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## CONTEMPORARY CRIMINAL LEGISLATIVE POLICY TRENDS TOWARDS COVID-19 DISEASE

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### **ABSTRACT:**

Contemporary legislative policy towards Covid-19 disease in most countries, including the Jordan and the UAE, has tended towards two directions, the first of which is the criminalization of reluctance to inform about infection with the disease, and the second trend is the criminalization of transfer disease infection to individuals by amending its private laws or by issuing instructions or orders to include Covid-19 from an infectious disease, and obligating individuals to take health prevention measures.

As for the Iraqi legislator, he was not successful in his criminal policy to confront this disease, which was considered by the World Health Organization as a global pandemic, so I see the need to amend the Public Health Law in a manner consistent with the severity and the severity of its effects, especially its health, social and economic effects, to be in line with the contemporary penal policy trends of most countries. The world - if not all of them - by explicitly the criminalization of transmitting disease infection to individuals, and also proposing tightening the penalty for refraining from reporting disease infection to limit its spread.

### **INTRODUCTION**

The World Health Organization announced on February 11, 2020 that the disease caused by the emerging corona virus will be called (Covid-19), and this name was chosen in order to avoid inaccuracy, as it does not refer to a geographical location, or an animal, a person or a group of people, and after a month it described WHO This disease is a global pandemic, it is a new disease that challenges its control and is characterized by its rapid global spread, and it is a communicable viral disease and is transmitted in multiple ways such as contact, approach, injection of a person with the Corona virus, and contaminated blood transfusion that contains the virus, as the emerging corona virus infects

the human respiratory system. It causes infection with this disease, and then eliminates those with weak immunity [1].

Given the seriousness of the Covid-19 disease on public health, all countries, including Iraq, have taken all preventive measures in order to confront this dangerous disease, such as curfews, suspension of activities and studies, closure of borders and aviation, and home quarantine ... etc.

And the importance of research stems from the severity of the Covid-19 disease, which is characterized by its rapid transmission on the one hand, and the ease of spread on the other hand, and the lack of in-depth and comprehensive legal studies of the subject.

The research problem can be explained in two questions. The first is what are the contemporary criminal legislative policy trends in Iraq and some countries towards Covid 19 disease? And the second question: Was the criminal legislative policy in Iraq and comparative law commensurate in terms of criminalization and punishment with the severity of this disease on public health and the speed of its spread?

#### ***The criminalization of Refrain from reporting infection with Covid-19 disease***

Refraining from reporting means The abstention of those who are legally bound to inform the competent authorities of the occurrence of a crime punishable by law, which is either verbal or written [2].

***Pillars of the crime:*** the crime has a special pillar, and general pillars.

#### ***The private pillars (the character of the perpetrator)***

The comparative laws stipulated the availability of a special characteristic for the perpetrator, but they differed in this capacity. The Jordanian Public Health Law No. (47) of 2008 went to obligate every person to immediately disclose his or her injury or injure someone else to the authorities the competent [3], every doctor who supervised or participated in the treatment of an injured person must inform the director in his area, as well as the medical laboratory official [4].

The UAE legislator has defined Federal Law No. (14) of 2014 regarding the control of communicable diseases, certain groups who have the capacity to inform when they know that a person has been infected or suspected of being infected, and they are (doctors, pharmacists, medical professionals who are not doctors in the government and private sectors, and the notification of the infection is In order to work within 24 hours) [5], it is also required to inform the Ministry of Health or nearest a health authority about the injury or suspicion on (the person who comes into contact with the injured, the direct official in the place of work or study of the injured, the captain of the public vehicle, the captain of the ship or plane If the injured or suspect is traveling on board the vehicle, ship or plane, the penal facility official, the camp official, or any other grouping in which the patient or the suspect is present, as well as the person carrying out the criminal investigation [6].

As for the Iraqi legislator, Public Health Law No. (89) of 1981 (amended) requires the treating physician, and every citizen suspected of having a case of diseases subject to the International Health Regulations, informing the nearest health institution of the state immediately, and the latter must take the necessary immediate measures including informing the competent health authority in the ministry [7], with medical and health professionals working in official institutions must inform the higher health authority immediately and of any available means of communication and within (24) hour of its discovery. Medical and health professionals working in the private sector must also inform The nearest official health institution, immediately and within (24) hour of its discovery [8].

### ***The General pillars of the Crime***

For the crime of refraining from reporting an infection with Covid disease - 19, two pillars are the physical and the moral:

#### ***The physical pillar of the crime***

It is intended to be every criminal act or issued by a person, whether that criminal behavior is positive or negative behavior that leads to the achievement of a result that violates one of the legally protected rights [9],

The criminal behavior in this crime is negative behavior, which is failure to inform the competent authorities about the injured or suspected of having a Covid-19 disease. This means, in order for the criminal behavior to be realized in this crime, certain conditions must be met, That there be a legal duty that the person is obligated to, which is to inform about the injury, and that he who is bound by a legal duty refrain from performing this duty, and that that person is able to perform the legally binding duty.

As for the criminal result, it is the material effect of the criminal behavior [10]. Comparative laws did not specify the criminal result, because this crime is a risk crimes that is achieved once the criminal behavior and Covid-19 disease occurs. It is considered an infectious disease that poses a threat to public health due to its easy spread.

#### ***The moral pillar of the crime***

Which is the psychological relationship between the perpetrator and the act, as the perpetrator must be eligible to bear criminal responsibility [11]. However, it is implicitly considered a deliberate crime that occurs with the realization of the criminal intent with its two elements of knowledge and will, because it criminalized reluctance to inform or suspect the injury after knowledge of it has been established, and his reluctance to inform is a crime punishable by law, and that leads to harm to public health, however his will tends to commit negative behavior (refraining from reporting), and these comparative laws were satisfied with general criminal intent, as they did not require the availability of a special criminal intent.

With reference to the comparative laws, it was noted that they did not explicitly state whether this crime was committed intentionally or in the form of unintentional error.

### ***Penalty of the crime***

Comparative laws varied in determining the penalty for this crime. As for the Jordanian legislator, the penalty for the crime of refraining from reporting a case of infection with Covid-19 has been defined as imprisonment for up to (3) three years, and the fine is set at (3000) dinars or one of these two penalties [12], the Jordanian legislator considered this crime a misdemeanor because the Jordanian Penal Code No. (16) of 1960 (amended) considered imprisonment as a misdemeanor penalty [13].

The UAE legislator also considered this crime a misdemeanor, as the Infectious Diseases Control Law specified the penalty for the crime of imprisonment and a fine that does not exceed (10,000) dirhams or either of the two penalties [14].

As for the Iraqi legislator, in the Instructions for identifying Communicable Diseases No. (1) for the year 2011 to punish the perpetrator of this crime in accordance with the provisions of Article (96) of the Public Health Law (Amendment), and this article makes the penalty as an immediate fine that does not exceed (250,000) or close The shop for a period not exceeding 90 days, or both, by a decision of the minister or his authorized representative.

### ***Criminalizing the transfer of infection with Covid-19 disease***

Many countries have tended in their legislative penal policy to combat this disease to criminalize the transfer of infection with Covid-19 disease to others, including the Hashemite Kingdom of Jordan and United Arab Emirates, while the Iraqi legislator did not criminalize the Public Health Law transfer the disease to others, and to clarify this, I will explain the pillars of the crime and penal.

### ***Pillars of the crime***

For the crime of transfer infection with Covid-19 disease a special pillar(presumed), and general pillars:

A- The presumed special pillar (the character of the perpetrator): The Jordanian legislator did not stipulate in the Public Health Law availability of a special character for the perpetrator of this crime, unlike the Emirati legislator, which stipulated in the Communicable Diseases Control Law that The perpetrator is (infected with the disease), as it stipulates that (it is prohibited for any person knowing that he has a disease listed in Schedule No. (1) attached to this law to intentionally commit any behavior that results in transmitting the disease to others) [15].

The infected person is (every person infected with the pathogen or its toxic products or secretions, whether or not signs and symptoms appear), and the agent pathogen is (the causative agent of the communicable disease) [16].

The requirement of a special character for the offender and considering it a special pillar that must be met for the establishment of criminal liability means that the Emirati legislator has removed from the circle of criminalization and punishment every person who does not have this character despite their danger to others and the possibility that their actions lead to the transmission of disease infection. On the one hand, it also reduced the scope of protection established for the victim on the other hand.

### *General pillars*

For the crime of transmitting Covid-19 disease, two pillars are the physical and the moral:

#### *The physical pillar of the crime*

The physical pillar of this crime is represented by the criminal behavior, and the criminal result.

#### *Criminal behavior*

The Jordanian legislator did not specify the type of criminal behavior whether it was positive or negative behavior or its image, as it stipulated (6- ..... or any action that would transmit the infection to others), Likewise, the UAE legislator did not specify the image of the criminal behavior that constitutes the material element of this crime, but is content with criminalizing the behavior as long as it results in the transmission of Covid-19 disease to others, which means that the criminal behavior is achieved by the perpetrator contacting others and touching them with the intention of transmitting the infection of the disease or wearing a muzzle or wearing gloves in order to transmit the infection to others.

#### *Criminal result*

The Jordanian legislator explicitly stated that the consequence of the behavior committed by the perpetrator is (transmitting infection to others), and infection (the entry of an infectious agent into the bodies of humans or animals and its development or reproduction in it in a manner that may pose a danger to public health) [17] While the UAE legislator stipulated the consequence of the offender's behavior by saying (transmitting the disease to others).

It was noted that there is a variation in the result of the criminal behavior of this crime, as the Jordanian legislator stipulated that a harmful result be achieved, which is (transmitting the infection to others), by entering an infectious agent after its transmission from the infected human body to the non-infected person, and then its interaction within his body as it develops. Or its multiplication in a manner that poses a danger to health, while the UAE legislator stipulated that a harmful result be achieved, which is the transmission of the disease from the infected person to others without requiring that others actually become ill.

#### *The moral pillar of the crime*

By referring to the comparative laws, it was found that the Jordanian legislator did not stipulate a type of the moral pillar of this crime, whether it was in the form of criminal intent or in the form of unintentional mistake, while the UAE legislator considered this crime to be an intentional crime that occurs with the fulfillment of the criminal intent and it cannot be committed as an unintentional mistake.

The comparative laws - the subject of the study did not require the availability of a special criminal intent to establish the moral element of the crime, as this element is achieved by the availability of the general criminal intent with its two elements of knowledge and will for the perpetrator to be aware that he suffers from Covid-19 disease and knows that his behavior achieves the criminal result and yet his will to commit that Criminal behavior and achieving the harmful criminal result.

Establishing whether or not criminal intent is present in the crime of transmitting covid-19 infection is a matter that is appreciated by the court through the external manifestations that indicate it and all the circumstances associated with the crime, and it is a very difficult issue because it is an internal matter.

### *Penalty of the crime*

The Jordanian legislator went on to count the crime as a misdemeanor, as it stipulated that the perpetrator be punished with a prison sentence of up to (3) three years, with a fine penalty of 3,000 dinars or one of the two penalties [18].

As for the Emirati legislator, this crime is considered a felony by making the punishment for the perpetrator of it to be imprisonment for a period not exceeding five years with a fine that is not less than (50,000) fifty thousand dirhams and not more than (100,000) one hundred thousand dirhams or one of them, and stiffens the punishment when the condition of recidivism is available. However, this emphasis was limited to prison terms only [19].

### **CONCLUSION**

The penal legislative policy in most countries has tended to criminalize refraining from reporting infection with an infectious disease, including Covid-19 disease, by requiring specific people to inform when knowledge of the infection is verified, while specifying the penalty for those who refraining to inform the competent authorities.

I think that the penalty set by the Iraqi legislator for the crime of refraining from reporting the infection with Covid-19 disease is not commensurate with the severity of the disease and the gravity of the criminal behavior. Therefore, he suggested to our Iraqi legislator to tighten the penalty for the crime.

It was noted that what the contemporary criminal policy has tended to combat Covid-19 disease did not provide a real protection for humans from transmitting this disease ,also, the punishment was disproportionate to the seriousness of the criminal behavior and the harmful criminal results, especially if it resulted in

the death of a person or the spread of disease on a wider scale, in addition to making the optional penalty for the judge to decide to impose a freedom-depriving penalty or a fine and it was more appropriate to be obligatory imprisonment with the fine .

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