

Criminal Liability for Intentionally Transmitting the COVID-19 Virus to Others in the UAE Law

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Abstract

This study explores the alignment of the noble Islamic Sharia's emphasis on preserving human life and safety with international conventions and national legislation, particularly in the context of the United Arab Emirates (UAE) response to the COVID-19 pandemic. Grounded in the principles of Islamic Sharia, which prioritizes the preservation of the soul, the study employs a qualitative analysis of the UAE's health policies and legislative measures against the pandemic, guided by the World Health Organization's recommendations and supported by a review of the UAE Constitution and global COVID-19 statistics. Findings reveal that the UAE's comprehensive health and legislative measures to combat the pandemic align with Islamic Sharia and international health guidelines, highlighting the effectiveness of integrating religious principles with modern health policies for pandemic preparedness and response. This study offers valuable insights into enhancing public health crisis management through integrating religious principles and modern legislative measures, underscoring the importance of strengthening legislative and healthcare systems in controlling communicable diseases.

Keywords: Criminal liability- Covid19- physical safety – legislation - crime

Introduction

In light of this, the state issued an integrated and diverse legislative system that includes measures to prevent and control all communicable diseases and contains deterrent criminal penalties for violating the provisions of laws and decisions related to this topic, before the emergence of the novel COVID-19 virus, including the issuance of Federal Law No. (8) of 2013, regarding the prevention and control of infectious and epidemic animal diseases, Federal Law No. (14) of 2014 regarding combating communicable diseases, and finally Federal Law No. (13) of 2020 regarding public health, in addition to what was also stipulated in the Federal Crimes and Penal Code, in Articles (349) and (399), which criminalize and punish anyone who intentionally puts people's lives or safety at risk, in addition to the Attorney General's Resolution No. (38) of 2020 and its amendments in July 2021 regarding the implementation of the regulations controlling violations and administrative penalties to limit the spread of the Covid-19 virus, in the

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implementation of Cabinet Resolution No. (17) of 2020. We also do not forget the role that the National Emergency, Crisis, and Disaster Management Authority has played and continues to play in implementing those decisions and regulations related to the Coronavirus.

Theoretical framework

Symptoms of the novel COVID-19 virus appeared in some working people and patrons of a seafood market where live animals are also sold in the Chinese city of Wuhan at the end of December 2019. These symptoms include high body temperature, fever, dry cough, congestion, loss of sense of taste and smell, headache, pneumonia of unknown cause, difficulty breathing, exhaustion, extreme fatigue, in addition to back pain. It was revealed through the medical history of all these patients that they had visited that market before the infection.

COVID-19 has now turned into a global pandemic affecting many countries of the world, meaning that it is a new disease that challenges control with the speed of its global spread among countries, and the term pandemic is usually used to describe a great scourge that has swept the world on a large scale, that is, a problem that has gotten out of control, meaning that this new disease has economic, political, and social repercussions on a global scale.

The Covid-19 virus:

The virus is generally defined as: "a microscopic organism composed mainly of nucleic acid surrounded by a protein membrane; it lives as a parasite inside a cell to ensure its reproduction and causes serious diseases". (Bani Hamad, 2020).

As for the Coronavirus, there is no unified definition of the virus, but there is agreement that this virus is an infectious disease caused by a new virus that has not been discovered before. Therefore, we will limit ourselves to addressing the definition of the World Health Organization and clarify the position of jurisprudence and legislation on that.

Jurisprudential definition of the Covid-19 virus:

Jurisprudence did not explicitly define the Covid-19 virus, but rather the infectious disease was defined as: "an organic disease that affects the body, taking it beyond the limit of special moderation". (Kanaan, A. M. (2005). It is also defined as: "Every action that causes the life functions of the body to deviate" to a greater or lesser extent in the manner prescribed by natural laws, and this deviation occurs if one of these functions ceases has stopped, regardless of the duration of its cessation. This also occurs if this function performs its work in a manner different from that which is usual for it. If this act results in fainting, incapacity, or disruption of the

normal functioning of the body's functions or systems, this act is considered harmful to health (Hosni, 1993).

Legal definition of Covid-19:

The UAE legislator did not define the Coronavirus in Federal Law No. 14 of 2014 regarding combating communicable diseases, rather, the legislator explicitly defined in the text of Article 1 of the law a communicable disease as: "a contagious disease resulting from the transmission of a pathogen or its toxic products or secretions, directly or indirectly, to others and their infection with the disease." the same law also defines an epidemic as: "An emergency represented by the emergence of cases of a contagious disease among a group of people in a specific geographical area during a specific period, with a clear increase from the normal expectation compared to a period similar to the previous period in the same spot and time in the same area, and causing concern at the National level." Pathogen is defined as the agent that causes a communicable disease. An endemic disease is defined as: "a disease that exists continuously within a specific geographical area or human group."

Under what was stipulated in Article (44) of the same law, the Minister of Health and Community Protection allowed an amendment to be made to any of the tables of communicable diseases attached to this law. The UAE Minister of Health and Community Protection issued a decision to add the novel Coronavirus to Section (A) of the Schedule, and thus all provisions stipulated in Law No. 14 of 2014 regarding combating communicable diseases apply to it.

The danger of the COVID-19 virus and its transmission methods:

Degree of severity of the Covid-19 virus:

We mentioned previously that the World Health Organization described the COVID-19 virus as a pandemic due to the rapid spread of this virus, the severity of its infection, and its serious effects that affect people without exception in different forms and proportions, most cases show mild symptoms, especially in children and young people. However, in some cases, symptoms may appear severe and dangerous, which may lead to death if the infected person does not receive urgent health care in the hospital (Al-Dajani, 2020).

Reports issued by international organizations indicate that COVID-19 viruses may not pose a threat to the lives of most people, especially children and young people. However, there are cases of severe infection with the virus that may lead to some suffering from shortness of breath and severe pneumonia.

Methods of transmission of the Covid-19 virus:

Regarding the COVID-19 virus, reports indicate that it may be transmitted through exposure to infected animals and is transmitted to humans primarily when in contact with individuals. It is often transmitted directly from one sick person to another through respiratory droplets that a person infected with COVID-19 secretes from his nose or mouth when he coughs, sneezes, or speaks hands (it may be transmitted indirectly if he touches surfaces contaminated with virus in the surrounding environment through his hands, or touches tools used on the infected person (such as stethoscopes or a thermometer), and then touches his mouth, nose, or conjunctiva before washing his hands. A person may become infected with the COVID-19 virus simply by breathing in the droplets that come out of the infected person when he exhales, therefore, it is important to stay away from the infected person for more than one meter.

Therefore, any person suspected of being infected with the COVID-19 virus must adhere to health isolation and home quarantine for a sufficient period to avoid transmitting the infection to other people.

Study Methodology:

The researcher used the descriptive and analytical approach to the legal texts so that the reign of the legal rule that criminalized acts related to transmitting the virus to others was applied, its content was determined and the conditions for its application to the commission of these acts, by returning to some references and scientific research that had previously dealt with the subject, we explain the essence and content, search details.

Dividing the Research Plan:

The research plan was divided into the following research questions.

What is the Novel Covid-19 virus?

What are the origins of the Novel Covid-19 virus and its danger?

The second requirement is the definition of the Novel Covid-19 virus and its transmission methods.

The second research work: The crime of intentionally transmitting the COVID-19 virus from one person to another.

The first requirement is the legal nature of the crime of transmitting the Covid-19 virus to others.

The second requirement is elements of the crime of intentionally transmitting the COVID-19 virus to others.

What is the novel Covid-19 virus?

Preamble and Dividing:

The novel Covid-19 virus is one of the most severe infectious diseases the world is witnessing. The suffusion of this virus in the Chinese city of Wuhan at the end of December 2019 led to a disaster after this epidemic crossed the borders of China and cases of infection with this virus were recorded in most countries of the world in a short period, and it caused these countries to take many preventive and therapeutic measures to try to control it and prevent its spread more widely.

Based on the above, we will divide this research work into two requirements. In the first, we will address the origins of the novel COVID-19 and explain its danger, and we will devote the second to the concept of the novel COVID-19 virus and its transmission methods, as follows according to Kupriyanova et al., (2023).

Results

Since the emergence of the novel COVID-19 virus epidemic, most countries in the world, including the United Arab Emirates, have implemented multiple preventive and therapeutic measures. These measures are aimed at controlling this epidemic and preventing its further spread. A large part of these measures aimed to teach individuals how to follow preventive methods. This is to raise their level of awareness to prevent them from contracting the disease, or to prevent transmitting the disease to others through infection if they become infected. All of this aims to protect society from infection and transmission of the virus between people. These measures are under the text of the Second Article of Federal Law No. 13 of 2020^{AD} regarding Public Health. This article stipulates: "This law aims to do the following: raising the level of society's awareness of the factors, risks that affect human health and their causes; In addition to establishing a sense of individual responsibility and working to increase society's awareness of methods of protecting human health".

The first requirement

First branch

Legal characterization of transmitting the COVID-19 virus to others

The search for criminal intent or premeditation is becoming more complex, especially since the virus is not fatal in all cases. The World Health Organization has acknowledged, according to what virologists and physicians have established, that 80% of cases of infection are not serious unless the matter develops and reaches the phase of pneumonia due to the novel COVID-19 virus. This pneumonia causes death. Confusion and questions increase, especially if the infected person already suffers from diseases related to immunodeficiency or diseases related to the

respiratory system, as the novel COVID-19 virus may in some cases cause fatal pneumonia that is different from traditional pneumonia. (El-Din, 2020).

Some jurists believe that the criminal liability resulting from the transmission of the emerging COVID-19 virus does not stop at the limits of intentional transmission. This is under what was mentioned above and about the provisions of Federal Law No. 14 of 2014^{AD} regarding combating infectious diseases and the Penal Code. This is if we consider that the infection can be transmitted accidentally if the person infected with the disease does not follow the necessary precautions and measures to protect others from infection, especially if these others are relatives who live with him in the same place (El-Din, 2020).

Second branch

Criminal liability for endangering the life or body safety of others to harm.

This law includes an explicit text that criminalization endangers others with risks. This text is the most important amendment made by the French legislator in the field of crimes of assault against persons. (Al-Atour, 2011).

The idea of criminalization mere dangerous behavior was not absent from the Emirati legislator, as it stipulated several applications for it in traffic laws, labor laws, the law on combating infectious diseases, and food adulteration, and in the Crimes and Penal Code itself it included some applications, as Article (349) stipulated that: "Anyone who intentionally endangers people's lives or safety by using substances, germs, or other things that could cause death or serious harm to public health shall be punished with life imprisonment. Article (399) of the same law, punishes with imprisonment and a fine, or one of these two penalties, anyone who intentionally commits an act that would endanger people's lives, health, security, or freedom. The penalty shall be imprisonment if the act results in harm, whatever it may be, without prejudice to any more severe penalty stipulated by law".

Criminal Law jurists have disagreed about the nature of the crime of endangering others: whether it is an intentional crime or an unintentional crime. Here we will avoid delving into jurisprudential disputes. There is a third group that believes that this crime is not a crime in terms of potential intent, but rather it is an unintentional crime, even though the dangerous behavior stems from deliberate will. This crime or behavior was due to a lack of extreme caution, that is, due to a serious mistake (Aqida, 2004).

The second requirement

Elements of the crime of intentionally transmitting the Covid-19 virus to others

Article (34) of Federal Law No. 14 of 2014^{AD} addresses the issue of combating infectious diseases. This article stipulates that: "Any person who knows that he is infected with one of the diseases listed in attached table No.1 to this law is not permitted to intentionally transmit the disease to others". Article (39) of the same law stipulates: "The person who violates the provisions of Article (34) of this law shall be punished with imprisonment for a period not exceeding five years and a fine of not less than fifty thousand dirhams and not exceeding one hundred thousand dirhams, or with one of these two penalties. If the person commits this crime again, he shall be imprisoned for twice the prison term".

This crime is because it is a direct assault on the right to health, the public safety of society's members, and the right to life and body integrity (Al-Shahawi, 2013).

Discussion

First branch

The material element of the crime of intentionally transmitting the Covid-19 virus to others.

Article (32) of the Federal Crimes and Penal Code stipulates that: "The material element of the crime consists of criminal activity that includes committing an act or abstaining from an act in any form of act or omission". According to this, the material element of the crime is an external act of a tangible, material nature, as the perpetrator cannot in any way be held accountable for a crime simply by thinking about committing it; this means that thinking about a crime is not a crime unless the thought turns into an entity that has a physical nature. According to this understanding, the crime is not complete without the presence of the material element, and the legislator may not intervene and impose punishment without the presence of this element (Shawqi Abu Khatwa, 2003).

The material element of the crime is the tangible material things that constitute the crime. We can touch or see this physical element. The material element is of great importance because the law does not view the crime except through this material element. The material element means the presence of tangible material things that have attacked or threatened to attack the protected rights or interests (Hosni, 2017).

First: The criminal act (the act of transmitting the infection):

The act that is carried out is the material element in the crime of transmitting Covid-19 infection to others. This action may take on a positive or

negative appearance in the outside world. The act of transmitting the infection to others is any prohibited behavior according to the vision of the legislator or the law. According to the text of Article (34) of the Law on Combating Infectious Diseases, this legal article prohibits an infected person from intentionally engaging in any behavior that leads to transmitting the disease to others without discrimination. The legislator for this crime imposes a penalty of imprisonment for a period not exceeding five years, a fine of not less than fifty thousand dirhams and not exceeding one hundred thousand dirhams, or one of these two penalties. The penalty shall be doubled if the perpetrator repeats the crime (Hosseini, 2017).

We conclude from the above that positive action occurs on two elements: organic movement and voluntary characterization. This means that the will must be the cause of organic movement, but if this movement is without the control of the perpetrator, then he is not responsible for it. Such involuntary actions are as if a person suddenly bleeds blood contaminated with the COVID-19 virus, for example, in a certain place, causing the infection of others. This person is not legally responsible for this act because sudden bleeding is an involuntary act, and the actor does not control or control it. (Ibrahim, 2020).

Negative criminal behavior (abstention) is the perpetrator's abstention from performing a specific positive action that he was obligated to do as a mandatory legal duty, and this abstention is voluntary. (Hosni, 2017).

Second: The criminal result:

The criminal result means the effect of criminal conduct. The legislator takes this behavior into account in the legal composition of the physical crime. (Salama, 1983-1984). The effect resulting from the behavior is such as death in the case of murder, wounding, theft, or fraud. These elements are essential to the crime, but there are crimes where the result is not so clear; the best example of these unclear crimes is the abstention or implementation of any negative behavior by the accused, such as a witness abstaining from testifying or abstaining from taking an oath before the judicial authorities. In these cases, the crime is complete merely by abstention, without the need to explain the external effect.

The effect of the criminal behavior or the result is that the virus is transmitted from the sick person to the victim, or actual infection or death occurs. In some cases, the result may be that the victim is exposed to the risk of contracting the virus as well. These changes have a significant impact on determining the extent to which the crime is completed or not, and the penalty prescribed for it. (Hosseini, 2017).

The legal meaning of the result of the act of intentionally transmitting the Coronavirus to others is in the form of an attack on the right or protected interest by

law, which is the right to public health. This result is achieved either by harming the right to the victim's health or life, or by simply threatening and endangering these two rights to danger (Ibrahim, 2020).

Third: Causal relationship

Implementing the material element of the crime is insufficient to characterize the perpetrator as having committed criminal conduct and to result in a criminal result. To prove a crime, we need to prove that this result was due to this behavior. The causal relationship must connect the two elements, the material element so that it becomes a unit and one entity (Mustafa, 1970).

This is if we prove that the perpetrator committed an act that led to this result. That is, the result is linked to the behavior and the cause is linked to the cause. In other words, the perpetrator's behavior must be the cause of the result, meaning that the result occurred because of this behavior. The result thus plays an important role in determining the scope of criminal liability. If there is no connection between the result and the behavior, then there is no crime (Hosni, 2017).

Second branch

The moral element of the crime of intentionally transmitting the Covid-19 virus to others.

The moral element of crime is the psychological force that moves the conscious, free, chosen will toward criminal activity. The moral element of the crime is the psychological relationship between the act and the will that carries it out (Wazir, 2006). Whether this is conscious and aware of this (perpetrator) goal, or unconscious. The perpetrator's unawareness means he is wrong; this error caused the criminal result (Hosni, 2017). The moral element is of great importance in the general theory of crime. The basic principle is that there is no crime without a moral element, which determines responsibility for the crime. A person is not responsible for actions that he did not intend. Lack of intent means no responsibility or punishment.

First: General criminal intent:

Criminal intent is the direction of the perpetrator's will towards committing the crime, with his knowledge of all the legal elements that constitute this crime, regardless of the motive or purpose of the criminal behavior (Wazir, 2006). General intent must be present in all intentional crimes. Most crimes need general intent for proof. General intent depends on two elements which are knowledge and will: knowledge means that the perpetrator possesses knowledge of all the necessary basic elements for the existence of the crime according to the legal information; the level of knowledge of the perpetrator is determined by referring in

each case to its legal text (Al-Jundi, 2009). Will means that the perpetrator has a desire to achieve a certain thing. Will is a psychological activity directed to achieving a specific goal through a specific means.

Second: Special criminal intent:

Specific criminal intent is the goal that the perpetrator desires to achieve. This criminal intent or desire is the goal of committing the criminal act. The legislator requires the presence of intent for the moral element of the crime to be complete. There is a group of crimes that are not crimes unless the specific intent is present in addition to the general intent to establish the criminal liability of the perpetrator for these crimes. Specific intent appears through the legal characterization of the crime (Al-Jundi, 2009).

The perpetrator must also know that the subject of the attack is the life of the other person. The perpetrator must be aware that this act would include harm to the health or life of the person. According to the above, if a person spreads certain viruses in a forest as an experiment to determine the extent of their effect on the organisms in the forest without knowing that there are some people in the forest, and this causes some of these people to be infected by the viruses, then in this assumption there is no criminal intent, given that he did not intend to infect them. (Ibrahim, M. J. (2020).

The will aims to infect the victim with an infectious disease. If the goal is achieved, the crime is committed (Abdulrahim et al., 2023).

In this context, there is a question that some may ask: What form of criminal intent is required to prove the crime of intentionally transmitting the emerging novel COVID-19 virus to others? Is general intent sufficient or does the crime require special intent?

Third branch

Punishment provisions

There are many definitions of punishment by jurisprudence. In the general sense, punishment is the social reaction against the perpetrator of the crime. Punishment is the determined penalty by the law and applied by the judge to whoever is proven to have committed a crime. This punishment is proportional to the crime (Hosni, 2017). If a person commits a crime and is proven to have committed it, and the relationship between the person and the crime is proven, then the fair compensation for this crime is the application of criminal punishment under the law and the ruling of the judiciary (Al-Jundi, 2009). Punishment is due to the crime. There is no punishment without a crime. The crime must be comprehensive in all its elements and lead to criminal liability for the perpetrator.

The UAE legislator has specified the types of penalties in Articles (67-83) of the Federal Crimes and Penal Code, and then divided them into two types: original penalties, and sub-punishments. The legislator divided sub-punishments into two types: accessory penalties and supplementary penalties. We will explain this as follows:

First: Original penalties:

The original penalty: In general, the original penalty is imposed by law is for anyone proven to have committed the crime. The original penalty is the original and direct penalty for the crime. This penalty is not applied unless the judge rules it and specifies its type and amount. This punishment is sufficient to achieve its purpose (Mustafa, 1970). The original penalties vary according to the size of the crimes committed. Some of them are related to human life, some are related to the freedom of the convict, which results in its being taken away, and some are related to the financial liability of the convict. The UAE legislator has clarified these penalties in Articles (67-73) of the Federal Penal Crimes Law.

Second: Sub-punishments:

The Federal Crimes and Penal Code stipulates a set of sub-punishments in Articles (74-83) that are divided into accessory penalties: deprivation of rights & benefits, removal from public office, and police surveillance. Sub-punishments are deprivation of certain rights & benefits, removal from public office, and confiscation. Accessory penalties, in general, are secondary penalties imposed on the convict by force of law, without the need for a judge to rule on it. This type of punishment aims to reinforce the original punishment, and therefore it is not conceivable to impose it alone (Hosni, 2017).

Conclusion

In the end we thank Allah; I have finished examining the criminal liability for intentionally transmitting the novel Coronavirus infection to others. I have addressed the topic through two sections, the first of which was devoted to describing the novel Coronavirus, and through two topics, the first dealing with the origins of the novel Coronavirus and its danger. I devoted the second requirement to the concept of the novel Coronavirus and its methods of transmission. The second section dealt with the crime of intentionally transmitting the Covid-19 virus from one person to another, through two requirements. The first dealt with the legal nature of the crime of transmitting the emerging coronavirus to others, and the second addressed the elements of the crime of intentionally transmitting the emerging coronavirus. I reached several results and recommendations, the most important of which are:

References

- Abdulrahim, H., Abdelhay, S., Oudat, M. S., & Marie, A. (2023). Termination of the Companies Under the UAE Federal Decree-Law No. (32) of 2021 Concerning Commercial Companies: The Impact on Stakeholders. *Journal of Law and Sustainable Development*, 11(3), e734-e734.
- Al-Atour R I. (2011). the crime of endangering others according to the French .Penal Code, *Journal of Sharia and Legal Sciences*, 8(2), 149
- Al-Dajani, H. M. (2020). Criminal liability arising from infection with the emerging coronavirus pandemic – a – *Journal of the Islamic University for Sharia Sciences*, Volume 53, No. 193.
- Al-Jundi. H. (2009). *Federal Penal Code in the United Arab Emirates*, First Book, First Edition, 2008-, Dar Al-Nahda Al-Arabi, Cairo.
- Al-Shahawi T. (2013). *Criminal liability Arising from the Transmission of AIDS*, Dar Al-Nahda Al-Arabiya, Cairo.
- Al-Shahawi, T. (2013). *Criminal Liability Arising from the Transmission of AIDS*. Cairo: Dar Al-Nahda Al-Arabiya.
- Aqida M. A. (2004). *Modern Trends in the Modern French Penal Code*, Dar Al-Nahda Al-Arabi, Cairo.
- Bani Hamad, A. S. A. (2020). Tort liability for the carrier of the Coronavirus infection in Jordanian law. *Journal of the Annals of Algeria*, Special Number, Volume 34, 663.
- El-Din, Z. S (2020). Perpetrator Dimensions in the Response to the New Corona Epidemic (Comparative Study), Published Research, Legal Journal for Legal Studies and Research. 10(2), 20-32.
- Hosni, M. N. (1993). Al-Mawjiz in Sharh Penal Code - Special Section. Cairo: Dar Al-Nahda Al-Arabiya. Sudan, 8(9) P. 3169.
- Hosni, M. N. (2017). Explanation of the Penal Code - General Section (8th ed.). University Press House. 18(2), 370-386.
- Hosseini, A. Q. (2017). *Criminal Liability Arising from Virus Infection*. (Ph.D. thesis, Ain Shams Law School).
- Ibrahim, M. J. (2020). *Criminal Liability Arising from Transmission of Infection*. Cairo: Dar Al-Nahda Al-Arabiya.
- Kanaan, A. M. (2005). Medical Encyclopedia. Beirut: Dar Al-Nafais.
- Mustafa. M. M. (1970). *The Origins of the Penal Code in the Arab Countries*.
- Salama, M. M. (1983-1984). *Penal Code* (4th ed.).
- Shawqi Abu Khatwa, A. (2003). *Explanation of the General Provisions of the Penal Code* (8th ed.). Cairo: Dar Al-Nahda Al-Arabiya.
- Wazir, A. A. (2006). *Explanation of the Penal Code - General Section, Part One* (4th ed.).