

Legal Reregulation Of Illegal Acts Against The Human Corpse In Jordanian Legislation

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ABSTRACT

Exposure've opted to the subject of legal regulation of Unlawful Acts located on the human body in the Jordanian legislation, which ensured that the provisions of Jordanian law, the protection of the human body alive and dead and discouraged all underestimated this protection or usurped and make it a hotbed of wasting the dignity of this body, has developed a Jordanian legislation - since the founding of the emirate - legal rules of civil and criminal deterrent and anti-assault on the body and the body in any form and under any circumstances, but the realism practices of some came in violation of this protection, so he dealt with in this research my idea; buying and selling corpses, which represents the most egregious illegal acts that may have occurred on the human body and in the first from the requirement, as well as with regard to the fact that some hospitals to seize the bodies to collect dues and in the second requirement of this research, this study has concluded a number of findings and recommendations, where he was the Jordanian legislator's role is estimated in the fight against these acts of During what years of legislation with the need to kindly re-consider some of the sanctions contained in the relevant Jordanian legislation and toughened a law governing the grip on such attacks.

Keywords: human body, protection, assault

Introduction

Man-made criminal laws, including the Jordanian Penal Code No. 16 of 1960 and its amendments, punish acts that constitute an assault on the bodies of the dead and their burial places, and acts that disturb visitors to cemeteries or carry any religious insult to those who meet with the intention of holding funeral ceremonies, regardless of the religion of the deceased. Article (277) of it stipulates that:

1- Whoever assaults a place used for the burial of the dead, or a place designated for holding funeral ceremonies, or preserving mortal remains or

monuments to the dead or desecrates or demolishes them, or violates the sanctity of the dead, shall be punished with detention for a period of no less than three months and not exceeding two years. It also stipulated the need to respect the feelings of the deceased's relatives during the funeral ceremonies, and not to do any act that constitutes an insult to them or their religion, in the second paragraph of the previously mentioned article, as follows:

2- Whoever causes disturbance to persons assembled with the intention of holding funeral ceremonies with the intent of hurting the emotions of any person or insulting his religion or

knowing that his act is likely to hurt the feelings of any person or lead to any religious insult shall be punished with imprisonment for a period not exceeding six months or a fine. Not exceeding one hundred dinars, or both. Also, the Jordanian Penal Code criminalizes acts of slander, and humiliation that may affect the dead⁽¹⁾, and by extrapolating the texts related to crimes of slander and humiliation it is possible that the victim of slander crimes is a public employee, one of the official bodies, public administrations, courts or the army⁽²⁾, It may also fall on anyone, and this is confirmed by Articles (358-366) and the Jordanian legislator has warned that the crimes of defamation and slander are not limited to the living, but may affect the dead. According to a text that his heirs are entitled to without Article 366, which states: "If defamation or slander is directed at a dead person, he urges his heirs alone to file a lawsuit"⁽³⁾. Article (8) of the Jordanian Human Body Organs Law No. 23 of 1977 stipulates that:

"It is not permissible to open the corpse for any of the purposes stipulated in this law except after confirming the death with a medical report". The ninth article of the aforementioned law included the stipulation of the necessity of verifying the brain death of a person in order to rule his death and allow the transfer and transplantation of his organs. It is not sufficient to stop the heart as a criterion for judging death while the third article of the same law stipulated the necessity of complying with the fatwas issued by the Jordanian Ifta Council⁽⁴⁾ concerning brain death, to prevent leaving the matter to the whims of doctors and divorce rulings for death despite the possibility of the patient returning to life in cases of cardiac and pulmonary arrest as the seventh article of the aforementioned law emphasized that the transfer of organs in one of the cases mentioned in this law does not lead to apparent mutilation in the corpse is in a way that its nation is inviolable for the deceased.

Despite this honor and protection of the human body guaranteed by the Penal Code and related legislation, there are practices that led to the wasting of this protection as the business of buying and selling corpses appeared under the name "death trade" as well as some hospitals seizing the bodies to collect their financial dues incurred in The obligation of the deceased before his death and to compel the heirs to pay it and this is what we will explain in the first and second requirements of this research. I pray of Allah Almighty to grant me success in raising this issue in all its aspects that I have realized and identifying all the legal texts that help me to clarify it with reference to the rulings of the esteemed Jordanian Court of Cassation on some parts of this subject.

The first requirement is the buying and selling human corpses

The phenomenon of human trafficking is considered one of the ancient phenomena as old as history and that the forms of its practice have changed and it can rightly be described as the contemporary flavor or the less severe name of the word slavery which prevailed in past ages and which was based on the sale of slaves at public auctions that offered these people at different prices that vary according to what they enjoy By that slave of fat power, there is no difference between him and that solid commodity of multiple descriptions and uses, both of them is one that is sold and bought⁽⁵⁾. Although a person is not money and does not make money and cannot be subjected to trading for the purpose of profit trade and material gain in a way that leads to the destruction of the manifestations of human dignity, which constitute the basis of divine and legal protection for the man⁽⁶⁾ body brokers in contrast to the simplest human values common in all societies have created a form of trafficking Illegal and replaced by the human body on the grounds that the human being is the natural being with capabilities not available in other beings.

Thus, it is possible to traffic in the vulnerable of this type of people in despicable ways and means in a way that helps them to benefit from the profits of this type of trafficking by practicing and expanding other criminal activities represented in the trade in drugs and weapons⁽⁷⁾.

Legal jurisprudence defines the phenomenon of human trafficking as: "All illegal behavior that turns a person into a mere commodity that is disposed of by professional intermediaries, with the intent of exploiting him in low-paid work, sexual acts, or the like, and whether this behavior is done with the will of the victim or the like. Short of it ⁽⁸⁾, with the emergence of global and regional organizations to defend human rights, the United Nations played a major role in combating organized crime under the United Nations Convention against Transnational Organized Crime of 2000. The organization also developed a protocol aimed at stopping and prohibiting trafficking in persons under the name: (Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention against Transnational Crime) ⁽⁹⁾. The aforementioned convention defines organized crime as: "the agreement with one or more persons to commit a serious crime for a purpose directly or indirectly related to obtaining a financial or another material benefit" ⁽¹⁰⁾ and organized crime can be defined as: "a complex and widespread criminal activity". It is carried out by groups of people with a degree of organization and aims to achieve wealth for its participants at the expense of society and its members they are often carried out through total disregard of the law and involve threatening crimes, sometimes linked to political corruption ⁽¹¹⁾. Forms of organized crime include human trafficking, money laundering, terrorist crimes, drug and weapons trade, theft of antiques and

historical monuments, illegal immigration smuggling, aircraft hijacking, and maritime piracy ⁽¹²⁾.

These crimes have four criteria:

- Three or more people collaborate
- The formation of the organized group should be for a long time
- committing crimes
- To be the goal of obtaining material profit or power ⁽¹³⁾.

The Jordanian legislator did not address the definition of organized crime or its criteria in the Jordanian Penal Code. However, the legislator listed some crimes whose characteristics are similar to those of organized crime, including in Article 157⁽¹⁴⁾ of the Jordanian Penal Code regarding forming an association or concluding an agreement with the intention of committing crimes against People or money, and Article 158⁽¹⁵⁾ related to roaming public roads and countryside in the form of armed gangs, as well as Article 160⁽¹⁶⁾ about belonging to an illegal association, not to mention what was mentioned in the second paragraph of Article 80 which provides for forms of interference in the commission of the crime, and as we have said The crimes of human trafficking are one of the organized crimes, and the first paragraph of Article Three of the Protocol to Prevent, Suppress and Punish Trafficking in Persons known as the Palermo Protocol defines the crimes of trafficking in persons as:

"The recruitment, transportation, harboring or receipt of persons using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over

another person, for the purpose of exploitation includes, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. Under the second paragraph of the same article, the consent of the victim of trafficking in persons to the intended exploitation described in the first paragraph is not considered. In order for the Jordanian legislator to keep pace with the global trends in eliminating the clutches of this phenomenon and folding it in the annals of history, since the era of the emirate, the abolition of slavery Law No. 110 has been issued For the year 1929, and because the world soon got rid of the tragedy of slavery, it fell into the trap of human experimentation and in multiple patterns, which prompted the legislative authority in the Kingdom to put in place Law No. 9 of 2009, which came in line with the provisions of the Palermo Protocol, and Article Three was formulated ⁽¹⁷⁾ From the aforementioned law a definition to clarify the meaning of crimes of human trafficking, which was similar to the definition contained in the Palermo Protocol and as follows:

A: For the purposes of this law, the term human trafficking offenses mean:

1. Recruiting, transporting, harboring or receiving persons for the purpose of their exploitation by means of threat or use of force or other forms of coercion, kidnapping, fraud or deception

Exploiting power, exploiting a situation of weakness, giving or receiving sums of money or benefits to obtain the consent of a person who has control over these persons.

2. Attracting, transporting, harboring or receiving persons under the age of eighteen, whenever that is for the purpose of exploiting them, even if this exploitation is not accompanied by a threat of force or Using it or other methods mentioned in Clause (1) of this Paragraph, B: For the purposes of Paragraph "A" of this Article,

the word exploitation means: the exploitation of persons in forced labor, forced labor, slavery, servitude, removal of organs, prostitution, or any other a form of sexual exploitation. By extrapolating this text from the Jordanian Human Trafficking Prevention Law, it has identified a number of exploitation patterns related to the removal of human organs and did not differentiate between whether these organs were removed from living or dead bodies

Although the word "members" came in the plural form, the punishment that we will come to explain affects the person who removes an organ or several organs, which may be taken from the body of a living person or a dead body to obtain financial and material benefits and gains, by organized criminal groups, which is according to the text of Article Two. Of the aforementioned law, "a group consisting of three or more persons that exist, even for a period of time, and work in concert with the aim of committing one or more criminal acts in accordance with the provisions of this law in order to obtain, directly or indirectly, a financial or another material benefit. Based on the foregoing and by reading these texts together, it can be concluded that the removal of organs, which according to the generality of the pronunciation and which came without specifying whether it is applied to the living only, affects the bodies of the dead, so that they are removed from the body of a dead person, whether with his consent before his death and with his consent that is not

A value for him or his forge, provided that this member is purchased through an agreement that may occur between these criminal groups and those who have authority over the deceased as his guardian, custodian or spouse, in accordance with what was stated in the first clause of the first paragraph of Article 3 of the Law on Preventing Trafficking in Human Beings. Which indicated that human trafficking crimes may be carried out by granting or receiving sums of money or benefits to obtain the consent of a

person who has control over the victim or who was subject to exploitation.

These criminal groups, in cooperation with doctors stripped of the lowest human values, split the body of the dead and take what they want from human organs in the event of his death, and then work to sell them to people who need them in exchange for huge sums of money, taking advantage of the need of those destitute families who offer their dead for sale for a sum of money. Just as the process of buying and selling may take place with the consent of those who have authority over the victim. It may take place by force and coercion or by the knowledge of these groups that these families owe sums of money to any of those involved in human trafficking or others and intimidating them that if these debts are not paid, they will be claimed before the court or at the creditor's instigation to do so, and if they do not fulfill it, they will be imprisoned. This compels vulnerable families of the victim to agree to sell their dead bodies or parts of them to ward off imprisonment, to prevent their humiliation and to expose their family circumstances.

The Jordanian legislator has arranged a penalty for committing any of these crimes in the text of Article Eight ⁽¹⁸⁾ of the Prevention of Human Trafficking Law: "He shall be punished by imprisonment for a period of no less than six months or a fine of no less than one thousand dinars and not more than five thousand dinars or both of these penalties." Anyone who has committed the crimes of human trafficking stipulated in Paragraph 1 of Paragraph Security of Article 3 of this law," while Article Nine ⁽¹⁹⁾ stipulates cases in which the penalty is aggravated to the extent of temporary hard labor, and as follows:

Despite what is stated in Article 8 of this law, a penalty of temporary hard labor for a period not exceeding ten years and a fine of not less than five thousand dinars and not more than twenty thousand dinars shall be imposed on anyone who:

A- Committing one of the human trafficking crimes stipulated in Clause 2 of Paragraph (A) of Article 3 of this Law.

b- Committing any of the human trafficking crimes in one of the following cases, including:

- If the crime is committed through exploitation in prostitution or any form of sexual exploitation or the removal of organs." The Jordanian legislator stated in Article 13 of the aforementioned law that the consent of the victims or those affected by human trafficking crimes is not considered for the purposes of reducing any of the penalties stipulated in this law.

This is about the death trade by buying and selling corpses, and we will now move on to researching what is related to some hospitals seizing the corpses of the dead to collect their financial dues, as follows.

The second requirement is the seizure of the dead body by hospitals, collection of financial dues

Some may have to borrow from others, provided that they pay what they owe to the creditor when maturity comes. The creditor has one of the following two means to obtain his right, which are:

First - the debtor pays by himself or at the request of the creditor, and here the obligation is implemented without the need for the judicial authority to intervene in the matter, and fulfillment here is the natural way to expiry the obligation and it is the origin, where it is assumed that the debtor submits to the indebtedness element of the obligation

And he implements it in accordance with the text of Article 315⁽²⁰⁾ of the Jordanian Civil Code, which stipulates that "the right must be fulfilled when the conditions for its entitlement

are legally fulfilled...” as well as Article 316 ⁽²¹⁾ of the same law, whose first paragraph states:

Second - forcing the debtor to legally fulfill what he owed because he did not do so voluntarily, and here the creditor submits his bonds proving his right to the judiciary to collect them. Of the rights, if he does not respond to that demand, the judiciary will compel the debtor to implement his obligation at the request of the creditor, and here the implementation is not optional, but rather compulsory ⁽²²⁾ pursuant to the provisions of the first paragraph of Article 313⁽²³⁾ of the Jordanian Civil Code, which states:

The right is enforced forcibly against the debtor when it is due when he fulfills the legal conditions and according to what is stated in articles 355-364 of the same law and compulsory execution, which is carried out by the public authorities represented by the person in the record under the supervision of the execution judge. In order for this to take place, it is necessary to seize the money to be executed, and the seizure is of three types ⁽²⁴⁾:

First - Executive seizure:

It is what results in placing the seized money under the control of the judiciary and selling it and collecting the distrainer's debt from its price. It is a tool in the hands of every creditor who holds an enforceable bond that he uses regardless of the reason for the debt, whatever the money to be seized, regardless of the person of the debtor to be seized and the circumstances of the seizure ⁽²⁵⁾.

Second - Precautionary seizure:

Which results in nothing but the seizure of the confiscated money and placing it in the hands of the judiciary to prevent the confiscated from disposing of it in a manner that harms the right of

the confiscator. It is a special feature that is not enjoyed by certain people in certain circumstances, and it may not be performed except after obtaining the permission of the judiciary, and it is limited to movables without real estate ⁽²⁶⁾.

Third: Due Seizure, which ends with the delivery of the seized thing to its owner ⁽²⁷⁾.

Implementation Law No. 20 of 2007 - and a draft amending the current law has been prepared - defines the procedures for seizure and implementation⁽²⁸⁾ in order for the seizure to take place correctly, the thing seized must be money or reside with money, and therefore as long as the human body and body are not money, then there is no it is permissible to seize him for any reason and by any person, whether natural or moral, and accordingly, some hospitals seize the bodies of the dead to collect what was owed to the dead before their death, such as treatment costs, is in violation of the law, and paragraph (d) of Article (16) From the Private Hospitals Law No. 54 of 2014, which replaced the Private Hospitals Law and its amendments No. 85 of 1980, stating: “A private hospital is prohibited from seizing the body of the deceased for any reason unless the death was caused by a judicial case.” corpses of the dead except for death resulting from a judicial case; That is, the death resulting from a criminal act that requires investigation and the perpetrator's statement. The legislator has also put in place many means and ways to collect debts without resorting to seizing the bodies of the dead, including collecting them from the estate of the deceased, as all the debtor's money is a guarantee for the fulfillment of his debts ⁽²⁹⁾ and the estate will not revert to its owners from the heirs until after paying the debts of their bequeather, not to mention.

About that the Jordanian legislator excluded and prohibited the seizure of some funds, and the money exempted from a seizure was mentioned in Article 142⁽³⁰⁾ of the Jordanian Civil Procedure Code No. 24 of 1988 and its amendments, as well as Articles 29⁽³¹⁾, 30⁽³²⁾ and 31⁽³³⁾. And 32⁽³⁴⁾ of the Jordanian Execution Law, and with these articles, the legislator prohibited the seizure of the residence house necessary for the debtor and his family and alimony, and the salaries of the employees unless the request was to seize them for the sake of alimony, money and princely things, dresses and tools used for worship, clothes, beds and mattresses necessary for the debtor and his dependents, and utensils Cooking and eating utensils necessary for the debtor and his dependents and sufficient supplies for them, books, agricultural machinery and seeds that suffice the needs of the land if the debtor is a farmer, the living animals necessary for the debtor, and the cultivation of his land if he is a farmer if the legislator has prohibited the seizure of these things so that the debtor can if he is alive and his family from living, and it is of no value compared to the value of the debtor's body, so how can a person's body be seized.

Despite the foregoing, the practices of some hospitals may come like this⁽³⁵⁾, but I did not find any lawsuit that was registered in the Jordanian courts of the deceased's family against one of the hospitals for seizing the body of their dead to force them to pay the financial dues arising from it despite the existence of such Behaviors on the ground, due to their fear of asking these hospitals for amounts through the judiciary, and in the event of non-payment, they will be imprisoned, with the need to note that the law does not rule the debtor's imprisonment except in specific cases, within what is stated in Article twenty third⁽³⁶³⁶⁾ of the Execution Law Jordanian.

Conclusion

At the end of my research on this subject, it became clear to what extent Jordanian laws and legislation combat such phenomena and criminalize the operations of human trafficking, living and dead, including the Jordanian Abolition of Slavery Law No. 110 of 1929 and the Jordanian Human Trafficking Prevention Law, and how some hospitals seize the bodies of some of the dead to collect their dues Finance despite the multiplicity of methods of debt collection in civil laws, and how this act is contrary to the slightest manifestations of humanity and respect for the law, and despite what is stated in the mentioned legislation, there are some recommendations that we would like our honorable legislator to take into account, which are as follows:

Recommendations:

1. We hope the Jordanian legislator will intervene and put in place texts that reduce the penalty for those who sell an organ of his body to report the body brokers instead of bearing the entire penalty alone and transfer him from the victim to the offender by adding a second paragraph to Article (10) as follows: (With due regard to what is stated in the first paragraph of this article, the penalty shall be reduced so that the imprisonment does not exceed six months or a fine of five thousand dinars for the one who is offered a sale to one of its members and informs the public authority of that).
2. We hope our legislator will intervene in detailing the penalty for each of the interfering, instigator and broker, by inserting texts into the core of the law on the use of human body organs in this regard, and interfering with the severity of the penalty mentioned in Article (10) against them, and stipulating the severity of the penalty for doctors in particular if they have been

stripped of their humanity and sold Human organs for the purposes of profit and trade, by adding a third paragraph to Article (10) as follows: (And that the penalty shall not be less than seven years in prison if these acts were committed by a doctor).

3. We hope that our legislator will include a comprehensive set of organized crime standards and that their provisions will not remain scattered between the second paragraph of Article 8 and Articles 157, 158, and 160 of the Jordanian Penal Code.
4. The necessity of issuing instructions to prevent public and private hospitals from seizing the bodies of the dead and enabling their relatives to bury those bodies, while securing and providing guarantees to hospitals to collect their dues, and penalizing the violating hospitals.

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