

The criminal liability for the transmission of the Novel COVID-19 to others in accordance with the Bahraini Legislation (Analytical Study)

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Abstract

Since appearance of the new Corona virus (Covid-19) in China, then its spread in Bahrain and all over the world at the beginning of 2020, the Kingdom of Bahrain has faced the pandemic with strict measures, including imposing restrictions on travel, commercial exchanges, closing public places and places of worship. The study aims to identify the punitive confrontation with the spread of epidemics such as the Corona virus in light of the effective Bahraini legislation. Also, adapting the crimes resulting from the transmission of the Corona virus intentional and non-intentional, furthermore sufficiency in providing influential punitive protection for society and individuals, especially in light of the seriousness of this virus and the impact of its spread on all aspects of health life, economic, social and others.

Keywords: Criminal Liability, Coronavirus (Covid-19), Public Health Law, Penal Code.

Introduction

One of the important duties of the state is to work to preserve the general health of society and prevent the spread of epidemics in it. The protection of the human right to life and health is one of the basic human rights, so the legislator was keen to provide adequate legal protection for it, including criminal protection.

The emerging coronavirus (COVID-19) is a widespread family known to cause diseases ranging from the common cold to more severe illnesses such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). COVID-19 is the disease caused by the emerging corona virus called corona virus.¹ The new corona virus is a new strain of corona virus that has not previously been detected in humans. This novel virus was first detected on December 31, 2019, after a cluster of viral pneumonia cases were reported in Wuhan, People's Republic of China² and then spread all over the world. The number of registered cases worldwide reached 1,218,23,305 cases, 9,8208,903 recovered, and 2,692,728 deaths.³ Thus, the new Corona virus turned into an unprecedented pandemic, given the extent of the spread of infection, and also showed the poor preparations of health systems in many countries in the face of such health predicaments.⁴ With no effective or preventative treatment for the coronavirus, governments around have imposed strict measures including implementing "lockdown" strategies. However, these measures had a negative impact on many and weakened them from aspects of social and economic life, leading to mass unemployment, and raising fears of economic recession and an impending global economic crisis.⁵

The Kingdom of Bahrain was not far from the transmission of this epidemic, as it appeared and spread widely, as the Bahraini Ministry of Health announced the registration of the first confirmed case of the Corona virus, COVID-19, for a Bahraini citizen coming from Iran on February 24, 2020.⁶ The number of registered cases in Bahrain reached So far, 134,510, of whom 127,329 have recovered, and 497 deaths.⁷ The Kingdom of Bahrain has faced this epidemic by multiple means, including criminal confrontation in light of the legislation in force and without the need to resort to declaring a state of public safety or emergency, as some countries have done. For example, the Hashemite Kingdom of Jordan confronted the new Corona pandemic by announcing the implementation of Defense Law No. 13 of 1992, where a Royal Decree was issued approving the decision of the Council of Ministers, implementing the law throughout the Kingdom, as of March 17, 2020, where Article (124) of the Jordanian Constitution that "if something happens that calls for defending the homeland in the event of an emergency, a law is issued in the name of the Defense Law according to which the authority is given to the person designated by the law to take the necessary measures and procedures, including the authority to stop the ordinary laws of the state to secure the defense of the homeland".⁸

The outbreak of the Corona Virus (COVID_19) pandemic may result in many crimes, the offender may intentionally transmit the new Corona virus to others with the intent to kill or harm or make an unintentional mistake and unintentionally cause the transmission of the virus to others either out of ignorance of the rules and principles of dealing with this virus. Or by neglecting him to take the necessary precautions to prevent the spread of the virus among people.

Given the importance of this topic and in order to stand on the criminal confrontation with the spread of epidemics such as the Corona virus, and the adaptation of the crimes resulting from the intentional and unintentional transmission of the Corona virus under Bahraini legislation, and the extent of its sufficiency in providing effective criminal protection for society and individuals, we have chosen to research this topic, especially in light of the

emergence of And the spread of the Corona virus all over the world, which had significant and dangerous effects on all aspects of health, economic, social and other life, so countries rushed to take various measures to confront the spread of this epidemic and mitigate its effects, such as imposing restrictions on travel and trade exchanges, closing public places and the role of Worship.

Objectives of the study:

This study aims to:

- 1- A statement of the crimes arising from the transmission of the emerging coronavirus (COVID-19) to others under the Bahraini Public Health Law.
- 2- A statement of criminal liability arising from the transmission of the novel coronavirus (COVID-19) to others under the Bahraini Penal Code.
- 3- A statement of the adequacy of the criminal legislation in force in the Kingdom of Bahrain to confront epidemics such as the emerging corona virus.

Research Problem And Questions

The problem of the study is to answer the question about the adequacy of criminal protection provided by the legislation in force in the Kingdom of Bahrain from facing epidemics, such as the case of the spread of the Corona virus? Specifically, it seeks to answer the following questions?

What is the legal qualification of the behavior of the offender carrying the Corona virus?

What is the criminal protection contained in the Bahraini Public Health Law to prevent the spread of epidemics, such as the spread of the new Corona virus?

What are the crimes that entail criminal responsibility contained in the Bahraini Public Health Law, and what are the adequacy of the penalties related to them?

What are the crimes that may arise from the unintentional transmission of the emerging coronavirus (COVID-19) to others?

What are the crimes that may arise from the intentional transmission of the emerging coronavirus (COVID-19) to others?

Research Methodology

This study will depend on the descriptive analytical method, by rooting the research based on the relevant legislative texts, the position of the judiciary and the analysis of jurisprudential opinions related to the subject, and weighting what we see as defective ones.

Research Plan

We decided to divide the research into two sections preceded by an introduction and ended with a conclusion, as follows:

First topic: crimes arising from the transmission of the emerging corona virus to others under the Public Health Law

- First requirement: the crime of refraining from reporting infection with the emerging corona virus.
- Second requirement: the crime of exposing others to infection with the emerging coronavirus.

Second topic: Criminal responsibility for transmitting the new Corona virus to others under the Penal Code

- The first requirement: Unintentional crimes arising from causing the transmission of the emerging corona virus to others.
- The second requirement: intentional crimes arising from the transmission of the new Corona virus to others.

FIRST TOPIC

Crimes arising from the transmission of the emerging corona virus to others under the Public Health Law

The Bahraini legislator arranged felony responsibility as a preventive offense to confront actions that could contribute to spreading epidemics, including the Corona virus, under the Public Health Law. We will review the criminal responsibility resulting from transmitting a virus to others under the Bahraini Public Health Law in two demands. In the first, we deal with the crime of refraining from reporting infection with the emerging corona virus, and in the second the crime of exposing others to infection with the emerging corona virus.

First requirement: the crime of refraining from reporting infection with the emerging corona virus

Article (38) of the Bahraini Public Health Law No. (34) of (2018) stipulates that “if a person is infected or suspected of having a communicable disease or is a carrier of the causes of those diseases, he must be reported to the competent department in accordance with the procedures approved by the Ministry. It is concluded from this text that this crime requires a presumed element for its commission, which is a special characteristic of the offender, as well as the presence of a material element, which is the behavior of refraining, and a moral element that is intentionality. Below we explain these pillars as follows:

First - the presumed element (adjective of the offender)

Article (39) of the Bahraini Public Health Law No. (34) of (2018) defines the categories that must report when they become aware of or suspect that any person has a communicable disease - including the emerging coronavirus, as it states the following:

The responsibility to report the presence of a person infected or suspected of having a communicable disease is as follows:

- a. The doctor or any other health worker who examined or participated in the treatment of any person infected with a communicable disease.
- b. The official of the health institution in which the infection occurred.
- c. The official of the laboratory in which the samples were examined.
- d. Relatives of the patient.
- e. The person who lives with the patient in the same accommodation.
- f. The employer or the official at work who knows that he is injured.
- g. The official of the educational institution in which an injured person study.
- h. The captain of the ship, plane, or any other means of transport if the patient is traveling on board.
- i. Responsible for reform, rehabilitation and detention institutions.
- j. The person responsible for any other place for which a decision is issued by the competent minister.

However, it is noted that the text did not include the patient himself, and this constitutes a weakness in the text, as it is assumed that every patient with such a disease should immediately inform the competent authorities in order to work on his treatment and take the necessary measures so as not to pose a threat to the health of others.

Second - The material element in the crime of refusing to report

The material element in most crimes consists of three elements: behaviour, consequence and causation. However, in some crimes, the material element may be based on one element, which is criminal behavior only. But it is not possible to imagine a crime without criminal behaviour. The legislator often forbids committing a specific act because of its danger to society or individuals, i.e., for the crime to be committed, it is required to be committed with a voluntary activity (committing an act) issued by a criminally responsible person. In some cases, the legislator requires that an act be carried out under penalty of criminal liability, and the behavior is based on voluntary abstention from this act. According to the principle of legality, punishment is not envisaged for the mere presence of danger or bad intentions with the desire to commit a crime unless this intention came into existence represented by an act (in the positive crime) or the omission of an act (in the negative crime).

Abstaining means “a person’s refusal to do a certain positive act that the legislator expected from him in certain circumstances, provided that there is a legal duty that obligates this act and that it is within the ability and will of the pleasure”⁹, or as others defined it as “a person’s voluntarily reluctance to take a certain positive behavior that was It must be taken, that is, there is a voluntary abstinence from the organic movement at the time when it should have been done”.¹⁰ Thus it can be concluded that abstinence is based on two elements: reluctance and prevention of performing an obligatory act, and the will not to perform the action that he must do.

The crime of refraining from reporting an infection with a communicable disease such as the emerging coronavirus (COVID-19) is one of the negative crimes whose material pillar consists of the perpetrator’s refusal to perform an act that the law requires to do, meaning that the law in this case is punishable by mere refusal, regardless of the occurrence of A specific criminal consequence as an effect of this refusal or not, as it is equal in the eyes of the law that the result occurred or did not occur at all.¹¹ Therefore, it is not possible to imagine the attempt to commit this crime, as by simply committing the behavior intentionally, i.e. refraining from reporting the crime is completed. That is, the law punishes mere omission. Regarding reporting a person infected or suspected of being

infected with the Corona virus, regardless of the occurrence of a specific result as an effect of this refrain or not, whether the infection of the person infected with the virus spreads or not, the person who abstains from reporting is considered the perpetrator of this crime. Or suspected of being infected with the emerging corona virus within the danger crimes, whose material corner consists of the criminal behavior element only, due to the seriousness of infectious diseases in general and the emerging corona virus (COVID-19) in particular on public health, Its widespread spread.

The crime of refraining from reporting a person infected or suspected of being infected with the emerging coronavirus presupposes the reluctance or inaction of the person who is obligated by law to report, and has not taken the procedures that he must take, such as reporting the infection with the virus when he becomes aware of it, and giving information related to the personality of the infected person, in order for the health authorities to be able to Reach the infected and prevent the spread of the virus. There must also be a legal duty to obligate this person to report a person infected or suspected of being infected with the emerging coronavirus (COVID-19). In Bahraini law, Article 38 of the aforementioned obliges certain groups of people to report an infected person or suspected of being infected with the emerging coronavirus, under penalty of criminal punishment.

There must be a voluntary capacity for a person to refrain from reporting an infected person or suspected of being infected with the emerging coronavirus (COVID-19). In order for a person's behavior to be considered abstinence, he must refrain from the positive act imposed on him, which is to report of his own free will. But if it is proven that the abstaining person's reluctance was done without a free will - as if he was subjected to physical or moral coercion, then in this case this reluctance is not described as abstinence in the legal sense required for the criminal conduct of the crime of refraining from reporting.

Third - The moral element in the crime of refusing to report

The crime of refraining from reporting is a deliberate crime that takes the form of the moral element with the general criminal intent, which consists of the elements of knowledge and will ⁽¹²⁾, meaning that it is required for the intent to exist. If it is proven that his refusal took place without a free will, as if he was subjected to physical or moral coercion, then there is no criminal intent.

But according to the text of Article (130) of the Public Health Law, if this crime was committed by a private legal person, it is assumed that it occurred through gross negligence and not willful conduct by one of his employees working for him.

The crime of refraining from reporting is a misdemeanor crime punishable by the Bahraini legislator under Article 122 of the Bahraini Health Law by imprisonment for a period of not less than three months to three years, and a fine of not less than five hundred dinars and not exceeding five thousand dinars, or one of the two punishments.¹³

Contrary to the general rules in the Penal Code, the Bahraini legislator has arranged criminal responsibility for the crime of refraining from reporting the disease in Public Health Law No. (34) of (2018) on the legal person, where under Article (130) of the law, the private legal person is punished without prejudice to The criminal responsibility of a natural person for the crime of refraining from reporting the person infected or suspected of being infected with the emerging coronavirus, with double the fine prescribed for the penalty, if this crime was committed in the name of the legal person, for his account or for his benefit, and that was the result of an act, gross negligence, consent or cover-up from any An employee working for this legal person.

Second requirement: the crime of exposing others to infection with the emerging corona virus

Article (121) of the Public Health Law states that “a penalty of imprisonment for a period of no less than three months and a fine of no less than one thousand dinars and not more than ten thousand dinars, or one of these two penalties, is anyone who intentionally conceals a person with a communicable disease or exposes others infection, or intentionally caused the transmission of infection to others, or refrained from implementing any measure to prevent the spread of the disease.”

It is concluded from reading this article that the Bahraini legislator has adopted the preventive approach, as it criminalizes the exposure of people infected with the emerging coronavirus (COVID-19) with healthy people from the forms of preventive criminalization, which aims to reduce the disease and avoid its spread, so the crime is based on the criminal behavior that poses a threat to the health of individuals, regardless of the result achieved.¹⁴

By analyzing the text of Article (121) of the Public Health Law, I find that the criminal behavior of this crime takes several forms, which are the following:

1- Concealment, by the offender deliberately concealing and concealing an injured person from the competent authorities, by any means, such as providing him with an alternative place or housing so that it is difficult for the authorities to reach him. In this way, it is assumed that the offender is not the sick person.

2- "Exposing others to infection", and this indicates that the behavior is based on the act of "exposing" others to infection, in other words, the criminal behavior is achieved as soon as the injured person performs an act that would expose others to infection, regardless of the achieved result, which means that the previous offense It is a dangerous crime, not a tort crime.

3- Intentionally causing the transmission of infection to others, and this image assumes that the offender is the infected with the contagious disease and was aware of his illness and the possibility of infection of others in it, yet he made his free will by mixing with them with the intention of transmitting the infection to them. Often this act also constitutes a more severe crime under the Penal Code and according to the criminal conviction and the intent of the offender who committed it, such as the crime of premeditated murder, harm resulting in death, felony of harm resulting in disability, or intentional harm.

In Article 2 of the Public Health Law, the Bahraini legislator defined infection as: "The transmission of an infectious agent in the body of a human or animal and its development or reproduction, and the result may be hidden or apparent." Infection is not transmitted according to the definition of the Bahraini legislator unless two conditions are met. The transmission of the new Corona virus to the body of others, and that this virus develops in the body of the infected person or multiplies in it.

4- Refraining from implementing any measure to prevent the spread of the disease. This procedure is assumed to be issued by a competent authority that imposes on him a legal duty to take certain measures to spread the disease.

Since the beginning of the outbreak of the emerging coronavirus disease (Covid-19), the competent authorities in the Kingdom of Bahrain have taken many measures and measures to limit and prevent the spread of this epidemic, including, for example, taking social distancing measures to prevent the spread of infection with it, imposing the wearing of a muzzle in public places and closing some of them. . To this end, a set of decisions were issued by the Minister of Interior as well as the Minister of Health stipulating a set of measures and procedures, and anyone who violates the provisions of these decisions shall be punished with the penalty prescribed in Article (121) of the Public Health Law promulgated by Law No. (34) of 2018. An example of this is Minister of Health Resolution No. (26) of 2020 regarding social distancing measures to be taken in commercial and industrial stores to contain and prevent the spread of the new Coronavirus¹⁵ and Minister of Health Resolution No. (32) of 2020 regarding health requirements that must be met in barber and beauty shops to prevent the spread of the emerging coronavirus (COVID-19)¹⁶, Resolution (68) for the year 2020 regarding the health requirements to be applied to restaurants and cafes that serve hookah to contain and prevent the spread of the novel coronavirus (COVID-19)¹⁷, and Resolution No. (53) for the year 2020 to adopt the guide Guidelines for the return of sports activity to health clubs, sports academies and outdoor stadiums to contain and prevent the spread of the new Corona virus (COVID-19).¹⁸

The Minister of Interior also issued Resolution No. (59) for the year 2020, to contribute to preventing the injured from causing infection to others, by obliging visitors to public places and industrial and commercial stores to put protective face masks and punishing anyone who violates the provisions of this resolution with a fine of five dinars to be collected immediately. By the competent judicial police officers, and this is proven in the violation report, and the violator is given a receipt stating that the amount has been paid.¹⁹ The penalty for this violation was tightened by virtue of the subsequent Resolution No. (126) of 2020 to reach twenty dinars.²⁰

The crime of transmitting infection with the emerging coronavirus (COVID-19) under Article (121) of the Public Health Law is a willful crime, and can only be achieved with the availability of general criminal intent, and criminal intent requires the availability of the elements of knowledge and will, that the offender knows that his behavior is valid in causing The criminal result, for example, who is infected with the emerging coronavirus (COVID-19) knows that the virus is transmitted through droplets or contact and that the infection is achieved near others with a distance of less than a meter and the infected approaches others with the intention of transmitting the infection to them, or greeting others by hand after placing the hand On the nose, mouth, or eye, however, he did so with the will to transmit the infection to others, and in this regard it equals that his will went directly to achieve this or indirectly when he expected to transmit the infection to others and yet he risked and committed the act. But it is not imagined that this crime was realized through the fault of the offender.

SECOND TOPIC

Criminal responsibility for transmitting the novel coronavirus to others under the Penal Code

Criminal responsibility means the person's authority to bear the legal consequences of committing the crime, when his awareness (knowledge) and freedom of choice (will) with all the elements of the crime is proven, and the subject of this obligation is the punishment or precautionary measure imposed by the law on the person responsible for it. In order to review the crimes that can be attributed to a person due to his unintentional or intentional mistake by transmitting the emerging coronavirus (COVID-19) to others under the Bahraini Penal Code, we will divide this topic into two demands. In the first, we will address the unintentional crimes arising from causing the

transmission of the emerging coronavirus to others. And in the second, intentional crimes arising from the transmission of the new Corona virus to others.

The first requirement: Unintentional crimes arising from causing the transmission of the emerging corona virus to others

We will deal in this requirement with the crime of unintentional murder resulting from causing the transmission of the emerging corona virus in the first section, and crimes of unintentional harm to the integrity of the body arising from causing the transmission of the emerging corona virus to others in the second section.

Section One: Manslaughter resulting from causing the transmission of the emerging corona virus

Article (342) of the Bahraini Penal Code states: "Anyone who accidentally causes the death of a person shall be punished by imprisonment or a fine. The penalty shall be imprisonment if the crime occurred as a result of the offender's breach of what is imposed on him by the origins of his job, profession or profession..."

It is clear from the text of Article (342) that it is conceivable that the criminal responsibility for the crime of unintentional killing will mistakenly transmit the emerging coronavirus (COVID-19) to others, whether the crime occurred through negligence, recklessness, lack of precaution, or failure to observe laws, regulations, and regulations. And it resulted in the death of one or more people due to infection with the emerging coronavirus (COVID-19). That is, the crime of unintentional murder by transmitting infection with the Corona virus requires three pillars: the unintentional error of the offender, and the achievement of a criminal result, which is the death of a living person, and the establishment of a causal link between the error and death.

1- Unintentional error: It is the behavior of the offender, which is represented by every act or omission that takes place in a way that is contrary to what is imposed by the duties of caution and caution required by human experience, as it is every act or voluntary omission that led to the death of the victim that the offender did not want in any way. Neither directly nor indirectly, but he could and should avoid it.²¹ If the offender is one of those who practice medical work or other supportive medical professions, then his mistake is that behavior that violates the scientific and practical rules and principles that those who practice these professions are supposed to adhere to. For example, the medical profession requires sterilization of used tools and medical tests before performing any surgery...²²

Accordingly, an unintentional error occurs by a positive or negative action, which is the deviation of the offender's behavior from what is imposed by the law or the general human experience of the duties of caution and caution, and is achieved through negligence, recklessness, lack of caution, inattention, negligence or non-observance of laws, decisions, regulations and regulations, if it results in For that mistake the death of the victim, which the offender did not want and did not expect, but he should and could have anticipated and then prevented it from happening if he had taken the usual behavior of a person of his category if he was found in such circumstances, or expected and believed that he could avoid them.²³

And then a person is asked about an unintentional murder if he violates the laws or instructions and decisions issued by the official authorities in the country that aim to prevent the spread of the virus, such as a person doing a party for a large group of people in violation of a decision to attend gatherings for a certain number of people, this mixing led to The infection of some of the attendees with the Corona virus caused the death of one of them.

2- The death of the victim: It is not sufficient for an unintentional murder to occur as a result of causing the transmission of the new Corona virus (COVID-19) to others, only the occurrence of an error, but rather that error must lead to the death of a living person, and therefore it is necessary for the crime of manslaughter to take place In this case, the victim must be alive, and not infected with the virus before, so if death is not achieved, he cannot imagine this crime, as it is stipulated that his will not leave when he committed the wrong behavior to achieve death, otherwise we are in the process of premeditated murder, the offender in this The crime does not want the result and does not desire it, but he did not take the precautions to prevent it from happening. However, if death does not occur, this crime does not take place or the attempt to commit it, as the attempt is not envisaged except in intentional crimes.

3- The establishment of the causal relationship between the non-intentional error and death: The Bahraini Court of Cassation has ruled that: "For the integrity of the judiciary by conviction in the crime of injury, the verdict must indicate the nature of the error that occurred on the part of the accused and its causal link between the error and the injury, so that it is not possible to imagine that the injury occurred without this error based on technical evidence".²⁴ Therefore, in order to assign criminal responsibility for a manslaughter for causing the transmission of the emerging coronavirus (COVID-19) to the victim, the death must have occurred due to the virus. That is, had it not been for the transmission of the virus to him, he would not have died, meaning that the virus was the cause of death even if previous or contemporary factors contributed to it, even if the offender was ignorant of them, such as the poor health of the victim, his old age or weak immunity, all of which does not affect the establishment of criminal responsibility for Death, but if, after the offender's mistake, an unfamiliar factor and sufficient in itself to

cause death intervenes, then in this case the causal link between the offender's mistake and death is interrupted, and he is not asked about an attempt because there is no attempt to commit misdemeanors and because it is only imagined in intentional crimes.²⁵

This crime in its simple form is punishable by imprisonment or a fine, but if the crime is committed by a doctor or someone who practices another professional work related to him as a result of his breach of what is imposed on him by the principles of his profession or if he was under the influence of drunkenness or anesthesia when the crime occurred, the penalty shall be imprisonment, and the penalty shall be severe to Imprisonment for a period not exceeding five years if the crime results in the death of more than three persons, and the penalty shall be aggravated by imprisonment for a period not exceeding ten years if the circumstance of the death of more than three persons combines with the circumstance that the doctor has violated what is required by the principles of his profession or with the circumstance of the occurrence of the crime under the influence Secret or anesthesia.²⁶

Section Two: Offenses of unintentional harm to the integrity of the body arising from causing the transmission of the new Corona virus to others

Unintentionally compromising the integrity of the victim's body by mistakenly transmitting the new Corona virus (COVID-19) to others and without leading to the death of the victim, constitutes a misdemeanor of unintentional harm for which he is asked in accordance with Article (343) of the Bahraini Penal Code, which states: That: "Whoever, by his own mistake, compromising the integrity of the body of another shall be punished with imprisonment for a period not exceeding one year or a fine not exceeding one hundred dinars."

For the criminal responsibility for the crime of unintentional harm by causing the transmission of the emerging coronavirus (COVID-19) to others, the offender must be aware of the behavior that he committed and violated the duties of caution and caution imposed by law or general human experience, which resulted in the infection of that third party. . This crime arises in any form of unintentional error, whether by negligence, recklessness, lack of caution, inattention, negligence, or non-observance of laws, decisions, regulations, and regulations.

Negligence, i.e. negligence, includes all cases in which the offender stands a negative attitude or leaves a criminal result to be achieved²⁷, and the image of negligence reflected the image of the lack of precaution with which the perpetrator actually committed. The error in every form is based on a voluntary act that leads to a harmful result that the offender expected or had to inflict, but he did not intend to cause and did not accept its occurrence²⁸, the offender by negligence does not take the precautions that call for caution, and that would have prevented the occurrence of the result. Thus, this picture includes all cases of error through action or omission.²⁹

Accordingly, the patient infected with the Corona virus who neglects and takes a negative attitude towards his actions and does not take the necessary precautions for the occurrence of the result that he expected or did not expect, while this was within his ability and his duty, but he negligently refrained from taking these precautions and the result occurred, as if he allowed himself By mixing with others, whether for work or frequenting the markets, in violation of the instructions issued by the competent official authorities on the necessity of isolation, non-mixing and the necessity of social distancing, and as a result of which the infection is transmitted from him to others, he is responsible for the crime of transmitting the virus through his negligence, negligence, or negligence.

Recklessness means poor judgment, lack of skill, or ignorance of what should be known.³⁰ Recklessness is achieved through ignorance of the rules and principles of the practice of the medical profession, when the offender undertakes an act of the medical profession while he does not possess the information required to carry out this act or does not follow the established principles of his work or art, as if a doctor extracts a person's teeth with a non-sterile instrument that was previously used with an injured patient. With the emerging corona virus (COVID-19) virus, as a result, it causes the virus to be transmitted to it. Despite the traditional provisions of the Penal Code that deal with the issue of causing the transmission of the virus to others by mistake if the offender is a doctor, I believe that this should be addressed according to a decree of the Bahraini Law on Practicing the Profession of Human Medicine and Dentistry by including the crimes that a doctor may commit related to his crimes, including those related to epidemic transmission. Viruses for others.

In order for this crime to occur, the error must be present, and the harm represented by the criminal outcome, i.e. the patient's infection with the emerging coronavirus (COVID-19), and the establishment of a causal link between the error and damage, and making sure that this link is established is an objective issue that the judge of the subject must prove in his judgment, otherwise his judgment will be a minor cause And it needs to be distinguished. The Bahraini Court of Cassation ruled that: "... It is decided that the causal relationship in criminal articles is a material relationship that begins with the act committed by the offender and is linked in moral terms to what he should expect from the usual consequences of his action if he did it intentionally".³¹

This crime in its mild form is punishable by imprisonment for a period not exceeding one year or a fine not exceeding one hundred dinars if the result stops when the virus is transmitted and causes minor harm to the victim. If the error was serious, as if the crime resulted in a permanent disability, or the crime occurred as a result of the

offender's breach of what is imposed on him by the assets of his job or profession, or if he was under the influence of drunkenness or anesthesia, the penalty shall be imprisonment for a period not exceeding two years or a fine not exceeding two hundred dinars. If the result of the unintentional infringement is grave, as if it resulted in harming the safety of more than three people, the penalty shall be imprisonment from ten days to three years or a fine of up to five hundred dinars. By three persons, and this was the result of the offender as required by the principles of his profession, or it resulted from a crime of permanent disability, or he was under the influence of drunkenness and anesthesia, then the penalty shall be imprisonment for a period not exceeding five years.³²

The second requirement: intentional crimes arising from the transmission of the new Corona virus to others

The intentional transmission of infection with the emerging coronavirus (COVID-19) to others may also constitute various crimes under the Bahraini Penal Code, and the legal adaptation of the offender's act depends on several factors, the most important of which is his intent and the criminal consequence of his act. The most serious of these crimes is the felony of premeditated murder accompanied by an aggravating circumstance such as premeditation, the penalty of which is death, or the felony of premeditated murder, or the felony of harm leading to death, or the misdemeanor of harming the penalty according to the duration of illness or disruption of work that may be inflicted on the victim.

Article (333) of the Bahraini Penal Code states: "Whoever intentionally kills a person shall be punished with life or temporary imprisonment. The penalty shall be death if the killing occurred with premeditation, or preceded by premeditation, or is associated with or linked to another crime, or if it occurs on one of the offender's ascendants. or on a public official or person charged with a public service during, because of, or on the occasion of performing his job or service, or if a poisonous substance or explosive was used in it".

Referring to Article (333) of the Bahraini Penal Code, it can be said that it is theoretically conceivable that a person commits a premeditated murder by deliberately transmitting the infection with the emerging coronavirus (COVID-19) with the intent of taking his life. In order to bear the criminal responsibility for transmitting the emerging corona virus as a premeditated murder, the offender transmits the emerging corona virus (COVID-19) to the victim, and that this leads to his death, that is, to be the reason for taking his life. This necessarily means that there are three traditional pillars of premeditated murder:

-The supposed pillar, where it is assumed that the law aims to protect human life by criminalizing murder. The victim is required to be a living human being regardless of his health condition, and he may be the subject of murder from the moment he is described as alive until the moment of his death, when his heart stops working, and his respiratory system is completely and permanently disrupted. However, for the premeditated murder by transmitting infection with the Corona virus, it is assumed that the victim is not originally infected with this disease, but in the case if the victim was infected with this virus, and the victim tried to transmit the infection deliberately to him because the offender was not aware of the victim's illness, then we are in front of the crime case The impossible, which is punishable by the Bahraini legislator, as it takes the rule of incomplete attempt.³⁴

-The material pillar, represented by its three elements, behavior, effect, and causation. Behavior is doing any good action or omission to take away a person's life without right. The legislator - as a general rule - does not require that the behavior be committed by a specific means, and it is not considered an element of the material element of the crime.³⁵ Therefore, it is conceivable that the method that the offender chooses to kill the victim is to transmit the new Corona virus (COVID-19) to others, as long as this is suitable to be a lethal means according to the circumstances that coincided with its perpetration, such as the victim's health condition, in addition to That is, the virus can be transmitted to the victim easily through touching, sneezing, and by placing saliva on the victim's tools.

The criminal result is the death of the victim, and the causal relationship between the act of murder and death is established. And the causal relationship is often in this case not apparent and there is difficulty in proving its existence, either because of the great possibility that many foreign causes were involved with the offender's activity in the death of the person to whom this virus was transmitted, or because this method used in the attack is usually not sufficient to cause death according to the normal cases, as it indicates Medical data shows that the death rate of a patient with the emerging coronavirus (COVID-19) is low. An extensive study, prepared by the "Chinese Center for Disease Control and Prevention", revealed that the death rate among cases infected with the Corona virus around the world reached 3.5%.³⁶

- Spiritual pillar, and representation of the general criminal intent with the help of science and intention. In other words, it is necessary to pay attention to the intent of the carrier to bring the issuer's behavior out of knowledge and discretion, aiming to investigate the criminal result of the carrier from which the carrier is involved and to impose a morale on the mover. The offender is supposed to know that he is carrying the virus, and that his behavior is a vector of infection, with the expectation that it will result in the death of a person. In most cases, it is not possible to conceive of a direct intention to kill a genius by killing him by corona virus mustache (19-COVID) as there is a possibility of a rare death by this means. But it is possible to expect more than the intended (probable), especially if it is expected to increase in size if the enemy is not there, but if the condition is worse than that, it will

increase. Article (25) deals with the Bahraini Penal Code on: "... and the intentional implication of a criminal offense if the perpetrator is expected to commit a criminal offense before proceeding with a precautionary measure". In the present case, the proof is that the intentional death of the genius is only due to the removal of the parasite from him, but this intention did not pass away in the form of the death of the genitals in any form, the mortal does not accept the death of the genitals against him or her. In this case, he committed the crime of intentional homicide, but the penalty for intentional murder is according to the article (336): "Whoever assaults the integrity of the body of another by any means, without intending to kill, but it led to death, shall be punished with imprisonment for a period not exceeding seven years".³⁷

And if the act is based on the premise of intentional homicide according to Article (333) of the Bahraini Penal Code, then the death penalty will be a punishment in the form of a prisoner or a temporary prisoner. But it is possible that the intentions of the deceased have not been established, and the thought may have been strongly conveyed to the magistrate, so that in this case, the death penalty may be intensified and there may be a precedent. The death penalty in the case of gold is considered to be based on the opinion that the coronavirus must be found (19-COVID) from the gemstone.³⁸ But if you look at the parable of the virus in the name of Hajj, it means that the object itself does not act on the body as it interacts with the vacuum and judges it, extending the unpopular shock and the beginning of the sharia. Therefore, it is necessary to provide the necessary treatment by amending the text (333) of the Bahraini Penal Code, which regulates the use of germs or microbes in the presence of bacteria and virus substances.

Conclusion

After we finished preparing this research, we reached some conclusions and recommendations, as follows:

Results

- 1- The Kingdom of Bahrain faced the spread of the novel coronavirus (COVID-19) epidemic with the legislation in force without the need to declare a state of public safety or emergency.
- 2- Although there is no text criminalizing the transmission of epidemics and viruses to others, such as the emerging coronavirus (COVID-19) in the Bahraini Penal Code, there is the possibility of applying traditional crimes in the penal code to the offender's intentionally or deliberately transmitting the novel coronavirus (19-COVID) to others by mistake.
- 3- The Bahraini legislator has done better by punishing the private legal person for the crime of refraining from reporting the person infected or suspected of being infected with the emerging coronavirus (COVID-19), without prejudice to the criminal responsibility of the natural person.

Recommendations

- 1- We recommend the Bahraini legislator to amend the Decree Law of Practicing the Profession of Human Medicine and Dentistry by including in the law the crimes that a doctor may commit, including the crimes of transmitting epidemics and viruses to others by the doctor and specifying their penalties, and resorting to alternative penalties for freedom-depriving penalties.
- 2- We recommend the Bahraini legislator to amend the Penal Code to ensure the inclusion of the crime of transmitting epidemics and viruses to others and its punishment in its texts, with the necessity of strict punishment in accordance with the gravity of the damage achieved.
- 3- We wish the Bahraini legislator to amend Article (39) of the Public Health Law by including the injured himself in the categories obligated to report the injury and placing him under penalty of punishment so that the injured himself does not escape punishment.
- 4- We recommend the Bahraini legislator to amend Public Health Law No. (34) of 2018, by including in it the text on crimes of unintentionally transmitting viruses and epidemics to others and determining their punishment.
- 5- We recommend the Bahraini legislator to amend the text of Article (333) of the Penal Code by adding the phrase "or transfusion of contaminated blood, or the use of germs or microbes, including bacteria and viruses," so that the use of these means is an aggravating circumstance for the penalty of premeditated murder.

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7. BeAware Bahrain community website, accessed on 20-3-2021.
8. The Jordanian Cabinet website, visited on 3/24/2021: <http://pm.gov.jo/newspaperSubjects/5625/5625.html>
9. Mahmoud Najib Hosni, Crimes of Abstention and Criminal Responsibility for Abstention, Dar Al-Nahda Al-Arabiya, Cairo, 1984, p. 5.
10. Fattouh El-Shazly, Egyptian Penal Code - General Section - The General Theory of Crime, Responsibility and Criminal Punishment, 2008 edition, p. 235
11. Article 22 of the Bahraini Penal Code states: "The perpetrator shall not be punished for a crime unless it is the result of his behavior. If the intentional crime is committed by means of refraining from performing what the law or agreement obliges him to perform what he refrained from, he shall be punished as if it had been committed by him."
12. Article (25) of the Bahraini Penal Code states that: "...a crime is intentional if the perpetrator is aware of its factual reality and its legal elements. The crime is considered intentional as well if the perpetrator anticipates a criminal consequence of his act and takes the risk of its occurrence."
13. Article (122) of the Bahraini Health Law states that "Whoever does not report a communicable disease in accordance with the provisions of Articles 38, 39 and 40 of this law shall be punished by imprisonment for a period of no less than three months and a fine of no less than five thousand dinars, or by one of the two penalties."
14. Adel Abdel Sadiq, Digitization and Epidemics: Challenges and Opportunities in the Light of the "COVID-19" Delinquency, Strategic Papers Journal, Issue 308, Volume 29, Al-Ahram Center for Political and Strategic Studies, Cairo, January 2020, p. 5.
15. Decision published in the Official Gazette No.: 3466, dated: 09/04/2020, and the first article of it states: "All commercial and industrial stores shall abide by the following social distancing measures to contain and prevent the spread of the novel coronavirus (COVID-19):
16. Allocating the first hour of opening the shop to the elderly and pregnant women.
17. Not to allow the presence of a number of people exceeding the capacity of the store, at the rate of one person per square meter of space free of things and concerns. A sign must be placed at the entrance to the shop showing the maximum number of people allowed to be inside the shop according to its capacity.
18. Placing advertisements for shop-goers by leaving a distance of not less than one meter between each customer when shopping and assigning one or more workers to monitor the implementation of this.
19. Placing signs on the floors at the entry and exit points for the shop's visitors to stop at, so that the distance between the sign and the other is not less than one meter.
20. Assigning one or more workers to organize the waiting at entry and exit by making the shop's visitors stop at the signs set for that.
21. Putting a hand sanitizer at the entry and exit points and setting instructions for shop-goers to sterilize their hands before and after shopping.
22. Continuous sterilization of the store with chlorine at a ratio of 1/8 or by sterilization means that eliminate viruses.
23. Not allowing entry to the store for those who do not wear a protective face mask, so that it covers the mouth and nose area, and setting instructions that it is not permissible to take it off while shopping.
24. Decision published in the Official Gazette No.: 3473 dated: 05/28/2020, and the first article states that: "Without prejudice to the health requirements and procedures that must be followed in commercial and industrial stores to contain and prevent the spread of the novel coronavirus (COVID-19) contained in Resolution No. (25) for the year 2020, all barbershops and beauty shops comply with the health requirements accompanying this decision. The annex to the decision stipulated a large set of requirements aimed at preventing the spread of the Corona virus among the visitors of these stores.
25. Decision published in the Official Gazette No.: 3494 dated: 10/22/2020
26. Decision published in the Official Gazette No.: 3483 on: 06/08/2020
27. Decision published in the Official Gazette No.: 3466 on: 09/04/2020
28. Decision published in the Official Gazette No.: 3490 on: 9/24/2020, the first article of which states: "With due regard to the health requirements, procedures and measures issued by the Ministry of Health to contain and prevent the spread of the novel coronavirus (COVID-19), visitors to public places are obligated to And industrial and commercial stores and all places prepared to receive customers, auditors

or visitors by placing protective face masks while they visit these places and shops, until further notice.” The second article states: “Anyone who violates the provision of the previous article shall be punished with a fine of twenty dinars, which shall be collected immediately by the competent judicial police officers, and this is recorded in the violation report, and the violator is given a receipt stating that the amount has been paid. In the event the violator refuses to pay the amount of the fine. The judicial police officer takes the necessary measures in preparation for referring him to the Public Prosecution.”

29. Dr. Raouf Obeid, Crimes of Assault on Persons and Money, Al-Wafa Legal Library, 2015, p. 249.
30. Dr. Muhammad Shanna, Bahraini Penal Code, General Section, 3rd Edition, University of Bahrain, p. 91.
31. Article (26) of the Bahraini Penal Code states: “The crime is unintentional if the criminal outcome occurred due to the perpetrator’s fault. The fault is considered available whether the perpetrator anticipated the result of his action or abstained from it, and only that it was possible to avoid it or did not expect it and that was in his ability, or from his duty.”
32. October 12, 1997 session, from the website of the Supreme Judicial Council https://www.sjc.bh/index_16.php, Access date 4-1-2021.
33. Article (23) of the Bahraini Penal Code states: “The causal link is not interrupted if other causes contributed to the events of the result, even if he was ignorant of them, whether they were prior, contemporaneous or subsequent to his behavior, and whether they were independent or not. However, this connection is cut off if, after the behavior of the offender, an unfamiliar and sufficient cause enters in itself for the events of the result, and in this case the punishment of the offender is limited to what he actually committed”.
34. Article (342) of the Bahraini Penal Code, which states: “Anyone who accidentally causes the death of a person shall be punished with imprisonment or a fine. The penalty shall be imprisonment if the crime occurred as a result of the offender’s breach of what is imposed on him by the assets of his job, profession or profession, or if he was under the influence of drunkenness or anesthesia at the time of the accident, or at that time failed to help the victim or to seek help for him when he was able to do so. The penalty shall be imprisonment for a period not exceeding five years if the act results in the death of more than three persons, and if another circumstance of the circumstances mentioned in the previous paragraph is present, the penalty shall be imprisonment for a period not exceeding ten years.”
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36. Dr. Safwan Muhammad Shdeifat, Criminal Responsibility for Medical Actions - A Comparative Study, House of Culture for Publishing and Distribution, Amman, 1st Edition, 2011, p. 50.
37. Dr. Mahmoud Najib Hosni, Explanation of the Penal Code - General Section, Dar Al-Nahda Al-Arabiya, 6th edition, 1989, pp. 507,508
38. Dr. Mahmoud Najib Hosni, Explanation of the Penal Code - Special Section, Dar Al-Nahda Al-Arabiya, 1988, pg. 407.
39. The session of February 26, 2018, from the website of the Supreme Judicial Council https://www.sjc.bh/index_16.php, access date 4-1-2021.
40. Article (343) of the Bahraini Penal Code, which states: “Any person who, by his own fault, jeopardizes the integrity of the body of another shall be punished with imprisonment for a period not exceeding one year or a fine not exceeding one hundred dinars. The penalty shall be imprisonment for a period not exceeding two years or a fine not exceeding two hundred dinars if the crime results in a permanent disability, or if it occurs as a result of the offender’s breach of what is imposed on him by the assets of his job, profession or trade, or if he was under the influence of drunkenness or anesthesia at the time of the accident, or if at that time he failed to Helping the victim or asking for help when he is able to. The penalty shall be imprisonment or a fine if the crime results in compromising the safety of more than three persons. If another circumstance of the circumstances mentioned in the previous paragraph is present, the penalty shall be imprisonment for a period not exceeding five years.
41. Dr. Fakhri Al-Hadithi, Explanation of the Penal Code, Special Section, Legal Library, Baghdad, 2019, p. 107.
42. Article (41) of the Bahraini Penal Code states: “If it is impossible to realize the crime that the perpetrator intended to commit due to lack of means or failure of the subject, the provisions of attempt must be applied.”
43. Dr. Ahmed Fathi Sorour, Mediator in the Penal Code, Special Section, Book Two, Dar Al-Nahda, 2019, p. 37.
44. Al-Arabiya website, access date 25-4-2021: <https://www.alarabiya.net/medicine-and-health/2020/03/12/%D8%A7%D8%B5%D8%A7%D8%A8%D8%A7%D8%AA-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7-%D8%A7%D9%86%D8%AA%D8%A8%D9%87-%D9%84%D9%84%D9%81%D8%B1%D9%82-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D8%B4%D8%AF%D9%8A%D8%AF%D8%A9-%D9%88-%D8%A7%D9%84%D8%AD%D8%B1%D8%AC%D8%A9>

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