

REGULATIONS FOR ESTIMATING FINES FOR THE VIRUS CARRIER COVID 19

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ABSTRACT

It is beyond doubt that judge's authority in appreciating the appropriate penalty undergone vast developments due to the scientific prosperity, that for, the legislature proceeded to enact criminal penalties to confront the crime and the seriousness of its perpetrators, based on objective material foundations and an inclined personality, aiming to ward off a current or potential risk away from an interest that the judge deems worthy for legal protection, however, the extent of the penalty proportionality that the judge decides for the person who commits the crime of transmitting virus or infection, cannot be specified at the initial stages of the case, as this decision depends on factors that are intractable for the Judge to determine in advance.

Nevertheless, this authority is linked to evidence, as some of this evidence are assertive by its signification, thus the certainty of the judge relies on it alone to link the accused with the crime, therefore, the absence of provisions in the legislation governing the crimes of virus infection, "COVID-19 specifically", by this method does not prevent criminalization to grant the opportunity to expand the understanding of the intention of the legislator or by measurement means, as our justification for that is that the social interests are renewable and developable, so that the legislative intervention required in each stage, this is where the importance of the judge's role and the significance of his criminal authority in interpreting the provisions and considering the analogies in pursuit of the deficiency that affects the legislative provisions that lead being incompetent in pursuing steady social development.

The punishment objectives and purposes are not taken into judge consideration unless it's assimilated and diagnosed within elements that located under the umbrella of the criminalization rule, whereas, within the context of this classification, it will have legal value in the judge's discretion and authority, since the criminal judge seeks to apply the legislative determination of the criminal rule effect, by matching the type and gravity of the effect in a side, and the public and private considerations that determine the crime gravity and the sin of the viral criminal in the other side.

Keywords: Covid 19, Legal Protection, Viral Crime.

INTRODUCTION

An argumentation arose between the criminal jurists in terms of determining the definition of the controls that stipulated in some penal legislation concerning the authority regulation of the judge in assessing the penalty, part of jurists refer it according to the criminal incident circumstances, depending on the assumption that the acknowledgment that there is a legal provision for each act that the law considers it as criminalization act must be hereby another

provision for determining the applied punishment, while the other party claims that the controls for estimating the punishment cannot be considered as necessary elements in the formation of the criminal act, despite if it had a direct effect if the matter concerns the elements involved in the crime formation.

The meaning of the contemporary behavior of the perpetrator for the indifference crime that accompanies him during commission, cruelty and violence and the consequent effects and manifestations that reveal his criminal inclination towards the perpetrator of the criminal act, as well as the fear and hesitation he may express, which shows the exacerbation of its seriousness, and the followed effects and manifestations that reveal the perpetrator of the criminal act criminal inclination, in addition to the fear and hesitation that he may express, that appear the exacerbation of his seriousness, the crime entails a hazard that threatens the legal protection covered rights, by same effect of the aggression inflicted upon it, and the intensity of inclination towards its implementation.

Consequently, the trend feature of this era, is represented by the wars and divisions era¹, Europe at that era was not aware of anything about the health system, so the prevailed chaos the country, and epidemics and famines spread, it is thus reflected negatively on the profession of medicine, which led to deteriorate this science, where the corruption prevailed, and the valuable books in medicine were replaced by the quackery books and incantations, while the books of "Hippocrates", "Galen" and other medical celebrities were neglected in those eras (Billah, 1984).

Rome dominated Europe, until it fall in the fourth century AD, and the chaos started ushering in the dark era, as civilizations were destroyed, and the territories of single state disintegrated into small states and fiefdoms that contested by the barbaric nations, from this point the system of feudalism started, the war corruption and strife, along with the myths, ignorance and epidemics, where the health system had no place at that period, also the thoughts and the intellectual orientations at that period were not directed to the medical sciences².

The criminal liability is based on performing something prohibited by law, or violation of what the law stipulates, these orders and prohibitions of the legislator are directed only to those who absorb and realizing what they are, otherwise, it will be a vain, therefore, the human only being addressed by provisions of law, being a human is not the only condition to name a person a criminal, rather, the requirement is that the person be responsible with free-will and his will is liable legally, and he behaved in a way contrary to the law, which is called the sinful will and it is considered legally liable if the will of this person enjoys perception and choice.

The two elements of the crime in term of the objective part, and the criminal acts and to what related to its material elements and the criminal texts that described it in varying degrees in terms of its danger, harm, and depending on the serious gravity of the intent or the mistake, and evaluating the motives and the emitted behaviors in the psyche of the perpetrator upon the commission of the crime, accordingly, the indicative controls for assessing the applicable penalty are a reflection of these components, in terms of quality and quantity.

The Research Importance

The importance of this research lies in the fact that the judiciary protects the law in the event that it is ineffective, the judicial function is limited to protecting the legal system,

especially if it is not activated, the judiciary must intervene to protect humanity from the symptoms of the Coronavirus epidemic, and the law enforcement powers that it authorizes to him, thus, the judge in principle is the initiator of the discretionary power, regardless of the legal field in which he exercises his activity, because the authority is the power and the ability to overcome those who allowed themselves to transmit the virus.

The Research Main Issues

Crime is a tangible phenomenon in all societies, even if its forms, motives, and methods of confronting it change, however, this kind of criminals and reckless people naturally burden the public prosecution and the court in proving their criminal intentions, as well as their sin, especially the huge and frightening numbers of infectors, threatening the health systems in many countries to collapse, whereas, the causal relationship between the act and the outcome is the main elements that gives the judge sufficient strength to estimate the punishment because the problem is that to whom the virus was transmitted, it may take a long time to verify its results.

The Controls Related to the Crime of Virus Carrier

Whereas the crime circumstances are considered as additional elements linked to one of the crime elements, and affect the crime seriousness and its punishment, thus the principle of criminal legality is one of the main principles that govern the criminal law, as of Article (3) of the Jordanian Penal Law stipulates there is no crime except by provision, and no penalty or measure shall be imposed unless the law stipulates it when the crime is committed, likewise, Article (22/b) of the Jordanian Public Health Law No.(47) of 2008 stipulates: Whoever intentionally conceals an infected person or exposes a person to infection with an epidemic disease or intentionally causes the transmission of infection to others or refuses to implement any measure requested from him to prevent the spread of infection, he shall be deemed to have committed an offense punishable under the provisions of this law.

The First Topic: The Material Element and Its Controls

The material element of the crime is a behavior within the provisions of the penal law, resulting a harmful and legally sinful consequence, due to it involves an assault on one of the interests that covered by legal protection, accordingly, the assaults limitation does not occur by one ritual or in one capacity, but rather varies in its magnitude and varies in capacity from one case to another, which can be claimed hereby that the behavior of the perpetrator differs in different circumstances, as a result of these differences, the harmful consequence vary, and as extent that the perpetrator's behavior reveals in terms of the seriousness and harmful consequences that it has on the protected right, the punishment will be determined (Hosni, 1985) therefore both of the controls related to behavior and the controls related to results must be clarified.

Section One: Criminal Behavior Controls

A factors shall be take into consideration by the judge while he is dealing with the crime of transmitting infection or virus, as of the nature of the committed act, the crime location, all related issues to the location or the time of crime commission, and the used means, in order that he will be able to estimate the appropriate and the applicable penalty against the perpetrator (Obaid, 1979), especially, within what the whole world is facing in this period due to the spread of the Corona virus pandemic, as all infected with this virus are aware by its seriousness, it is rapidly spreading, and the possibility of death for those infected with this virus, so due the act nature, act type, and the used means to commit the act, we acknowledge by the difficulty to enumerate all the elements that associated with the criminal behavior, here fore, the legislator shall formulate a flexible manner legislation so to enables the judge to absorb all evidence during his dealing with such case.

Viruses have a serious impact on humans, in which it known as a tiny particles that infect humans with various types of infections and health disorders, in addition, it is a microscopic organism composed mainly of DNA surrounded by a protein shell, lives as a parasite inside a cell that guarantees its reproduction and most of them cause a serious various diseases³, With regards to (COVID-19), it is a virus that belongs to a wide family of viruses, that cause diseases to humans, while some cause to animals, this virus has not been previously identified as a pandemic human infections, so that it is a source of global concern, therefore, the criminal behavior shall be considered as a criminal liability upon its performing, as the personal responsibility is related to the perpetrator personality, in which linguistically means what is required to be fulfilled, and it also means accountability for it, with regards to (COVID-19), it is a virus that belongs to a wide family of viruses, that cause diseases to humans, while some cause to animals, this virus has not been previously identified as a pandemic human infections, so that it is a source of global concern, therefore, the criminal behavior shall be considered as a criminal liability upon its performing, as the personal responsibility is related to the perpetrator personality, in which linguistically means what is required to be fulfilled, and it also means accountability for it, in terms of "*fulfillment*" it is as stated in the Holy Quran-Surat Al-Israa⁴, and the translation of the Holy Surah Fulfill your pledges, for you will surely be accountable for them, that is, to be fulfilled, while the second meaning of "*accountability*" as expressed by the Almighty in the Holy Quran⁵ the translation in English the hearing, the sight, the heart, each of these shall be called to account that is, the belonged of these who is the responsible for and accountable for it (El-Shazly,2002).

The responsibility by its general sense is diverse, and this various sense is not differentiated cause the lack or the existence of commitment, but due to the source and the destination of the commitment, so that, the religious responsibility, it is as the individual adheres to his duties towards God, accordingly the act shall become permitted or prohibited (Imam, 2004), while for the legal liability, it is the individual duties commitment toward society, and performing this duty either a legitimate act with no penalty or an unlawful act, where some classified the legal responsibility into two types, the civil liability, and the criminal liability, as for the civil liability it is an obligation to compensate the harmed for the harmless he has sustained, which is in two types :

1. The contractual liability: which its core is the contractual obligation, two conditions required for its workability, first, is the existence of a valid contract that creates an obligation between the responsible and the harmed, as for the second is the harm resulted from breaching the obligation⁶, and the civil lawsuit raised by the harmed or his family is a means to obtain the compensation.
2. Negligent liability: which is built upon a fixed or presumed error that leads to an involuntary obligation between the responsible and the harmed, which is an obligation to compensate (Al-Ibrashi, 1952).
3. Responsibility shall be considered as negligent in cases that result from the patient acting harm to others, such as the doctor's negligence in caring for and treating of a mentally disturbed person who causes harm to others, and cases of harm to others by getting diseased by contagion from a patient under medical care, or because of using same treatment equipment (Kamal, 1990).

With regards to criminal liability, it means the person's liable to bear the criminal sanction for the crimes he commits (Hosni, 1985) and (Majali,2020), thus, the committing of the person for an act prohibited by the criminal law raises the concept of criminal liability, and imposing a criminal sanction on this person by a court ruling means that he is liable for criminal liability, this does not mean that liability is a result of the punishment, as the criminal penalty does not create responsibility but rather limits it, consequently, criminal liability has several characteristics, a human responsibility, as well as a personal responsibility, finally, the criminal liability depend on error (Najm, 2003).

As for the crime location and timing, these parameters may be Incentive of the legislator in intensifying the punishment, since the crime was committed at a time where there is no room for denial as the whole world is speaking about the seriousness of the virus and its severity and that it may cause death or severe diseases that would disrupt the lives of many nations, thus the punitive varies between severity and mitigation.

Section Two: The Controls of the Criminal Results

It is not advisable to punish the offender severely, if his behavior causes only minor harm to the interest subject to legal protection, as the aggression extent against the interest in which covered by the legislator protection differs according to the severity of the damage or the risk resulting from it, in which the protected individual may be infected with a virus from a well-known person, as the treatment is available and matters are palatable and common, complications arise when there is a viral infection that is a source of concern to the entire world and has caused the death of many people, while others suffer psychologically from things they have not experienced before.

A criminal consequence is defined as the harmful consequence of an act, that is, damage to the interest protected under the criminalization provisions harmfully, either through actual harm or simply exposing a protected person to risk (Ramadan, 1969).

The essence of the outcome is actual or potential damage, and the severity of the assault is proportional to the extent of the damage, what is stipulated in Article (2/58) of the Jordanian Penal Law

"However, if the result of criminal acts worsens after the first prosecution, it requires a more stringent description, if it deserves this description, and only the more severe punishment is imposed, and if the previous punishment is carried out, abolished from the new penalty"

The observed in the negligence crimes is that the public is affected by the harmful outcomes without searching at the literary part or the circumstances that led to the occurrence of the act that constitutes a legal crime, meaning that the harmful consequences create a hostile spirit against anyone harms the society by his illegal actions.

The crime of transmitting infection or virus to a single person consider as normal matter, while if the crime creates a panic for humanity, then it has a psychological effects on society, similar to the death of millions of people affectation, accordingly, the punishment for negligence crimes depends on the severity of the harm and its impact on society, this is the best way to defend society, and therefore, if the personal criterion of the perpetrator influences the determination of the nature of the punishment, the severity of the harm is clear influent in determining the extent of the punishment, as the harmful consequences are issues of concern to society, while the judge whose sole aim is to achieve justice and stability, initially looks at whether the perpetrator is criminally responsible for his act or not, after that, the judge assesses the punishment in proportion to the damage resulting from the offender's act, as the punishment must be consecutive with the sequence of damages and their severity (Al-Matit, 1994).

The existence of conclusive scientific evidence and decisive proofs, on which the judge build-up his assertion and certainty, not by speculation and probability, or in other words, those evidence that the criminal judge can rely on individually, to link the accused to the crime that occurred, as this evidence derives its power as forensic evidence from recent scientific developments of medical devices that dealt with criminal evidence, taking into account the official evidence issued by the Ministry of Health, which shows the extent of the link between the evidence and the incident of the crime, hereby, it must be acknowledged by the fact of harmed right limitation comparing to the right of the victim, which is a logical consequence due to the wideness of the damage limit if it is compared by the aggression limit (Tharwat, 2001), according to the ruling of the Egyptian Cassation Court: There is nothing in the law that prevents a person from being considered harmful by reason of the crime, even if he is not the victim, as long as this harm is proven, and the harm is a direct consequence of the crime⁷.

The Second Topic: The Moral Element and Its Controls

Crime is not just a physical entity that depends on the act and the criminal behavior and the consequences thereof, but rather it is a psychological entity, just as the crime has material elements that make up the material element, also there are psychological elements that constitute the moral element of the crime, therefore, it was said that the moral element represents the psychological component of the crime and psychological control over it, and the rule here is that there is no crime without its moral component, just as the crime has a will that represents the most important element in the moral element, rather it is the essence of this element, as part of it will be directed towards the action and the result, while another part will be directed to the action without a result, and some that In it the action overrides the intention of the perpetrator and takes the form of the transgressive intention.

The judge must search for the moral element after completing the material element of the crime with which he deals and take into account the moral element when assessing the punishment. The Jordanian Penal Law stipulated in Article (64) that;

“A crime is considered intentional even if the criminal consequences of the act exceeded the intention of the perpetrator if it was expected that these results will be obtained, and he accepted the risk.....”

The basis of criminalization in legislation is not only the act specified in the legal provisions, but rather the relevance of this action to the desire to occur by a person in the way determined by the law, and this “will” will give this act a human character, meaning that it comes out of the nature accident category, and its inclusion in the human and social phenomena, the mental activity of the offender must be linked to the material activity and control over it as well, and thus the judge forms a clear picture of the case, and it has been noted how reckless some people are in transmitting infection with the virus, especially the Corona virus, and transmitting it in a horrific way, which led to the suspension of the course life, and the global lost many human life as a result of these actions amounting to criminal elements.

Section One: The Criminal Intent

The basic principle of crimes is that they are intentional, and unintended crimes are the exception, and therefore the core rule was raised that if the public neglects to consider the moral element of the crime, then this means that the public is demanding the criminal intent, but if the public is convinced of the unintentional error, they must disclose it as that adherence to the principle does not require announcing, while the deviation from the principle must be disclosed, Article (63) of the Jordanian Penal Law stipulated intention: is the will to commit a crime as defined by the law, and the criminal intent as defined by the jurisprudence, and as the judiciary has settled, is the deviation of the will towards achieving a criminal situation with the knowledge or awareness of its real reality and the essence of the crime (Hosni, 1985).

While the knowledge of the law that a certain act is what the law criminalizes, it is assumed that it is known to everyone, and no apology may be accepted for ignorance of the law, the criminal intent-as a general rule-is achieved through knowledge of the status of the criminal case in terms of reality, and there is no need after this proof to confirm that the perpetrator knows that this case is a crime stipulated in the law, and therefore the cases in which the law attributes the act to the perpetrator as a result of his act or abstention, are the cases in which the law assumes the criminal intent of the offender⁸, and the issue of availability or lack of criminal intent is an actual matter the jurisdiction of the competent court, according to the court's findings of the circumstances of the case, it is not necessary for the judgment to independently mention the criminal intent and prove its availability with special evidence, but rather sufficient for the safety of the court's judgment in this matter is that the incident it has proven against the accused and the basis for his judgment in this regard is evident and predicts the extent of the availability of the intention.

Corona virus has raised many questions since its spread around the world about the responsibility of carriers of this virus, especially when the infected person is aware of his infection with this virus or that of a member of his family and hides this matter, as he continues his usual daily activities and wanders between people and countries without any concern or taking any precautions, therefore, and here several questions arise, including whether there is a law facing this person because of his intentional behavior, and can we imagine that there is criminal participation in this incident, and what is the punishment in the event of the death of a

person who was in contact with this patient as a result of his infection with the virus, the criminal judge faces this situation and through the authority he possesses, and his intending to settle the social balance disturbed by the crime, by imposing the appropriate punishment or appropriate measure for the perpetrator of the crime, the capacity of his authority determines how to deal with the abstract reality, to bring it back to the path of balance by force after a breach of this consensus occurred as a result of persons not voluntarily abiding by the provisions of the law.

Article (326) of the Jordanian Penal Law stipulates that “*Whoever willfully kills a soul shall be punished with hard labor of twenty years*”. as for the insistence on committing the crime by an individual or persons carrying the virus, this insistence with a decisive intention before committing a misdemeanor or felony with the intention of harming a specific person or non-specific persons, whether the intention is related to the occurrence of something⁹, if the court proves this intention, the penalty must be increased to death in accordance with Article (328/1) of the Jordanian Penal Law, and at the same time the same punishment is applied for those involved in the crime, if there is an agreement between them, or each of them performs an act that leads to the same result, and therefore they are punished with the same punishment as if each of them acted individually¹⁰, the intent is determined according to the extent of the perpetrator's knowledge of the result, and the direction of his will for it, the intentional act has varying degrees in terms of its intensity, and thus the degree of the tendency to commit the assault, and the accompanying cruelty are matters that are taken into consideration when estimating the punishment, the punishment due is determined according to the severity of the sins because the direct intention is more severe than the probable intention, and then the penalty for a crime associated with direct intent is more severe than the penalty for a crime associated with probable intent.

Section Two: The Non-Intentional Fault

The judiciary works to protect the law itself from the disease of ineffectiveness, in a manner of speaking, whereby the judicial function is limited to protecting the legal system, especially in the event of ineffectiveness of the law, as it interferes within the limits of the symptoms that raise it, with the intention of undermining it without delving into its causes except to the extent necessary to determine the appropriate scale in terms of quantity and quality to confront this disease, leaving its radical eradication to the general policy of society, whether criminal, political or economic, and the discretionary authorities are similar, whether criminal or civil, and therefore the nature of the conflict does not effect on the essence of the discretionary authority of the judge, so the use of logic in the legal field is necessary, because law is a science, and its application is a first-class art, and it can be analyzed with ideas, inference, judgment and concepts.

Article (64) of the Jordanian Penal Law states the error occurs if the harmful act is the result of negligence, lack of caution, or failure to observe laws and regulations, as there are many jurists who adopt the idea of repeating errors or mistakes that make up a criminal error on the basis of the principle of legality of crimes and penalties (Sattar, 1977), in the crimes of transmitting a viral infection, if the victim participated in the occurrence of the criminal outcome by mistake, the responsibility of the perpetrator does not fall due to the non-availability of clearing between errors in criminal legislation, as each error is calculated according to its role in

criminal responsibility, and if the victim's fault does not effect on criminal liability, it affects the punishment and compensation by reducing it, according to the percentage of error, and this is up to the judge's discretion (Al-Hadithi & Al-Zoubi, 2010).

The punishment for unintentional crimes was not targeted by the tremendous scientific progress, especially at the time of the spread of the Corona virus, but it is the duty of the judiciary to defend society, taking into account the distinction between the perpetrators of crimes according to the limits of their knowledge of the seriousness of the virus when assessing their mistake to assess what suits them in terms of punishment, as the issue of reducing the punishment to a minimum or raising it to the maximum depends on the judge, which makes the punishment in such crimes one of the means of defense of society against the spread of the virus accelerating globally.

The judge relies on a realistic assessment of the error, based on the principle of the uniqueness of the penalty prevalent in the modern penal code, and therefore, the judge during his judgment on an unintended crime concern on the capabilities of the individual and the wrong deviations that affecting his will, while if the perpetrator accepts the risk, as the perpetrator does not want to harm others, but he is fully aware of the possibility of harm if he follows a certain behavior, and does not take the necessary precautions in that, equating acceptance of the result with failure to avoid it, which justifies Judges stress in this form of unintended error (Hosni, 1985),the Jordanian Cassation Court ruled in one of its rulings that: the motive is not an element of criminalization in the cases specified by the law pursuant to Article (67/2) of the Penal Law, therefore, the accused's shooting of several bullets at the victim in a dangerous place of his body led to his death, so that, this incident is sufficient to establish that the accused was intending to kill him, accordingly, the concerned court's deduction of this evidence from the facts of the case is a sound conclusion consistent with the provisions of the law, Penalty Discrimination No. 124/94, 1995, Criminal Judgments Group.

The competent judge evaluates the carriers of the virus, by considering that the criminal intent of the perpetrator is hidden, so the competent court can't determine it directly, as the perpetrator's intention is confirmed indirectly, through inferring and extracting it through the external manifestations shown by the perpetrator and the circumstances surrounding the crime, as well as the direction and evidence from which the judge concluded the availability of intent within the limits of his discretionary authority, it is assumed that there are criminal models for the crime of transmitting infection or virus, and these models differ according to the result of the act, so death may occur where the victim may have weak health immunity or harm may occur as a result of the virus transmission, where the type of criminal intent can be deduced here by the judge, and the difficulty faced by the court in establishing criminal intent in this type of crime cannot be denied, but this is not impossible, due to the absolute discretion of the judge, especially if it is proven that the virus carrier does not adhere to quarantine, or deliberately put his saliva in places exposed to touch with the intention of transmitting the virus and infection.

The Perpetrator that is Virus Carrier, the Regulations Related to Him, and the Punishment Type he is entitled to

Many studies have shown that the causes of the spread of viruses, including the Coronavirus, are primarily the silent carriers of the virus or those who did not show any

symptoms until they discovered that they were infected with the virus or that their symptoms were mild, so they are the main reason for the spread of this epidemic in the world, these people do not have any kind of responsibility towards being infected with this virus, while the perpetrator or perpetrators are infected and they are aware of the seriousness of this infection, and the actions they take may harm others and society, it is necessary to rely on the seriousness of these acts and its harmful effects when assessing the judicial punishment, it is known that the crime arises from factors and causes that control the personality of the perpetrator and weaken him from controlling his ability by giving him a justification for treating with mercy, as he may act by behavior after crime commission that would reveal the dissolution of his criminal gravity or his behavior during the commission of criminal acts or concealment of the effects of the crime may indicate for escalation of his criminal tendency, which necessitates his punishment severely commensurate with the seriousness of that.

The facts claimed determine the judge's mission, and are directly related to the judgment reached by the judge, as the facts presented must lead to the validity of the judgment, in the crimes of transmitting infection or virus, there must be a legal and judicial logic explaining the legal rule in a scientific and practical framework in terms of this type of crime, so that the judge must focus his research on the various facts, and then choose what is necessary so that the judge can do so, it is necessary to fully review the facts presented to him, then analyze the basic intertwined elements in terms of its composition and surrounding circumstances, and finally, choose the appropriate legal text for implementation and arrange its impact, the judge has the right to choose the mental activity that he may undertake to find a solution to the cases presented to him, while a rational understanding of the facts presented to the judge assumes that the judge is aware of it and possesses a legal culture, it is a purely mental process in which it is not possible to verify its credibility and the judge's correct awareness to understand it, except through its reflection in his deduction of the facts from the total of what was presented to him in the case, and his conviction that results from a psychological position.

The First Topic: The Virus Carrier Perpetrator and His Motives

The "*will*" will have a legal value, in event it fulfills two conditions which the discrimination and freedom, the meant by the discrimination is the ability to understand what the act is and to anticipate its outcome effects, this ability is directed to the action materiality and relates to its entity, elements, and characteristics, It is also devoted to its effects in terms of what it entails as a risk to the interest or right protected by law¹¹, with regards to the controls related to the person of the perpetrator of virus carrier, it may be an internal represented in the motives and incentives that led him to commit the crime, as the motives of this crime are counted among the personal factors that are significant in the discretionary reasons of the concerned judge, since the crime is a group of ideas wandering in the perpetrator mind, where a struggle may occurs between committing the crime or refraining from it, until the culprit, the virus carrier, reaches a categorical decision, in committing the crime, so that this decision will function as motivation to his "*will*" towards committing the crime (Obaid, 1979).

Section One: The Perpetrator Motives

The motive of the virus carrier is important even if it is not part of the origins of the crime or one of its elements, and whether the motive available or not it is legally equal in the crime, however, this virus carrier crime has a distinctive characteristic because, as it is understood from the context of Article (67/2) of The Penal Law, the motive is an element in the formation of the crime according to the cases stipulated by the law, and it will surely have an influence on the judge while assessing his punishment within the limits of the discretionary authority, and it will be necessary to tighten the punishment if it appears that the motive was sloppy¹²

As for the difference between the motive and the incentive, it is that the incentive is limited to a set of psychological factors emanating from the offender's feeling and his blind tendencies that drive him to the world of crime, while the motive is the causes of criminal behavior that stems from the mind, so that when the perpetrator acts, he may realize in his mind the current conditions that favor the act and those that necessitate abstinence from the act, and then decide to step forward or stop his criminal action, whoever, from a scientific point of view, there is no difference between the motive and the incentive, especially in crime transmission of infection or virus, because feelings and emotions in both are mixed, the incentive is the feeling of a need for something to satisfy a certain tendency, it is natural for the feeling of need to be accompanied by saturation and imagination, and the incentive as a feeling of need, function as motivation toward the act, it is the generator of action's energy, rather, it is the drive of "*will*" directed toward intent (Obaid, 1979).

Every person has the right to the integrity of his body, and others must refrain from causing harm or interfering with the crime of violating a right protected by law with any kind of abuse, especially the crime of transmitting infection or virus that constitutes an imbalance, since the crime that occurs and infects the human body, whether death or injury of any kind, places the perpetrator under the punishment, the Public Prosecution, as a representative of the entire community, is the only one competent to file a criminal case, it is the exclusive authority to raise a criminal case, as it is the only authority empowered to file a lawsuit, because it is the one who can file a lawsuit against the accused or not.

If the principle in the civil provisions is that the defendant switch into plaintiff in the defense, then he has the burden of proof of the defenses and evidence that he claims, the evidence presumption of proof and its attribution to the perpetrator have a role in the criminal proof rule, whereas, the accused is not in charge to prove himself evidence of the facts he claims or other aspects of the defense that he brings to the court, while the public prosecution has the burden of proving its availability, because the guiltiness assumption does not impose on the prosecution only the evidence on which criminal responsibility is based, but the prosecution must prove that there is no impediment to proving criminal responsibility and refer it to the competent judge for further evaluation after reviewing its compatibility with the facts of the case, then assessing the appropriate penalty according to the seriousness of the committed act.

The insignificant motives that are not commensurate with the magnitude of the aggression against the interest subject to legal protection are not comparable to the motives for the crime of transmitting the virus, such motives must face severe punishment because there is a coherence relationship between the aggression that took place and what motivated it, although motivation is

a state in which the feeling mixed with action, the purpose is a pure state of mind, however, they are related, after all, the purpose is the method to accomplish the motivation, and it must be separated by this relationship in a situation where the rule of law is seen to motive individually, or purpose as a self-contained within the elements of intention, in such case, be necessary when applying such legal basis and claim the existence of intent or lack thereof, you must know the motivation and knowledge of purpose without confusing them (Obaid, 1973). With all this, the evidence must be proven upon providing it to the judicial authority, as the evidence is the recognized measure to convince the judge of the truth of the incident, but due to the specificity of the case we are dealing with, and since the general principle in establishing criminal judgments is that this is done by all methods of proof that are legally permitted, and this principle based on a clear necessity, which is that the legal facts that are required to be proven cannot be anticipated before it occurs, while the law guarantees for the judge the freedom of contentment to form his belief towards any evidence, as there is no authority over his conscience (Amer, 1990), however, in such crimes that constitute a danger to all and its ugliness, the judge must be given the extra range of freedom to investigate the facts and evidence, collecting it calmly, and exploit the modern technical, technological means and the official international correspondence to find out the extent of infection of virus carrier from out-borders and the extent of the perpetrator's knowledge of his virus infection, discussing the perpetrator and his defense in an unconventional way, but in a modern artistic style and confronting him with all the evidence, and not denying his right to defend himself, as in this type of serious crimes, the evidence is not like a permit to prove the passport, because the criminal protection of individual freedoms and the safety of society prevails over considerations of innocence.

Motivation is related to behavior as an idea, while the purpose is related to the same behavior after achieving the result, and the motivation differs from this angle from the intention, which in all cases is represented in knowledge and will, the intent is the same in all crimes, while the motive changes and has many unlimited forms, in such heinous crimes, the crimes of transmitting the virus by achieving death by killing, as the perpetrator intended here to lose the soul, whereas in this case the motive is both, on the other hand, the intention does not accept division, such as being good or inferior, while the motive accepts this division, in addition that the legislator does not depend on it in the occurrence of the crime except in rare cases, while the crime occurrence relies on its moral component, of which criminal intent is one of its two forms (Obaid, 1979).

The decision of the Jordanian cassation court within its penal capacity no. (365/1995) The Quintet Commission, dated (8/4/1995) and published on page (394) of the Bar Association magazine, dated (1-1-1996) stipulated:

“The incentive to commit the crime of premeditated murder, even if it is not one of the elements of the crime, is the reason that compels the perpetrator to commit his crime in accordance with Article (67) of the Penal Law, and to formulate the facts of its commission. The act as if it was committed without a motive is unimaginable. As each crime must have a motive, and therefore, this is a lack of interpretation, which applies to cassation”

And in another judgment of the court in its penal capacity No. (1994/124) (The Quintet Commission) dated (26/4/1994), that published on page No. (1428) of the issue of the Bar Association magazine, dated (1/1/1995) stipulated by:

"The motive shall not be an element of criminalization except in the cases specified by law pursuant to Article (67/2) of the Penal Law, therefore, the accused fired several shots at the victim who was on the roof of his house and hit one of these bullets in a dangerous place of his body, which led to In his death, these facts are sufficient to conclude that the accused was intending to kill him, accordingly, the extracting of the concerned court for this evidence from the facts of the case is in consistent with the law provisions"

Section Two: The Motivation Role in Estimating the Punishment

The judge's use of his discretionary authority while dealing with this viral crime must be based on a purely legal standard to reach the desired goal in facing this criminal who is considered a criminal of a unique kind, while the standards, as everyone knows, are either objective standards or a personal evaluation.

The Jordanian legislator has adopted the standard of personal evaluation in criminal matters, as is stipulated in Article (54-repeater) of the penal law, when passing judgment on a felony or misdemeanor with imprisonment for a period not exceeding one year, the court may order the suspension of the execution of the penalty, if the court considers that the morals of the convicted person, his past, his age, or the circumstances in which the crime was committed lead to the belief that the convict will not return to violating the law (Al-Majali, 2020), however, when encountering this type of crime, it is impossible to implement this ruling absolutely because the suspension of execution contradicts its origin, as the legislator did not give the accused any influence in this matter and restricted it to the judge only because the execution suspension is not considered as part of punishment, but rather a means to track the punishment, so it stops its effect (Hosni, 1985).

The objective evaluation and the subjective evaluation of the punishment differ, as the objective evaluation is one in which the judge takes into account the elements related to that case and excludes the personal elements of the parties to the dispute, while the subjective evaluation depends on the personal elements of the individual, which the criminal judge must take into account when performing his discretion authority (Al-Kasasbeh, 2015).

As implementation of that, there is no objection if the judgment assessing the punishment for the crime of transmitting the virus or infection is based on several justifications, as each of these justifications is sufficient separately, to be a reason for tightening the punishment for these crimes, provided that the justifications mentioned in the judgment do not conflict with each other, to ensure the safety of the reasons on which the judgment is based, and per the correct logic, as a mandatory viewpoint to protect humanity and society from crime and enable them to defend themselves against crime, and to punish the perpetrator with a punishment commensurate with his crime, this will deprive the judge of absolute freedom and the authority to assess the punishment, but rather the judge is within a restricted authority when dealing with such crimes, Imposes a penalty on the accused, he is forced to make it compatible with the personality of the accused and the circumstances in which he was spreading. Criminal poisons, and that if he

claims that the punishment is considered justified whenever the judgment indicates that it took into account all matters in assessing the punishment in a restricted judgment, the wisdom that the legislator targeted, its existence and non-existence will be lost. He became equal and the power of a judge granted him by law became without restrictions or guarantees.

Criminal justice is identical with the social conscience, and relying on each person's sense of his moral responsibility, requires that the judge when assessing the punishment of such crimes, that his work is subject to rigorous scientific scrutiny based on the foundation of the theory of criminal law that does not reject any belief or act in the interest of the criminal world that it denies moral values because the actual purpose of the criminal law is to protect society and its members from the world of crime, so the criminal judge, with his authority to assess the punishment of the virus carrier, works to complete the job of the legislator when he strives in the realistic determination of the punishment through abstract legislative determination to achieve harmony between the abstraction of the determination and its realism, and therefore he must be gradual in determining the fair penalty for this extraordinary criminal, depending on the patterns of logical analysis of the issues that may be new or unprecedented method in an attempt to draw parameters of the theory that has meticulous craftsmanship to confront this criminal.

The Second Topic: The Punishment Type in Term Quantity and Quality

While determining the punishment for each crime, the judge must clarify the circumstances of the crime and the circumstances surrounding it in many aspects, such as political, national, and social, taking into account the environmental traditions, and what is consecrated because of the inherent traditions in society, the past of the accused is his mirror in his present, and he has no criminal history and is not considered dangerous, in term of the crime of transmitting infection or virus, the committed maybe is a someone whose hands were stained in the crime and his previous evil did not act as a deterrent, the perpetrator was not deterred from the previous punishment, which made him deserving of the severity and cruelty of the punishment, and this crime may have been committed by people who have never been part of the criminal world.

The criminal policy relies on both punishment and precautionary measures during its combat against crime, as both contain a form of criminal punishment and involve a measure of intended suffering related to the punishment, both of them are subject to the principle of legality and are not applied unless the crime is committed, and both aim for one purpose, which is to combat crime in addition to their social and legal importance (Al-Hadithi & Al-Zoubi, 2010), the legislator may set more than one penalty for a single crime, or apply one of the penalties, and he may combine the penalties, and this may be required mandatory, and if the judge chooses the punishment, questions shall arise about the extent to which it inflicts, what are the measures of the qualitative choice of the punishment and what is the quantitative assessment of it as well?

To apply the appropriate punishment to the perpetrator carrying the virus, the idea of punishment must be realistic and ideal, as the role of the judge regarding it is limited to a procedural process by matching the physical reality of the crime and the crime, and then arranging the effect in a semi-automatic way, where the judge's scope is limited to verifying that there is a match between the physical event and the ideal one, without any evaluation efforts on his part, and then focusing on the material element of the crime, where the physical incident has

become the focus of what the criminal rule is concerned with, because it embodies the will of the perpetrator, so the judge only to explain what is on the mind of the legislator at the time of its stipulation (Hosni, 1985), the circumstances of the crime of transmitting the virus put the judge in a position as if he is establishing a legal rule for certain circumstances that were not at the time that rule was established.

Section One: The Optional Penalty Type

The authority of the criminal judge has complete freedom to review the provisions enacted by the legislator and to choose what he deems appropriate for the committed crime, taking into account the personality of the perpetrator, his circumstances and the circumstances of his crime in accordance with the contemporary criminal policy, and because we are facing a criminal intent of the kind that is not easy to prove, but it is not impossible, especially with the great confidence towards the judges in analyzing the most accurate details of each crime to achieve the correct path of the appropriate penalty range for the criminal of virus carrier.

The system of optional penalties maybe restricted by motivations, as according to that, the legislation imposes two punishments of varying in severity as an optional option in the crime, by obliging the judge to rule by the maximum sentence or prevent him from ruling by the minimum penalty if the motive of the crime commission was seamy, or, the penal system may be restricted by suitability, meaning that if the law gives the judge the choice between ruling a freedom-restricting penalty or a fine, then he may not impose a freedom-restricting penalty unless the fine ruling is not appropriate for the offender in light of his personal circumstances and the objective circumstances of the crime, and since the crime of transmitting the virus is a heinous crime, the optional penal system is restricted by the ugliness of the crime and the seriousness of the offender, as if the law specified for a crime either life imprisonment or the death penalty, as a choice of the judge, and made the death penalty mandatory if the nature of the act, the manner in which it was committed, as well as other general circumstances of the crime, makes the act outrageous (Obaid, 1984), with this, the whole world and we notice the recklessness of the virus carrier, who wanders maliciously among members of society, which has caused a global state of panic, so the legislator and judiciary should not stand idly by in front of these evil people, they must apply the harshest punishments in proportion to the ugliness of their crime.

As foregoing addressed, despite the recognition by international organizations that the Corona virus is a global epidemic, Corona is a virus that affects the lungs in general, which makes normal breathing difficult and greatly affects those who suffer from immunodeficiency, especially the elderly and some children, if a comparison is made between the transmission of the virus and the disease that causes (AIDS) and all the scientific facts that have concluded that everyone who is confirmed to have this disease will end in death, whereas Article (22) of the Jordanian Public Health Law stipulates that: Whoever intentionally conceals an infected person or exposes a person to infection with epidemic disease, or intentionally causes the transmission of infection to others, or refuses to implement any measure requested from him to prevent the spread of infection, he shall be deemed to have committed a crime punishable under the provisions of this Law, and Article (66) of the same law stipulates: Subject to any severer penalty stipulated in any other legislation, a penalty of imprisonment from two months to a year

or a fine of no less than five hundred dinars or both of these penalties shall be imposed on anyone who violates any of the provisions of this law or the regulations issued according to it and does not titled for punishment in this law.

It is concluded from the previous provisions, that the dependency on the most severe punishment, that the means used by the perpetrator to kill a person's soul and to reveal the intention of the perpetrator without considering the time in which the death occurred because the time difference between the crime and the achieve result does not affect its establishment and responsibility when there is a causal link between the act and the result, Article (326) of the Penal Law stipulated that: Whoever kills a person intentionally shall be punished with hard labor for twenty years, by the acknowledgment that the Jordanian jurisprudence and judiciary are compatible on the fact that the criminal intent to kill as it is available in direct intent may be realized in the form of probabilistic intent (Al-Majali, 2020), therefore, the perpetrator can be prosecuted for harm if the result is achieved by harming the affected by transmission, Articles (333-335) of the Jordanian Penal Law apply to them.

As for the initiation of the crime and the effect of the outside reasons against the will of the perpetrator that prevented him from achieving the result, it is imperative to apply the appropriate punishment against those whose intention is to commit crimes appropriate to their attempted crime, in sum, we are in the throes of the differentiation between the choice of punishment, within the presence of a specialized criminal judge, so as to avoid the risk of the judicial error, which is difficult to be corrected in many cases, with the necessity to exaggerate the choice of more severe punishment against the perpetrators of these inhumane crimes.

Section Two: Punishment Type as Quantitative

Based on the rule that absolute justice and not social benefit is the basis of the legitimacy of the state's right to impose punishment, and as a mixture of the two ideas of absolute justice because it is the basis of punishment and the aim of resorting to the fact that punishment should not exceed the level of justice, and the useful limit, because the result of exceeding the limit of benefit will be terrifying adverse consequences, and, consequently, as a result of taking into account the seriousness of the harm caused by the perpetrator of the carrier of the virus with his crime as an objective criterion, as well as the degree of criminal responsibility for the bearer, requires a strict punishment for what the social interest needs to confront these criminals, and the authority of the criminal judge in assessing the punishment is carried out within two regular means for the purpose of judicial exclusivity over the punishment, as mentioned in advance the qualitative choice of punishment, and now followed by a method represented in quantitative estimation, which is known as the authority to estimate the punishment between its limits in the penal text, and the legislator sets penalties that are inherently accepting the two limits, the lower and the upper, and the judge authorizes the estimation of the appropriate punishment between these two extremes (Nashat, 1970).

Article (20) of the Jordanian Penal Law stipulates if no special provision is made in this law, the minimum sentence for temporary hard labor and temporary detention is three years and the maximum limit is fifteen years as well as Article (21) of the same law which states imprisonment is the status of the convicted person has to be in one of the Correction and

Rehabilitation Centers for the sentenced period, which ranges between one week and three years unless the law stipulates otherwise, as for the crime of transmitting infection or virus, and because it is not possible to place a special penalty for such crimes in the Public Health Law, which provides the opportunity for other provisions to punish these criminals so that it is appropriate and suitable for each criminal act according to its outcome and given the lack of similarity in the circumstances and conditions in which the crimes are committed, the legislator gave the judge the ability to estimate the appropriate punishment for the offender by reviewing the circumstances and circumstances of his crime.

The crime of transmitting the virus if proven and attributing it to its perpetrator, and therefore the severity of the penalty required that it exceeds the maximum penalty stipulated in the law, because there are crimes in practical life that require more stringency and take the most severe penalties against it, aggravating circumstances were the legal means by which the judge was able to achieve full compatibility between what he decided in terms of punishment and the realistic circumstances that require more stringency beyond what the criminal text permits, hence, it can be said that the function of reasons for strictness and the choice of the upper limit in the legal system is to provide a method for more appropriate use of the judge's discretionary authority (Hosni, 1985).

As for Islamic law and its conditions regarding the reaction to the criminal phenomenon and its nature in terms of its identification and release, it leaves the way it is dealt with by the discretionary authority of the judge to tighten or reduce according to the appropriate case, the Islamic criminal policy aims to protect interests (rights), and it is known that the criminal protection of rights requires the criminalization of the acts that affect it, and the determination of the punishment for those who commit it (Taymiyyah, 1979).

CONCLUSION

If the judge's discretionary authority imposes in principle that the judge has a degree of freedom in assessing the seriousness of the criminal act and the type of personality of the offender, then the type and amount of punishment that will be applied, it was necessary to frame this authority with controls that the judge can use during the performance of his duty, in order to ensure full legitimacy and to achieve compatibility between the penal texts and the circumstances of each crime and the circumstances of its perpetrator, the crime of transmitting infection or virus must have special standards for the judicial authority, as it is among the crimes that are difficult to identify the criminals and their intentions in. but despite the existence of these standards, the judicial evaluation shall match the correct legal texts, and as a result, the Jordanian legislator has put in place a system of procedures and means to confront these criminals.

Therefore, if the legislator is looking for quick and fruitful justice, he must strengthen the justice system by increasing the number of judges and qualifying them in a specialized manner, and providing the judge with a decent lifestyle in a way that preserves their prestige and status to enable them to perform their mission to the fullest.

Judicial controls, by their nature and types, are a means in terms of their organization aiming at achieving stability and realistic justice, it reflects the material and moral elements of the criminal act, as it includes aspects of the crime in terms of its means, seriousness, the timing

of its occurrence, damage resulting from it, and the motives and incentives of the perpetrator when committing the crime, and the actions accompanying it, the principle of the legality of crime and punishment does not only mean that there is no crime or punishment without a legal provision, but it also means that there is no fair punishment without an accurate judicial ruling, and the latter meaning is a preliminary result that culminates in the most precise rules of form and subject matter to protect the rights of the citizen.

THE OUTCOMES AND RECOMMENDATIONS

The Outcomes

1. The authority of the judge enhances the effectiveness of the law through its application and reliance on the judge's degree of competence in criminal justice and the authorization entrusted to him to achieve the legislator's aim of deterrence and reform.
2. The legislator has given a wide space for the criminal judge to choose the appropriate punishment according to the criminal act of the perpetrator and grant him a set of penalties that he chooses which suit the prosecution of the criminals of the virus.
3. The qualitative and quantitative choice of punishment deters the criminal carrying the virus because of the heinous of the crime committed and the seriousness of the perpetrator and his motives.
4. The criminal judge is bound to apply the aggravating penalty in the event that there is more than one penalty in the legal provisions confronting the perpetrator of transmitting the virus.
5. Judge authority controls are a regulatory method aimed at achieving stability and ensuring realistic justice because they reflect the material and moral components of the criminal act.

The Recommendations

1. In such crimes, the punishment must be justified, even if the adapting is legally defective in the event this evidence prepared for correct adaptation.
2. The concerned judge, in the event of a real multiplicity of crimes, takes into account this multiplicity in the matter of assessing the penalty in an amount commensurate with what has been proven against the accused of related crimes.
3. The discretion authority, scope, and role of the process as a subject must be based on the judge's mental activity, which must be through a logical process that leads him to the integrity of the appropriate judgment.
4. The protection of the personal freedom of the victim by the introduction of the maximum penalty, which would reduce the risk of judicial error and ensure a punitive measure in line with contemporary criminal policy directives.
5. The necessity to pay attention to the judicial authority because it achieves the desired justice and to adopt the idea of judicial specialization in a way that reduces judges' mistakes.

ENDNOTES

1. This was not an era of strife and wars only, but an era of famines and epidemics, and Europe did not know anything about the health system. When Rome fell in the year (476) to the hands of the righteous tribes, chaos ensued and the bond that gathered its various divisions dissolved. And it eliminated many of the features of its civilization after the period of authority remained in both southern and Western Europe and the country became in conflict between barbaric people who were not familiar with the methods of organized governments, and after that, Europe dominated the feudal system.
2. The ecclesiastical system that was untouched by the conquerors was able to prevent the elimination of the rest of the Roman civilization, as the Church members were of a high degree of progress and sophistication

- calling for respect, however, the Christianity was not affecting in improving the medical aspect, although, the canon law interested by the same conditions that are permissible for practicing the profession of medicine.
3. www.webteb.com
 4. Verse (34) from Surat Al-Israa- Holy Quran.
 5. Verse (36) of Surat Al-Israa- Holy Quran.
 6. The medical civil liability in France has an important dimension, as most of European countries, after it was covered in the compulsory insurance, so that insurance covers the civil liability for medical field workers.
 7. Cassation 13/3/1986 Set of Cassation Rulings, Sixth Year, No. 99, Pp. 330
 8. Criminal Cassation, No. (79/19) of (12/03/1973).
 9. For more information, see Article (329) of the Jordanian Penal Law.
 10. For more information, see Article (76) of the Jordanian Penal Law.
 11. The term "*will*" was not commonly used by jurists in ancient times, but it became certain that the terminology used at that time was synonymous with the term "*will*", as contentment and will were two synonyms, and the "*will*" represented an element in the act as it is an organic movement that represents a moving psychological situation in the events of a specific outcome.
 12. Article (67/2) the motive is not an element of criminalization except in the cases specified by the law

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