

# The Legal Adjustment for COVID19 Transmission Crimes in Jordanian Law

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The seriousness of the pandemic of Corona Virus (COVID19) lies in its rapid and ease of spread. Therefore, all international and national bodies and institutions at various levels have taken all possible measures to prevent their spread. From a criminal point of view, national legislation, whether in the Penal Code or the Public Health Law, often provides for the transmission of infection with a disease or an epidemic as a crime against public health. By examining the approach of the Jordanian legislator, it was found that as epidemic crimes stipulated in Public Health Law No. 47/2008, the penalties stipulated in this law are not commensurate with the seriousness of criminal acts, especially for intentional crimes. However, this law states that any more severe punishment can be applied in any other law. Here it can be said that the Penal Code is applicable upon these crimes, but it did not stipulate these crimes as they are in the Public Health Law. Therefore, the question arises about the extent to which the provisions of the crime of murder and harm in the Penal Code are applied to these crimes if their penalty is more severe than that stipulated in the Public Health Law. So, if the act constitutes a murder (according to the free mold) or the harm crime because the penalty is more severe than that stipulated in the Public Health Law, the Penal Code will be the applicable law, not the Public Health Law.

**Key words:** *COVID19, Jordan, pandemic, Transmitting Coronavirus, the Public Health Law, The Penal Code.*

## Introduction

Article 22 of the Public Health Law stipulates the crime of concealment of an epidemic disease exposing a person to infection with this disease, or intentionally causing transmission of infection to others, or refraining from carrying out any required procedure to prevent the spread of infection.

Whereas, according to Article 66 of this law, such acts are punishable by imprisonment from two months to one year or by a fine of no less than 500-1000 JD, or both of these penalties. These crimes are not stipulated in the Penal Code, however the law will be applicable because it punishes these crimes by a more severe penalty according to Public Health Law, as this pandemic may be transmitted intentionally or unintentionally, and as the transmitting may have multiple effects. These things can be visualised as follows

1. Transferring the infection from an infected person or carrier who does not know that he is infected.
2. Transferring the infection from an infected person or carrier who does not know that he is infected.. This case may happen in two probabilities:
  - It may happen with intent. This intent may be direct, to constitute a murder or a harm crime, depending on the type of intention and criminal outcome that may occur.
  - It may happen without intent (by mistake). This matter differs according to the result and the different type of mistake: the conscious mistake and the unconscious mistake.

The Public Health Law does not prevent applying any severe penalty in any other law. This is confirmed by Defence Ordinance No. 8/2020 issued on 4/15/2020 by Jordanian Prime Minister in accordance with the Defence Law No. 13 of 1992. Accordingly, if the penalties stipulated in the Penal Code for such actions, if it can be adapted, are more severe than the penalty stated in the Public Health Law, then there is nothing to prevent it from being applied. Therefore, the general provisions stipulated in the Penal Code apply in this regard, whether or not the crime is intended.

### **Intentional Crimes of Murder and Harm Committed by Transmitting Coronavirus**

In this crime, the infected person or carrier of the virus, who knows he is infected, transmits the virus intentionally to kill or harm another person/s, then the result of the crime will be achieved. Both crimes consist of physical and mental elements:

#### ***The Physical Element***

The physical element consists of the action, the result, and the causal relationship. Transmitting virus crimes also have these elements as follows:

1. The action: The action here is to transfer the virus from the infected person or carrier of the virus who known that he is infected, to one or more people who are not infected and who are not carriers of the virus, in any possible form of transmission of the virus that is known regarding this disease. For example, if the infected sneeze is intentional in the face of an uninfected person or one puts part of his saliva on tools or places related to uninfected persons. The crime tool here is the virus, so to

demonstrate the adequacy of this tool as a means of killing or harming, it was settled that it doesn't matter about the killing tool if it was suitable for killing by nature or not (Mustafa, 1964).

According to the World Health Organization (WHO), the virus is likely to lead to death, where the disease is considered to constitute a deadly pandemic of humanity. Since the transmission of the Coronavirus is a viable means of a murder crime, it is a viable means of a harm crime as well, as the harm is done by beating, wounding, or the influencing act. Therefore it can be said that the use of the Corona virus to harm the victim's body is considered an effective action, as the influencing act is to give harmful substances or non-lethal germs or shed radiation to the body, and it may also include the transmission of secret diseases through sexual contact (Jabour, 2012).

2. The result: In these crimes, the result lies in the death of the victim regarding a murder crime. The responsibility for the crime will not be affected if the death occurred directly or after a period of time, as there is nothing that specifies a period in which the death occurs (Jabour, 2012). The result in a harm crime lies in harming the health and safety of the victim's body; the disease also falls under that (Articles 333 and 334 of the Penal Code). The disease is a health disorder that affects the normal functioning of the vital functions that some body systems or organs perform, whether they are physical, nervous, or mental (Hosni, 1994, p466), so this can be imagined regarding corona virus transmitting if death wasn't the result.

3. The causation: Here there is nothing different in these crimes than others, if it turns out that the act was the cause of the result, then the causal relationship is realised and then the physical element is completed (Hosni, 1983).

In infectious crimes, a causation means that the result (whether murder or harm) was caused by the virus transmitting to the uninfected person.

The causal relationship in murders or harm does not raise any problems when it was clear that death or harm was caused by the act of transmitting the virus infection to the uninfected person. However, there are cases in which the causal relationship may be interrupted, such as if the victim is sick with diseases that lead to death, or that the result is achieved due to factors other than the transmission of the virus, then the causation is interrupted. The Jordanian legislator does not ignore any of those factors. Consequently, it stipulated that if the intended murder or harm occurred as a result of previous reasons that the perpetrator was ignorant of and independent of his action, or as a result of separated reason from his actions completely, he/she shall be punished by imprisonment for a period of no less than ten years if the original act required a death penalty or life imprisonment, or by reducing any other penalty to the half of it if his act necessitates a penalty other than death penalty or life imprisonment (Article 345 of the Penal Code). Therefore, if the death occurred as a result of such reasons, the act remains punishable, but with lesser penalty. It is not sufficient for these factors to be available to say that the causal relationship has been interrupted, but death or damage must be achieved as a result of these factors and not as a result of transmitting the infection. However, if the

causes of death are multiple, then the Jordanian judiciary adopts the theory of equivalence of causes, whereby everyone who contributes in achieving the result is punished with the same punishment. Here what applies to murder applies to damage as well according to Article 345 of the Penal Code.

### **The Mental Element**

According to Article 63 of the Penal Code, this element expresses the intention to commit the crime. It consists of two parts: the will and knowledge. (Al-Fadil, 1965):

**First:** The will, which has two manifestations:

1. The will to the act: it means that the intention of the perpetrator is directed towards the act with a complete free and conscious will (Jabour, 2012). In the crime of transmitting infection, it means that the perpetrator transmits the virus with a free and conscious will, which is free from any defect.
2. The will of the result: it means that the will of the perpetrator tends to achieve the result. The result has an important role in adapting the act and determining its penalty. If the result is achieved without the will to deviate from it, we will face an unintended crime (Tharwat, 1995).

In crimes of murder or harm, the perpetrator expects the result, where his/her will tends to achieve it, whether the will is direct intent, or indirectly, such as if he/she expects it alongside another result, then he/she accepts it or wants it (potential intent); here he/she asks about the crime as if his/her will was to achieve it (whether in killing or harm). However, if he/she did not expect the result, but the death occurred as a result of his/her action, here he/she did not mean it but rather intended a lesser result, then he/she will be asked about causing death, not murder.

**Second: Knowledge:** The element of knowledge focuses on two aspects. This element focuses on two aspects: knowledge of the laws that are supposed to be applied, based on the rule (ignorance of the law is no excuse). The other side is knowledge of all the elements that form the physical element of the crime. Otherwise, the intention is considered non-existent (Muhammad, 1985).

In the crimes of transmitting infection, the element of knowledge appears through the knowledge of the perpetrator, starting with the fact that he/she is infected with the virus, as well as knowing that his/her actions will lead to transmitting the infection to another person who is uninfected by the virus. Moreover, he/she must know that this infection will lead to harm the victim. An important point in this regard is to distinguish between the knowledge of the perpetrator that what he/she is doing would lead to death to be convicted by murder, or only knowing that the virus might cause harm to the victim to be convicted by a harm crime.

In the absence of the knowledge element, actions will be criminalised through unintentional crimes if the unintended action belongs to any forms of mistakes that the Jordanian legislator mentioned in

Article 343 of the Penal Code (Jabour, 2012). It should be noted here that what applies to murder applies to crimes of harm.

Among the problems that relate to the knowledge element in the crimes of transmitting infection is the need to prove that the perpetrator knew that he was infected with Corona virus, which can only be done through examination. The examination is often carried out by government laboratories, and if the sample is positive, the infected will be placed in isolated hospitals or departments. However, if the examination is carried out in private laboratories, it is under a legal obligation to report the infected to be transferred to the specific isolated hospitals. Here we can imagine different patterns of crime that are related to the element of knowledge, either the proven knowledge of the perpetrator in the crimes of murder or harm, or crimes of medical laboratories when not reporting positive samples of Corona.

From problematic issues also is the need to prove the knowledge of the perpetrator of the crime that the pandemic can often lead to the death of the victim, without limiting the death to the elderly victim or someone with a disease history of developing respiratory, cardiac, or kidney disease.

### ***The Penal***

According to Articles 326-328 of the Penal Code, the death penalty ranges from the death penalty to life imprisonment or imprisonment for twenty years, depending on the form of the crime. As for the crimes of harm that can be conceived by the transmission of infection, they may take the form of a misdemeanor that takes place through any act or means of harm, as well as ill-treatment that leads to illness or disruption of work for more than twenty days. This is punishable by imprisonment from three months to three years (Article 333 of the Penal Code). It may also take the form of a misdemeanor of harm that does not result in any illness or work prevention for a period not exceeding twenty days. In this case, the punishment is imprisonment for a period not exceeding one year, a fine not exceeding 100 J) or one of these two penalties (Article 334/1 of the Penal Code). In addition, we can imagine the criminal harm, which results in the disabling of one of the senses from work, causes serious deformation or any other permanent disability or has the appearance of permanent disability, the penalty will be imprisonment from three to ten years (Article 335 of the Penal Code).

It should be noted that, according to the Jordanian legislator, the issue of intent, whether specific or not, does not affect the penalty, as long as the intention is to transfer the infection from an infected person to uninfected person, and if the crime occurred on a person other than the intended one, the perpetrator is punished as if the act was committed against whoever was intended harm (Article 66 of the Penal Code).

## **The Crime of Attempted Murder or Harm by Transmitting the Virus**

Attempted crime is defined as the starting of an act leading to the commission of a felony or misdemeanor, but the intended result of the crime is not achieved for reasons beyond the will of the perpetrator (Article 68 penalties). In the crimes of infection with coronavirus, the attempted crime can be visualised. This issue is discussed by looking at the availability of the elements of the attempt as follows:

### ***The Physical Element of the Attempt***

The physical element of the attempt is the starting element of the execution, that is, the beginning of the implementation of the act constituting the crime whose result has not been achieved (Najm, 2016). If the perpetrator begins the process of transmitting the virus by taking actions that lead to infection, but the result, which is the transmission of virus, has not been achieved, then the physical element may be available, such as if the perpetrator puts saliva on certain surfaces or sneezes in the face of a nurse, a doctor, or a worker at the hospital designated to isolate the infected, in order to transmit the virus to them or to others.

However, within the framework of the attempt, the completeness of the element that constitutes the crime must be examined to know if the attempt is incomplete or complete, as this has an effect on the penalty. If the perpetrator did not complete the element of the act, the attempt is called incomplete, then the penalty shall be life imprisonment or imprisonment with hard labour (from 7-20 years) if the penalty for the completed felony is the death penalty. The penalty for an incomplete attempt is imprisonment (from 5 to 20 years); if the complete penalty is life imprisonment. the penalty for incomplete attempt by imprisonment (one-third to one-half) of the penalty is prescribed for any other complete crime (Article 68 of Penal Code).

The Penal Code has also addressed the situation in which the necessary action to complete the crime is taken, but the result has not been achieved due to the intervention of causes that were beyond the will of the perpetrator, which is known as the complete attempt. In this case, the penalty shall be life imprisonment or twenty years imprisonment if the punishment for a complete original felony is the death penalty. However, if the penalty for the complete crime is life imprisonment, then the penalty for attempting such crimes is imprisonment from 15-20 years, or it will be punished by imprisonment (12-15 years) if the penalty for the complete crime is twenty years imprisonment. Except for these mentioned crimes, the penalty for the attempt is between one half to two thirds of the penalty prescribed for the complete crime (Article 70/1&2 of the Penal Code). It should be noted that these penalties are applicable to the attempt, unless the law stipulates otherwise (Article 68 of the Penal Code), and that this attitude applies equally to murder or a harm crime whatever the type of the crime, including crimes related to the transmission of corona virus.

### ***The Mental Element or the Criminal Intent***

In the the attempted crime, the criminal intent is the same as the intent required for the complete crime. Therefore, the penalty of attempt requires the availability of the intent to commit the crime in order to complete its mental element. To punish attempted murder, there must be intent to kill, and to punish attempted harm, there must be intent to harm (Najm, 2016).

### ***Ceasing to Complete the Crime of Transmitting Coronaviruses***

Just having an intention to commit a crime or preparing to do so is not considered a crime. Moreover, whoever attempts to commit a criminal act but voluntarily stops completing it, it is punished only for the act committed or the acts that constitute in themselves a crime. The cessation of completing the crime is similar to the attempt in terms of not achieving the result of the crime, but in stopping the commission of the crime; the result was not achieved for reasons that stem from the will of the perpetrator (Article 69/2 of the Penal Code). The cessation is punished only in the stage of a complete attempt by a penalty that differs from the attempt penalty, but is lighter than it, as it reduced the penalties prescribed for the complete attempt until two-thirds in case of cessation (Article 70/3 of The Penal Law).

Cessation can be envisaged in the crimes that are committed by transmitting corona virus, for example, whenever the perpetrator disappoints the effect of his act, such as by sterilising the surfaces on which he applied saliva, while ensuring that the infection is not transmitted.

### ***The Impossible Crime of Transmitting the Virus***

It is possible to imagine the impossibility of murder or harm in the case of crimes that are committed by transmitting infection, such as if the perpetrator believes that he has a coronavirus but actually he has not, as a result of a mistake in the examination, or if the victim himself is already infected .The impossibility of murder crimes means that the targeted person of the crime is not valid for killing, such as if the targeted person died or the inability of the act to kill. Here it is possible, according to the settled doctrine, to punish this action by an attempt penalty due to its seriousness (Jabour, 2012).

The Jordanian legislator distinguishes between legal impossibility and physical impossibility, so the act is not punishable in the case of legal impossibility, because it is considered in its essence legitimate acts for the lack of legal elements that constitute the crime (such as the act of killing directed at a dead person). As for physical impossibility, there are material circumstances that made the result not possible, so it is possible to punish it by attempt (Najm, 2016); the Jordanian Court of Cassation, Decision No. 108/1954, 1954, p867).

### ***Unintentional Crimes of Murder and Harm by Transmitting Coronavirus***

Jordanian law criminalises unintended acts according to certain criteria: negligence, lack of precaution, and violation of laws and regulations (Article 64 of the Penal Code).

The first case is negligence, which means ignoring the perpetrator by following a behaviour guided by the general rules of human experience (Sorour, 1989), for example, the affected person does not adhere to the necessary precautions to prevent transmission of infection, such as not wearing masks. As for non-precaution, it is taking positive behaviour that does not comply with the general human experience rules, as if an infected person has contact with another person physically, or gives others the tools he uses. Whereas violating laws means refraining from abiding by them (Sorour, 1989), as a violation of the Public Health Law or orders issued under the Defence Law. These crimes have no criminal intent, so they are based only on the physical element. The physical element can be explained as follows:

1. The act: which is implemented by transferring the virus from an infected person to one or more uninfected persons, which leads to death or harm.
2. The result: death or harm.
3. Committing the act according to one or more of the previous forms of an unintended act: negligence, lack of precaution, and violation of laws and regulations.

Accordingly, it is necessary to mention the two unintended types of acts : the conscious mistake accompanied by the expectation of the perpetrator to the result of his action, but his will is not directed towards its realisation or acceptance, but it is achieved as a result of his negligence, his lack of precaution or failure to observe the laws and regulations. The second is the unconscious mistake, which means that the perpetrator did not expect the result in the first place, but it was achieved as a result of his negligence, lack of precaution, or failure to observe laws and regulations (Sorour, 1989). It should be noted that the unintended act has two criteria: the objective criterion and the personal criterion (Jabour, 2012). There is also a criterion for professional mistake, which is the mistake and neglect of professionals and researchers, and their failure to observe the scientific and technical rules and principles that govern the profession (Mustafa, 1948). In the area of virus transmission, this can be imagined when any medical or nursing staff makes a mistake that leads to the transmission of the virus.

### ***The Penalty***

Unintended murder resulting from negligence, lack of precaution, and violation of laws and regulations is punishable by imprisonment from six months to three years (Article 343 of the Penal Code). As for unintended harm, it is punished by imprisonment from one month to one year or by a fine (30-100 JD) if work prevention is more than twenty days, but if the unintended harm



has resulted in a disability, it will be punished from three months to two years or by a fine (50-200 dinars). While any other unintended harm is punishable by imprisonment for a period not exceeding 6 months or by a fine not exceeding 50 JD (Article 344 of the Penal Code).

### **Conclusion**

This study concludes that it is possible to apply the murder and harm provisions stipulated by the Penal Code to the crimes of transmitting infection with Corona virus due to the shortness of the Public Health Law in that regard. On the other hand, Public Health Law does not prevent applying any more severe penalty mentioned in any other law with regard to the acts, which violates its provisions. However, the researcher recommends law enforcement entities and courts to be careful in the field of searching for the mental element of such crimes in this delicate and sensitive circumstance, in terms of the assumption of intent or not to determine whether the crime is intended or unintended. The researcher also recommends taking into account prison emptying procedures and mitigation decisions to prevent the pandemic outbreak.



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