

The Role of The National and International Judiciary to Limit the Spread of The Corona Virus

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Abstract:

In our study, we dealt with the topic (the role of the national and international judiciary in limiting the spread of the Corona virus), as we have shown the dangers of this crime, which has acquired an international character and has become among the most dangerous crimes at the international level because of its effects on the international community, whether in money or lives, and in touching the transmission of the Corona virus. With the basic rights of human life, health and safety in societies, this matter calls for the enactment of national and international legal texts to criminalize such acts and confront them with the necessary punishment, and that these behaviors are a clear indication of the extent of the danger of the offender when he creates viruses such as the new Corona virus in his crimes because the victim does not It can be detected and not seen with the naked eye.

As for the international aspect, international conventions have ensured the provision of adequate guarantees to protect the right to health in general and the accompanying guarantee of providing treatment, medication and medical services, and obligating countries to take the necessary measures to prevent diseases and epidemics to limit their spread, and this is embodied by the crisis experienced by the international community in (Corona pandemic) and achieving international, regional and national cooperation to limit the spread of the virus and criminalizing the people who caused its deliberate transmission or spread.

key words

Corona, the position of national legislation, criminal responsibility, the position of international conventions, international responsibility.

Introduction

First: Introduction to the study

One of the most important rights that criminal laws aim to protect, whether international or national, is the protection of the human right to life, the right to health and the safety of the body and not to be infringed upon. All levels, especially the medical level, led to the discovery of infectious and transitional diseases. Among these diseases, what is very dangerous to the safety and life of individuals, such as the Corona virus. In addition, we find that international conventions have obligated countries to take the necessary measures to limit the spread of the most dangerous virus due to its impact on the destruction of humanity, and these charters have obligated countries to the need for international and regional cooperation in order to limit the spread of this pandemic.

Second: the importance of the study

The subject of the study is of great importance at the national and international levels. From a theoretical and practical point of view, the Corona virus is one of the very dangerous weapons that affect the world, as these viruses are considered living, transitional and invisible organisms that spread very quickly and then infect the victim and transcend to other people, transmitting to them what they carry from Poisons dangerous to people's health, and despite the large number of

victims of this virus, evidence of the crime is very rare, and it is not possible to know the perpetrator because it is difficult to prove.

And that international conventions have obligated countries to take the necessary measures to limit the spread of the most dangerous virus because of its impact on the destruction of all mankind, and sought international and regional cooperation to limit it, and punish those responsible for transmitting it.

Third: The problem of the study

The problem of the study lies within the scope of national legislation, in the absence of a special law criminalizing the dissemination of infectious diseases or the Corona virus specifically, or explicit and clear texts dealing with this virus. 369) The penalty set by the legislator for this crime is not commensurate with the seriousness and gravity of the act of transmitting the Corona virus, and the criminal treatment here was not sufficient in the special laws or actually criminalize the acts of spreading the Corona virus. The powers are for specialists to carry out, and the problem lies in international covenants that they did not directly stipulate the corona virus) but were their guarantees to protect the right to health in general and obligate countries to take preventive measures against diseases and epidemics, but they did not put a text criminalizing the people that cause its spread).

Fourth: Study Methodology

In studying this topic, we have relied on the analytical approach, which analyzes national and international legal texts related to the act of spreading the Corona virus and everything related to transitional and infectious diseases. world and international conventions on this subject.

Fifth, the research plan

The focus of our study is the role of the national and international judiciary in limiting the spread of the corona virus, and to study this topic in some detail we will divide it into two demands. Regarding the transmission of the Corona virus, while we deal in the second section of it, the position of the Public Health Law on the spread of the new Corona virus, and in the second demand of it we deal with the international obligation to criminalize the transmission of the Corona virus, which we will divide into two sections. While we deal in the second section with the position of the statute of the International Tribunal regarding the transfer of the corona virus as a second branch, then the study concluded with a set of results and recommendations.

The first requirement

The position of national legislation on the transmission of the corona virus

Before addressing the legislative texts, whether in the Penal Code or special laws, all of these texts did not contain a reference to the Corona virus in their content. Rather, the legislator addressed the term “serious diseases” or “transitional diseases,” regardless of the causes of these diseases, whether they were microbes, bacteria, viruses or parasites. The Penal Code and the Public Health Law dealing with the spread of serious diseases, we had to address the constitutional text that relates to health aspects. The Iraqi constitution in force addressed that, and stipulated the following: (Every Iraqi has the right to health care. Hospitals and health institutions ()), the constitutional text guarantees health care to all members of the Iraqi people and puts the responsibility of the Iraqi state to provide health protection for them through the provision of treatment and means of health protection, as well as the establishment of hospitals in order to provide health assistance to them. Corona virus, being one of the infectious diseases that infect humans, those infected with it need health care through the establishment of health institutions to provide Prevention and treatment, as well as protecting the rest of the individuals from the transmission of infection to them, and this is what the Iraqi constitution guarantees in the text of the above article.

Accordingly, we will address in this requirement the position of the Iraqi Penal Code regarding the transmission of the Corona virus as a first branch, while we will address in the second section of it the position of the Public Health Law regarding the transmission of the new Corona virus.

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First section.

The position of the Iraqi Penal Code on the transmission of the Corona virus

In the Penal Code, the Iraqi legislator dealt with criminal acts that violate public health in Chapter Seven of it under the title of crimes of public danger in Chapter Seven entitled Crimes harmful to health, as it stipulates that (Whoever willfully commits an act of It would spread a serious disease that is harmful to the lives of individuals, and if the act results in the death of a person or his permanent disability, the perpetrator shall be punished with the penalty prescribed for the crime of beating that leads to death or the crime of permanent disability, as the case may be.

The same law also stipulates the following: “Whoever accidentally causes the spread of a serious disease that is harmful to the life of individuals, and if the act results in the death of a person or his permanent disability, the perpetrator shall be punished with the penalty prescribed for the crime of murder.” An error or a crime of harm is wrong, according to the circumstances.

It is noted through the statement of the provisions of the Penal Code that the penalties included in the two articles are simple penalties for the committed act and are not equivalent to the danger of spreading the Corona virus or its effects, especially what was stated in the text of Article 368. This is because of its harmful consequences for society and individuals, as well as its effects on all social, economic or political levels, as well as the infection of this virus when it is transmitted to another person. This is the best evidence that the penalty is not equal to the gravity of the act committed and that the provisions in the Penal Code are not sufficient to prevent that virus, and that spreading the Corona virus by mistake must be punished more severely in order to comply with the decisions and instructions issued by the executive authority in the field of preventive measures with the aim of Preserving the health of the rest of the citizens)

Regardless of the means used by the offender, some means may be lethal in nature, such as a firearm, a knife, or throwing a person into the sea with the intent of killing him. .

Just as the legislator dealt with some aspects that have an impact on health and the life of society, and whose punishment is included in the violations, it distinguished it from other misdemeanors and felonies and made its punishment very simple (), and that among the criminal acts that violate public health in Chapter Three under the title of health-related violations (), The legislator has criminalized acts against public health, including burying a human corpse in a city or other than a place authorized for burial, or throwing the corpse of an animal into rivers or sewers, or throwing dirt in a street or public road or other things that are harmful to health.

It can be said that the Corona virus has an effect on the act and the crime because it is considered a killer by its nature as it is a substance, and therefore it is suitable for killing with it or transmitting it to others as a means of premeditated murder, because it is not required that the act constituting the criminal behavior in the crime of murder be fatal by nature, but it is sufficient for it to be The act is valid for the events of death in light of the circumstances that lived through its perpetration. These circumstances are represented by factors with possible effects, and adding these potential effects to the act is what determines its validity to form the material element of the killing.()

second section

The position of the Public Health Law on the spread of the new Corona virus

When looking at the texts of the public health law in force regarding infectious and transitional diseases, we did not find a criminalization of the act of spreading the new Corona virus in them. Some texts that dealt with infectious or transitional diseases are preventive and curative texts that regulate health precautions to prevent infectious diseases without being subjected to criminal responsibility for spreading these viruses. The legislator stipulated some penalties in order to confer criminal protection on public health with the aim of preserving and not attacking health. He clarified this law in a general statement that falls on the shoulders of the Iraqi Ministry of Health in dealing with diseases that affect individuals within the framework of Iraqi society, so it stipulates that (disease control). Transitional control, monitoring and preventing its infiltration from outside the country to its interior and vice versa, or from one place to another in it, and limiting its spread in Iraqi lands, waters and airspace.

The legislator clarified the nature of the transmissible or rapidly spreading diseases (transmissible disease is the disease resulting from infection with an infectious agent or the toxins generated by it, which results from the transmission of that agent from the source to the host directly or indirectly)), the legislator did not refer in this text to a virus Corona, but it included all infectious or transitional diseases. excessive.

As the legislator dealt in the same law with issues of transporting and burial of the deceased with one of the transmissible diseases, he stated that if the cause of death was a transmissible disease, the body must be wrapped with a cloth saturated with a disinfectant solution. The corpse from inside the country to the outside.()

Although the texts that dealt with infectious and communicable diseases are preventive measures, the effective Iraqi Public Health Law stipulates that whoever violates the provisions of this law shall be subject to penalties, namely a fine, store closure, confiscation and also imprisonment.()

And that the absence of a text criminalizing the act of spreading this virus does not mean that this behavior is permissible. There are several general rules that criminalize compromising the integrity of the body and aim to protect the right to life and the right to health. With some legislative texts that may apply to the Corona virus, these texts may It does not apply to some incidents of spreading this virus that take place through the mother breastfeeding her fetus or donating blood transfusions, in addition to the fact that the legislator has put in place some special laws and texts in order to impose preventive measures and precautions against transitional and contagious diseases such as isolating the infected patient in private places and prohibiting the practice of some professions However, violating these measures does not result in the criminal responsibility of the perpetrator of the behavior, due to the lack of the most important conditions, which is the punishment, so we need legislative intervention to confront the behavior of spreading infectious diseases, including the Corona virus, by introducing some amendments to the legal rules to suit the seriousness of this disease or by establishing a special independent law regulating criminal responsibility for the spread of the coronavirus.()

The second requirement

International commitment to criminalize the transmission of the corona virus

International covenants guarantee the individual's right to health and obligate states to take measures to protect that right from all violations of this right.

And when we talk about the Corona pandemic, we are about to talk about the opposite of the right to health, so we must clarify the position of international conventions on this pandemic and the position of the International Court of criminalization of the deliberate transmission of the Corona virus.

From the foregoing, we will divide this into two branches:

The first section: the position of international conventions on the transmission of the corona virus.

Section Two: The position of the statute of the International Tribunal on the transmission of the corona virus.

The first section : the position of international conventions on the transmission of the corona virus

Article 25 of the Universal Declaration of Human Rights refers to the human right to health and medical care.

As for the document of the International Covenant on Economic, Social and Cultural Rights, we seek in it an explicit and direct reference to the individual's right to health and to be protected from diseases and epidemics, and it obligates states to take all measures regarding commitment to the content of that protection by saying "...the prevention, treatment and control of epidemic, endemic, occupational and other diseases and other diseases." " It follows from this explicit international text that any breach of this obligation would expose the state to international responsibility, and therefore the state has the obligation to make all available means to limit the transmission of diseases and epidemics, so how and if we are facing a global pandemic that caused the destruction of the human race, so the criminalization of The people who caused the transmission of the virus are among the state's obligations to protect the right of individuals from the risk of disease and epidemics, and it is also obligated to prepare health places, provide appropriate health care and provide treatment to individuals, and here we discuss whether these countries are able to manufacture treatment, so it is fun to protect individuals by ensuring Full treatment for them, but if the state is not a manufacturer of treatment, but it has a financial capacity that enables it to purchase treatment and provide it to its citizens, and if it violates this, the state will be the main culprit in the transmission and spread of the virus, which will result in a breach of its international obligation to protect the right to health and protect the individual from infection with diseases. and epidemics.

The Committee on Economic, Social and Cultural Rights has commented on the text of Article (12) in its paragraph (1) regarding the right of the individual to enjoy the highest attainable standard of health, and has clarified the mechanisms used to achieve this goal through the development of health policies or the implementation of health programs developed by an organization World Health Organization or the adoption of specific legal instruments, and for this purpose it has taken a clear and comprehensive course regarding the protection of the right to health, with everything related to this right in order to eliminate diseases or epidemics that affect the right to health.

As for the constitution of the World Health Organization, it initially referred to the definition of health: as a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity.

The constitution of the World Health Organization referred to the obligation of all member states annually to submit a report explaining the measures they have taken or the progress they have achieved in the health of their people, and that each country submits epidemiological statistics in the manner decided by the Health Assembly as referred to in Article (64) of the organization's constitution. It also has broad powers to approve regulations related to the spread of diseases and epidemics, impose quarantine measures and other measures to prevent the spread of the virus.

We understand from the foregoing that international conventions criminalize any behavior that harms public health and considers it a grave violation of the individual's right to his physical, physical and mental health and safety, and imposes on states to abide by these international conventions and reach the highest levels of protection for public health, through their enactment of laws that criminalize the one who violates laws Health and safety, if it deliberately causes the spread of the virus among individuals in the country or among the countries of the international community.

The civilized world tends to apply the so-called preventive medicine, on the grounds that it is one of the most successful methods to limit the spread of the virus and that it does not incur the state with huge financial expenditures from buildings, hospitals, medical staff, specialized medical centers and examination supplies.

The second section : the position of the statute of the International Criminal Court on the transmission of the corona virus

The Statute of the International Criminal Court of 1998 referred to the court's active role in eliminating the most serious crimes of concern to the international community, by punishing the perpetrators of those serious crimes, and that (the Corona pandemic), as described by the World Health Organization, is one of the most dangerous epidemics on the world. Collect, as it began by enumerating the crimes that fall within its jurisdiction.

However, if we look at the text of Article (6) of the statute of the International Criminal Court, we find that it has included forms of the crime of genocide, including killing members of the group, and causing serious physical or mental harm to members of the group. Hence, we find that deliberately transmitting the virus or deliberately causing its spread would be considered a crime of genocide in public international law as defined by the International Criminal Court, and therefore if the culprit is an individual, they are tried before the International Criminal Court for the crime of genocide by transmitting the Corona virus. The newcomer, but if the cause of the transmission of the virus is a country, it will be tried before the International Court of Justice in accordance with the provisions of Article (36/c) for violating an international obligation, which is a violation of the right to global health, by deliberately transmitting the virus or causing its spread.

In spite of this, we do not see that there is any lawsuit that has been brought before the international courts. China has been sacrificed as the country that is the first cause of the spread of this virus, which has crossed its impact to all countries of the world and led to the death of a large number of people.

Conclusion

Through our study of the topic of the role of national and international legislation in limiting the spread of the corona virus, we have reached a set of conclusions and proposals, which we will include in turn:

First: the results

1. The laws that dealt with serious and contagious diseases that could include the new Corona virus were scattered and dispersed and were not collected by a special and unified law in the national legislation, in addition to the fact that most of these laws are preventive and did not regulate the criminal responsibility of the Corona virus, but rather the punishment they included was for violating the rules Disease prevention, and it would have been better to pass legislation criminalizing breach of the right to public health and transmission of the virus or causing its private dissemination.
2. The lack of keeping pace with the national legislation in force with the great developments taking place in society. By studying the laws related to dangerous and infectious diseases, we note that most of them were developed more than half a century ago at a time when science had not reached the modern and advanced devices that explore infectious diseases such as the corona virus. .
3. Despite the guarantees provided by international conventions that guarantee the protection of public health, they were weak and not commensurate with the scale of the pandemic, especially in the event that countries violated the right to health or did not apply preventive measures, it was necessary to issue penalties on those countries and refer them to international courts competent

Second: Recommendations

1. Unremitting efforts must be made in order to create a society that enjoys a high degree of health culture and adherence to preventive measures and health instructions that will preserve human lives.
2. We call on the Iraqi legislator to legislate and publish a law on infectious diseases and to obligate individuals to the procedures followed by health departments in order to combat the corona virus and their commitment to the health instructions in force to combat this epidemic. And the application of the health procedures followed within the country, provided that this legislation regulates the crimes of spreading infectious diseases, including the Corona virus, and determines the penalties for anyone who violates its provisions, because these diseases are dangerous and independent in their characteristics compared to other crimes.
3. Despite the spread of the virus and the huge damage that it has caused to the international community and the family, we have not witnessed until now any international or international judicial position that determines the country causing the spread of the virus. against them.

Margins

1. Article (31/first) of the Iraqi constitution in force for the year 2005.
2. Article 368 of the amended effective Iraqi Penal Code No. 111 of 1969.

3. Article (369) of the amended effective Iraqi Penal Code No. 111 of 1969.
4. Muhammad Hamid Hassan: Criminal responsibility for spreading the new Corona virus, a master's thesis submitted to the Council of the Faculty of Law at Tikrit University, 2021, p. 47.
5. Jundi Abd al-Malik: The Criminal Encyclopedia, part 5, Arab Heritage Revival House, Cairo, 1, 1976, p. 685.
6. It is a crime punishable by simple imprisonment for a period of twenty-four hours to three months or a fine of no more than thirty dinars, Article (27) of the Iraqi Penal Code No. 111 of 1969.
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9. Article (3/Second) of the Iraqi Public Health Law No. (89) for the year 1981.
10. Article (44) of the Iraqi Public Health Law No. (89) for the year 1981.
11. Consider articles (58-63) of the Iraqi Public Health Law No. (89) for the year 1981.
12. Articles (96 and 99) of the Iraqi Public Health Law No. (89) for the year 1981.
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15. Article (12/c) of the International Covenant on Economic, Social and Cultural Rights in 1966.
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