the circumstances that are predominant or accompanied by death or not are a matter for the discretion of the competent court, and the court, in turn, is subject to the oversight of the Federal Court of Cassation.⁽⁸⁾

(D) Defining the absent and distinguishing it from the missing

Iraqi law differentiates between the absentee and the missing person and specifies several provisions for each of them due to the difference between them. Therefore, I divided this requirement into two branches: The first is defining the absent person and the second is distinguishing it from the missing person.

(E) Definition of absentee

Backbiting: In the language of distance and concealment, it is said that I am missed by the absence of so-and-so, and your absence has been prolonged⁽⁹⁾.

The absent person, according to the prevailing definition in modern jurisprudence, is someone who left his homeland, willingly or under duress, and it became impossible for him to manage his affairs himself or supervise those who manage them on his behalf, which resulted in disrupting his interests and the interests of others. This applies equally to whether his life was fulfilled or not.⁽¹⁰⁾

Article (85) of the Minors' Care Law No. 78 of 1980 defines him as "a person who has left Iraq or has no known residence there for a period of more than a year without any news of him being interrupted and this has resulted in the disruption of his interests or the interests of others."

That is, the absent person, according to Iraqi law, is either to have left Iraq for a period of more than a year without any news of him being interrupted and this resulted in the disruption of his interests or the interests of others, or to have an unknown place within Iraq for a period of more than a year and this ignorance resulted in the disruption of his interests or the interests of others.

(F) Distinguishing the absent from the lost

Absentee: The missing person is the person whose place of residence is unknown or cannot be reached. The missing person is the absent person who does not know whether he is alive or dead.

⁽⁸⁾Fadel, Dolan, Provisions for the Missing Person according to Sharia, Law, and Judiciary, Baghdad, House of General Cultural Affairs, 1987, p. 72.

⁽⁹⁾Mustafa Ibrahim, Al-Mu'jam Al-Wasit, previous source, vol. 2, p. 674.

⁽¹⁰⁾Ali Sayyid Hassan, Special Provisions for the Missing, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1984, p. 17.

That is, the life of the absent person is verified and his news is known, while the missing person's life is not known from his death and his news cannot be known.

It becomes clear from this that the absent person is more general and comprehensive than the missing person, and that the missing person is a type of absent person. The missing person is necessarily absent, but not every absent person is missing.⁽¹¹⁾ There are other differences:-

1. It is not required for a missing person to be fully competent. It is possible that a person lacks or lacks legal capacity, while an absent person is a person with full legal capacity. This is clear from the definition of the absent person in Article (85) of the Law for the Care of Minors previously mentioned by saying ((the person who left Iraq)) i.e. Of his own free will, he left.
2. What matters is ignorance of the condition of the (missing) person, such that he does not know whether he is hopefully alive or dead, while the absent person is ignorant of his place of residence, meaning his life is certain.⁽¹²⁾

III. RULING ON LOSS AND ITS EFFECTS

The Personal Status Court has jurisdiction to issue a ruling on loss if the missing person is a Muslim, and the Personal Matters Court if the missing person is a non-Muslim. The issuance of the ruling has implications for the missing person's wife and his property. Therefore, I divided this topic into two topics: The first deals with the procedures for ruling on loss, and the second section deals with the effects of this ruling.

(A) Loss ruling procedures

The loss is announced by a decision of the competent court or by a decision of the Minister of Defense or the Interior. There are three ways to announce the case of loss, so I divided this requirement into two branches: In the first, I explained the announcement of the loss, but in the second, I devoted it to explaining the methods of announcing the loss.

(B) Announcement of loss

The purpose of announcing the loss is to calculate the period necessary for the missing person to be considered dead, which is either two or four years depending on the circumstances of the loss, as explained in Article (93) of the Law on the Care of Minors ((aforementioned)), and Article (87) of the Law on the Care of Minors stipulates: "The case of the missing person is

⁽¹¹⁾Dr.. Ismat Abdul Majeed Bakr, *Legal Provisions for the Care of Minors*, National Library, Baghdad, 1989, p. 69.

⁽¹²⁾Judge Hassan Odeh Aboudi Al-Ukaili, *Rulings on the Missing*, a specialized study, Library of the Judicial Institute, 1986, p. 23.

announced by a court decision, and the decision of the Minister of Defense or the Minister of Interior takes the place of the court's decision regarding members of the armed forces and internal security forces. The announcement is canceled if evidence of the life of the missing person appears." This is what the Court of Cassation confirmed in its decision ((that what An issue issued by the Minister of Defense confirming the loss of members of his ministry is equivalent to announcing their loss))⁽¹³⁾This decision is consistent with what the Iraqi legislator said, but we note that the courts are not unified in their decisions. Sometimes they consider the decision issued by the Minister of Defense or Interior to be an announcement of loss, and at other times they do not consider it as such, as the Court of Cassation went in a different direction than the aforementioned decision, as it emphasized the "The Minister of Defense issuing a statement confirming the loss of one of his members does not replace the necessity of announcing his loss."⁽¹⁴⁾It would have been better for them to unify their decisions and consider it as a declaration of loss, as the text of Article (87) of the Law on the Care of Minors was clear and unambiguous, as the decision of the Minister of Defense or Interior was considered a decision issued by the court.

(C) Advertising methods

There are three ways to declare a missing person as follows:

1. If the missing person is a soldier, then the status of the missing person will be announced from the department of the missing person to which he belonged before his loss, such as the Ministry of Defense and its directorates ((Staff Administration, Personal Services)) or the position of the movements issued by the military regiment to which the missing person was affiliated and recorded in official books or from the Ministry of Interior, and this What was confirmed by the Court of Cassation in its decision ((The date of the movement's position issued by the Minister of Defense regarding the loss of one of its members is considered the beginning of the validity of the period)). The procedures for announcing the loss of a military member affiliated with the Ministry of Defense or the Interior differ from the loss of a civilian, and as explained in Article (87) of the Minors' Care Law precedent. The remembrance.

With regard to a missing military person affiliated with the Ministry of Defense, the Military Criminal Procedure Law No. (30) of (2007) stipulates in Article (Nine/First Paragraph) that

⁽¹³⁾Court of Cassation Decision Federal Court of Cassation Decision No. 519/First Person/2009 dated 5/14/2009, unpublished.

⁽¹⁴⁾Court of Cassation Decision Federal Court of Cassation Decision No. 710/First Person/2013 dated 3/5/2013, unpublished.

“The Minister of Defense shall issue an order to form an investigative council in the military unit to which the missing person belongs to verify From the event of his loss, the necessary recommendation is issued and the matter is submitted to the Ministry of Defence/Army Chief of Staff/Administration Department, and after completing the necessary procedures and approval of the legal consultation, the Minister of Defense issues his decision to lose the soldier who was a member of his ministry)).

As for the missing person affiliated with the Ministry of the Interior, an investigative council is also formed to confirm and investigate the case of loss and the circumstances of the loss, and the matter is submitted to the Minister of the Interior for approval and issuance of the loss decision, which is considered an announcement of the state of loss.⁽¹⁵⁾.

2. The other means of announcing the loss is the official crime, based on a letter issued by the Personal Status Court and in accordance with Article (87) of the Law on the Care of Minors mentioned above.⁽¹⁶⁾.
3. The court also considered that the argument of quarantine and value is considered a declaration, and its date was considered a principle for the validity of the period stipulated in Article (93/2) of the Law on the Care of Minors, as the Court of Cassation considered in one of its decisions ((The date of issuance of the argument of value for the missing person as a principle for the case of announcing the stipulated loss). In Article (87) of the Minors’ Care Law)⁽¹⁷⁾We also suggest that websites be officially adopted as a means of announcing the loss, and that their date be considered as a principle for the validity of the period.

(D) Effects of a loss judgment

The missing person is considered alive according to the rulings that harm him, which depend on proving his death. His wife is not married, his money is not divided among his heirs, and there is no separation between him and his wife before the situation arises and after the expiration of the period stipulated in Article (93) of the aforementioned Law for the Care of Minors or the establishment of Conclusive evidence of his death, and based on that, I divided this requirement into two sections: The first concerns the effect of the loss ruling on the missing person’s assets, and the second concerns the effect of the loss ruling on the wife of the missing

⁽¹⁵⁾See Ministry of Finance Instructions No. (1) of 2010 regarding laws (No. 20 of 2009) regarding compensation for those affected by military operations, military errors, and terrorist operations.

⁽¹⁶⁾Court of Cassation Decision Federal Court of Cassation Decision No. 181/First Person/2010 dated 11/10/2010, unpublished.

⁽¹⁷⁾Court of Cassation Decision Federal Court of Cassation Decision No. 1584/First Person/2010 dated 12/22/2010, unpublished.

military man.

(E) The effect of the loss ruling on the funds of missing military personnel

The Iraqi legislator did not differentiate between a military missing person and a civilian missing person, as the legal texts were absolute regarding the management of the missing person's money. If he left an agent on his behalf before he went missing, then the agency continues throughout the loss. The agency does not end except with the death of the principal or his dismissal. Therefore, it continues until the death of the missing person is announced.⁽¹⁸⁾ This may cause harm to the relatives of the missing person. Because the agent may act in harmful ways, we therefore suggest canceling the agency when the state of loss is announced. However, if the missing person did not leave an agent on his behalf before he went missing, the court will appoint a guardian who will be in charge of preserving and taking care of his money, provided that the guardian must be of good reputation and conduct, a sane adult, and that he does not dispose of the missing person's money. This disposal is in the interest of the missing person or his family, such as if the property of the missing person is quick to perish, such as fruits, or needs to be maintained, such as cars and the like. Keeping it will cause harm to the missing or absent person, and selling it will bring a benefit to them. This is what the first paragraph of Article (90) of the Minors' Care Law states. "Edit The funds of the missing or absent person when a guardian is appointed over them and their funds are managed in the same manner as the funds of a minor." Article (91) of the same law permits the sale of movable property belonging to the absent or missing person if it is perishable or requires expenses for the purpose of preserving it.⁽¹⁹⁾ It did not address the sale of the property, and the legislator had to permit the sale of the property, a fortiori, after obtaining permission from the Minors' Welfare Department, similar to what the legislator permitted to manage a minor's money in Article (55) of the same law, where it permitted the sale of a minor's property with the approval of the Minors' Welfare Department.

The Minors' Care Directorate carries out the usual management work if the missing person does not have a guardian or agent entrusted with the necessary tasks for managing and preserving the money.⁽²⁰⁾

As for the salaries and allowances of the missing person, if he is an employee, they are allocated to his wife and children and disbursed to them directly by the competent authority. They are not

⁽¹⁸⁾Dr.. Adnan Sedkhan Al-Husseini, *Rulings on the Absent and Missing in Sharia and Law*, Al-Isami Press, Egypt, 2009, p. 38.

⁽¹⁹⁾Fadel Dawarat, *Rulings on the Missing Person in Sharia, Law, and Judiciary*, previous source, p. 148.

⁽²⁰⁾Ahmed Hassan Al-Taha, *Rulings on the Missing and the Captive in Islamic Sharia and Law*, 1st edition, Baghdad, Dar Al-Resalah Press, 1986, pp. 29 et seq.

sent to the Directorate for the Welfare of Minors, or they are allocated to the parents of the missing person if he is single, taking into account the legal texts contained in that, and the disbursement continues until his death is proven in fact or by decree.⁽²¹⁾.

As for the legacy of the missing person, it leads us to research from two aspects:

the first: The inheritance of others from the missing person. Article (96) of the Law for the Care of Minors stipulates that “the estate of the missing person shall be divided upon his death in accordance with Article (95) of this law among his heirs present at the time of his death ruling,” where Article (95) is considered “the day the death ruling is issued.” The missing person has a date of his death)) It is clear from this text that the estate is not distributed or divided until the judge issues a ruling on his death, and it would have been better for the Iraqi legislator to explicitly mention that in the law on the care of minors.⁽²²⁾.

As for the second aspect: It is the inheritance of the missing person from someone else, so the Iraqi legislator did not stipulate that. Rather, he was satisfied with what the majority of jurists have said, which is that the missing person should not bequeathed to someone else as long as he is missing. Rather, a share of the estate of his legatee who died during his loss is reserved for him until his condition becomes clear. If he appears alive, he is entitled to his share that was allocated. For him from the property of his inheritor, and if it becomes clear that he is dead or the judge rules that he is dead, this share will be returned to the heirs of his decedent. However, if the ruling on the death of the missing person was issued at a previous date, then the missing person is not entitled to the share because it is proven that he died before the death of his legator.⁽²³⁾.

(F) The impact of the ruling of loss on the wife of the missing military man

The Iraqi legislator did not mention a text that addresses or regulates the conditions of the wife of the missing person, except for what was stated in Article (43/4) of the amended Iraqi Personal Status Law No. 881 of 1959, which stipulates that it gave the wife the right to request separation from her missing husband after four years have passed since his loss, and the court must It is necessary to prove the continuation of the loss in the same way in which his loss was proven. Then the court issues a ruling of separation. The wife of the missing person shall observe the waiting period after the ruling of separation for four months and ten days. After the waiting

⁽²¹⁾The dissolved Revolutionary Command Council Resolution No. (88) of 1987.

⁽²²⁾Ahmed Al-Khatib, Summary of the Provisions of Inheritance in Islamic Jurisprudence and Iraqi Law, 3rd edition, University of Baghdad, 1978, p. 232.

⁽²³⁾Judge Muhammad Hassan Kashkul, Abbas Al-Saadi, Explanation of the Personal Status Law, Legal Library, Baghdad, p. 424.

period has passed, she may marry if she wishes.⁽²⁴⁾ We note that the Iraqi legislator has failed greatly against the wife; Because remaining without a husband for four years harmed her rights, so how can her fate be linked to the fate of a person whose life or death is unknown during this period?

Therefore, we suggest reducing it to two years because it is more appropriate and to reduce the harm to the wife. The legislator also gave the right to the wife to request separation from her missing husband before consummation. This right is absolute, so that the wife has the right to request separation before consummation, provided that the wife returns to the missing husband or his guardian everything she has received. The dowry and all the money he incurred and other expenses were spent for the purposes of marriage⁽²⁵⁾.

The wife also has the right to demand alimony in a judicial manner, and the judge may award her alimony after verifying the existence of the marriage in fact or in a decree and her swearing an oath to prove that her husband did not leave her any money to spend on herself and her minor children. If he did not leave her any money, she has the right to file a lawsuit against the missing person's representative or the trustee who The judge appointed him to demand alimony⁽²⁶⁾. However, if the missing person has no money and the wife is insolvent, she has the right to borrow in the husband's name in case of need and after obtaining the judge's permission. She has the right to do so on two conditions: the first - that the wife requests that, and the second - that she borrow from someone who is obligated to support her if she were not married, even if he has the financial ability to support her. Lending to her. In that case, the lender has the right to recourse to the husband only when he returns. However, if this person does not exist, she may borrow from a foreigner after the judge gives her permission to do so. The foreigner has a choice between recourse to the wife for what he lent her or between recourse to the husband, provided that the wife is not able to work, even if There was no one to lend her money and she was unable to work, so the state committed to supporting her⁽²⁷⁾.

IV. THE EFFECTS OF RULING ON THE DEATH OF A MISSING SOLDIER AND HIS RETURN ALIVE

The court may rule the death of the missing person if there is conclusive evidence of his death

⁽²⁴⁾Court of Cassation Decision Federal Court of Cassation Decision No. 1615/Second Personal/2010 dated 12/19/2010, unpublished.

⁽²⁵⁾Judge Muhammad Hassan Kashkul, Abbas Al-Saadi, Explanation of the Iraqi Personal Status Law, previous source, p. 162.

⁽²⁶⁾Dr.. Ahmed Al-Kubaisi, Personal Status in Jurisprudence, Judiciary and Law, previous source, p. 303.

⁽²⁷⁾Mohsen Naji, Explanation of the Personal Status Law, 1st edition, Baghdad, Al-Rabita Press, 1962, pp. 343 et seq.

or if four years have passed since he was declared missing in circumstances that are not likely to be fatal. If two years have passed since he was declared missing in circumstances that are likely to be fatal, the competent court shall issue a ruling.⁽²⁸⁾ A decision on his death and that this decision is subject to mandatory cassation, meaning it must be cassated, either by the opposing party or by the court that issued the ruling. The decision may not be implemented and take effect except after it becomes final with the death of the missing person, based on the provisions of Article (309) of the Civil Procedure Code.⁽²⁹⁾ In the first and second paragraphs, the case of loss ends in three cases: if the death of the missing person is proven to be true, or if the judge rules that the missing person is dead, or if the missing person appears alive and returns, and this case has an impact on the wife of the missing person and his money, so I divided this topic into two topics: The first - the effects of ruling the death of a missing soldier, and the second - the appearance of the missing person alive after his death was ruled.

(A) Effects of the death sentence for a missing soldier

The issuance of a death sentence for a missing soldier leaves effects on his wife and his money, so I divided this request into two branches: The first concerns the missing person's money and the second concerns the missing person's wife.

a. The effects of the death sentence of the missing person on his money

The property of the missing person is distributed to his heirs present at the time of his death ruling according to the text of Article (92) of the Law on the Care of Minors mentioned above. As for his heirs who died after his loss, i.e. during his absence and before the ruling was issued, they do not inherit. Because the ruling on death is an originator, not a revealer, so it is not based on what came before that⁽³⁰⁾ This applies to a missing person whose death was ruled after four years or after two years, according to the details contained in Article (93/2) of the aforementioned law.

As for the missing military person, we see the necessity of making the period of loss only one year by a decision issued by the Minister of Defense or Interior instead of what is stated in

⁽²⁸⁾Missing persons cases fall within the jurisdiction of the Personal Status Court in the region where the missing person went missing.

⁽²⁹⁾The first and second paragraphs in Article (309) of the Iraqi Civil Procedure Law No. 83 of 1969 stipulate that:
1. Judgments issued against the treasury, endowments, children, absentees, the insane, the mentally ill, or others lacking legal capacity, judgments including the prohibition of a marriage contract, as well as arguments considered to be rulings, such as arguments related to the replacement of endowments and permission for a consensual division, and it is distinguished by the concerned parties. The judge must send the file as soon as possible. To the Court of Cassation to conduct discriminatory audits on it.

2. The rulings and arguments mentioned in the previous paragraph shall not be implemented unless ratified by the Court of Cassation.

⁽³⁰⁾Judge Hassan Odeh Al-Ukaili, *Ahkam Al-Missing*, previous source, p. 122.

Article (93/2), because the circumstances of the loss of a military person are devastating, in which the proportion of his death outweighs his life, and his donation is not special compared to the missing civilian who goes missing in circumstances. His death does not prevail. As for a missing person whose death is ruled due to conclusive evidence of his death, the court may, if there is conclusive evidence, prevail in a way that calls for reassurance about the truth of the missing person's death, such as if his body arrives from the country of the loss with documents bearing the true date of death, or the concerned parties present with personal evidence of two people confirming that they were present. The missing person dies on a specific date, so his estate is divided among the heirs present on the date on which the death occurred⁽³¹⁾; Because the judge's ruling is a revelation of death and not its origin.

If four years have passed since the announcement of the loss and the existence of the missing person has not been confirmed and he has no apparent heir, the Minors' Welfare Department must obtain the approval of the Minister of Justice to register his funds in the independent account.⁽³²⁾This is what is stated in Article (98/1)⁽³³⁾From the Law on the Care of Minors, the estate of a missing person in general is not distributed except after executing his will and paying his debts.

b. The effects of the death sentence for the missing soldier on his wife

After the death sentence of the missing person is issued, his wife must observe the waiting period for the death, which is four months and ten days, and after the end of the waiting period, she can get married. However, if she is pregnant, her waiting period ends on the day she gives birth.

The court must alert the wife to the necessity of adhering to the legal waiting period, as this procedure is related to permissibility and inviolability⁽³⁴⁾.

(B) Effects of the missing soldier appearing alive after his death was ruled

The missing person may appear alive after a decision is issued by the competent court declaring his death and return to his family and homeland. He may appear alive before his death is ruled. If he appears alive before his death is ruled, his money that belonged to him before his loss and

⁽³¹⁾Ahmed Al-Khatib, Summary of Inheritance Provisions in Islamic Jurisprudence and Iraqi Law, previous source, p. 242.

⁽³²⁾Dr. Ismat Abdel Majeed Bakr, Legal Provisions for the Care of Minors, previous source, pp. 200-201.

⁽³³⁾Article (98/First) of the Amended Minors' Care Law No. 78 of 1980 stipulates: "If the period stipulated in the second paragraph of Article (93) of this law has passed for the missing person and his existence has not been confirmed and he does not have an apparent heir, the Minors' Welfare Department must obtain approval. The Minister of Justice to register his funds in the independent account).

⁽³⁴⁾Ahmed Hassan Al-Taha, Rulings on the Missing and the Captive in Islamic Sharia and Law, previous source, p. 69.

the shares or shares left to him that came as an inheritance from his heirs during his loss are taken. He has the right to exercise his marital rights, but if the missing person appears alive after the competent court has issued a decision regarding his death, then this appearance has implications for his wife and his money, and based on that, I divided the request into two branches: The first is about the impact of the missing person's appearance being alive on his money, and the second is about the impact of the missing person's appearance being alive on his wife⁽³⁵⁾.

- a. The impact of the appearance of the missing person alive after his death was ruled on his money

The Iraqi legislator addressed the issue of the property of the missing person if he appears alive after his death was ruled in Article (97) of the Care of Minors Law No. (78) of 1980, as follows: ((The property of the absent or missing person shall be returned to him upon his presence or delivered to his heirs when his death is proven, in fact or by law, and shall apply. It is subject to the provisions of Article (95) of this law). That is, if the missing person returns after his death is ruled, his money will be returned to him upon his presence. This means that the missing person will recover what remains of his money in the hands of his heirs. As for what they consumed, nothing will be recovered from him. Because their action was based on a valid judicial ruling, they are not liable⁽³⁶⁾ However, if the heirs dispose of the money, in whole or in part, with or without compensation, such as when the heir buys a house for the amount he inherited from the missing person, then we see that the house must return to the missing person if it is proven that the purchase of the house was for the amount he inherited from him, and the missing person can prove his claim with all evidential evidence because it is a fact. Materially, Article (98) of the aforementioned law allows the Minister of Justice to return the missing person's money, if any, or its value upon his presence within five years from the date of his decision to register it in the independent account. However, this article is unfair to the missing person. Because if he returns after five years, his money will not be returned to him, neither in kind nor in value, noting that this money does not go to the state treasury, but rather to the authority of the Ministry of Justice to spend from it what achieves the purposes and objectives of the Minors' Care Law.⁽³⁷⁾

⁽³⁵⁾Dr.. Ahmed Al-Kubaisi, *Personal Status in Jurisprudence, Judiciary and Law*, previous source, p. 421.

⁽³⁶⁾Dr.. Ahmed Al-Kubaisi, *Personal Status in Jurisprudence, Judiciary and Law*, previous source, p. 421.

⁽³⁷⁾Ahmed Hassan Al-Taha, *Rulings on the Missing and the Captive in Islamic Sharia and Law*, previous source, p. 134 et seq.

- b. The appearance of the missing person alive after his death was ruled on his wife

If the missing husband returns after his death has been ruled and the wife has completed her waiting period and married another man, then if the latter was not aware of the life of the missing person and the marriage contract was not concluded during her waiting period with the first one, then the marriage contract is considered valid. Because Islamic law gives the judge the authority to take legitimate measures, reveal the condition of the missing person, and then issue what he deems appropriate⁽³⁸⁾As for the position of Iraqi law, there is no provision in the Personal Status Law regarding that. Rather, the legislator avoided that shortcoming by issuing the dissolved Revolutionary Command Council's Resolution No. 62 of 1994 in the third paragraph of it, stating: "If the missing person returns, his wife will continue to be his unless she remarries and the second consummation takes place." The fact that he does not know the life of the first)).

We believe that this text is appropriate for logic and justice, as it stipulated that the second husband not know about the life of the first husband, that is, it assumed good faith. It also filled the legislative deficiency contained in the amended Iraqi Personal Status Law No. 188 of 1959.

V. CONCLUSION

(A) Results and recommendations:

Results:

1. The missing person is the absent person whose life or death is not known.
2. The Care of Minors Law No. 78 of 1980, in its Article 93, defines the missing person as between two cases: the first case - he goes missing in circumstances where death prevails, and his death is ruled after two years have passed from the date of announcing his loss, and the second case is that he goes missing in circumstances where death is not common, such as a missing person on a trip to treatment. Or study, and his death is pronounced four years after he was declared missing.
3. Absentee - is a person who has left his homeland or whose place of residence is unknown for a period of more than a year without interruption of news of him, resulting in the disruption of his interests or the interests of others.
4. The absent is more general and comprehensive than the missing.
5. The loss is announced either by a decision of the competent court or by a decision of the Minister of Defense or Interior if the missing person is a military man.

⁽³⁸⁾Dr.. Mustafa Al-Rafi'i, *Personal Status in Islamic Sharia and Lebanese Laws*, 1st edition, Beirut, 1983, p. 211.

6. The missing person is considered alive subject to the rulings that harm him, which depend on proving his death. His wife is not married, his money is not divided among his heirs, and there is no separation between him and his wife before the situation arises.
7. The Iraqi legislator did not differentiate between military and civilian missing persons, but rather the provisions were absolute.
8. The wife has the right to request separation from her husband during the period of loss, and the judge has the right to rule for her after she waits for four years, and she must adhere to the legal waiting period after the ruling.
9. The estate of the missing person is divided after his death is ruled, and the day of the missing person's death ruling is considered the date of his death - among his heirs present at the time of his death ruling.
10. After the death ruling is issued, the wife of the missing person must adhere to the legal waiting period of four months and ten days.
11. In the event that the missing person returns alive, the ruling shall be deemed to be his death, and his money shall be returned to him upon his presence or delivered to his heirs when his death is proven, in fact or by default.
12. If the missing person returns, his wife will be deemed dead and his wife will return to him unless she marries another man, and consummation will take place with her on the condition that the latter does not know about the former's life.

Recommendations:

1. The Iraqi legislator did not differentiate between a missing military man and a missing civilian. It would have been better to stipulate that the loss of a military man is a case in which death prevails and his death decision is issued one year after his loss was announced, because this period is appropriate for the circumstances of his loss.
2. The agent's continuation of his agency after the ruling of loss may cause harm to the families of the missing person. Therefore, it was suggested that the legislator stipulate that the agency be terminated upon the issuance of the loss declaration, contrary to the rule of terminating the agency contract upon death or removal. Because this may make the agency last for two or four years until the death ruling is issued, and this is a long time during which the agent may dispose of the missing person's money in harmful ways.
3. We also see that the Iraqi legislator did not explicitly stipulate the inheritance of the

missing person from others and relied on the opinions of the majority of jurists, and it would have been better for him to stipulate that.

4. Likewise, the Iraqi legislator stipulates in Article (98) of the Law for the Care of Minors that the property of the missing person must be returned upon his return after his death has been ruled, but within five years we suggest not stipulating a specific period. Because the return of the missing person after five years deprives him of recovering his money.
5. We see the collection of missing provisions in a unified law instead of dispersing them into several laws, which creates difficulty for researchers and workers in the field of law to become familiar with them.
6. We also noticed that the Iraqi legislator stipulated that the wife of the missing person must request separation after waiting four years, and that this is unfair to the wife's rights. Therefore, we see a reduction in the period for requesting separation.
7. We also suggest that the Iraqi legislator rely on announcing the loss on electronic sites and consider it a principle for the validity of the legally stipulated period of loss.

Laws and instructions:

1. Iraqi Civil Law No. 49 of 1951, amended.
2. Civil Procedure Law No. 83 of 1969, as amended.
3. Law on the Care of Minors No. 78 of 1980, amended.
4. Iraqi Personal Status Law No. 188 of 1959, amended.
5. Military Criminal Procedure Law No. 30 of 2010.
6. Ministry of Finance Instructions No. (1) of 2010.

Unpublished decisions:

1. Federal Court of Cassation Decision No. 602/First Person/2008 dated 4/13/2008.
2. Federal Court of Cassation Decision No. 519/First Personal/2009 dated 5/14/2009.
3. Federal Court of Cassation Decision No. 181/First Personal/2011 dated 11/10/2010.
4. Federal Court of Cassation Decision No. 1615/Second Person/2010 dated 12/19/2010.
5. Federal Court of Cassation Decision No. 1584/First Person/2010 dated 12/22/2010.
6. Federal Court of Cassation Decision No. 710/First Personal/2010 dated 11/10/2010.

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