

## Potable Water Pollution Crime in Jordanian Penal Law

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### Abstract

Most legislations in world countries enacted laws and regulations to protect the national environments of such countries, including Jordan. The Jordanian environmental law develops constantly to cope with the developments place in most industrial and technological fields. Jordanian Penal Law incriminates some acts committed against the environment including potable water pollution Crime as stipulated by the Jordanian legislator in Article No. 458 of Jordanian Penal Code. Such research aims to shed the light on such crime regarding describing its elements, the due penalty defined for such crime, distinguishing between the crime – subject matter of the research – and other crimes mentioned in penal law and environment protection law No. 6 of the year 2017 and defining its relative matters.

**Keywords:** Environment, Water Pollution, Environment Protection, Penal Law.

### 1. Introduction

The legal concept of Environment is not separable from other modern legal concepts included in the law after the end of the Second World War till this date. The environment has become a legal idea with its accurate meaning<sup>1</sup>. Yet, it is a difficult idea regarding the determination of the extent of protection, ambiguous regarding its principles, branched and related to other internal and international laws.

The right to have a sound and intact environment is a fixed and defined right by itself as it is an existing right for a declared real value. Such right reinforces other human rights granted for each person. It also completes it as it is one of the forms of expressing the human dignity. National legislative acts of some countries tend to confirm such obligation. Some of them promote it to make it within constitutional rules so as to make it irrevocable or disposable by the country as it is constitutional right remains like other rights such as the right to live<sup>2</sup>. With respect to Arab Constitutions, the great majority of such constitutions do not contain a declaration with such right.

The legal articles related to Jordanian Environment Protection are not enacted in one law but they are spread among a lot of laws and regulations. Jordanian Environmental Law has defined and set a special protection for water. In addition, penal law also defined penalties for those crimes related to water system.

It is necessary to distinguish between pollution arising from acts of god such as volcanoes, earthquakes, floods and others as the law does not define any penalties for such acts<sup>3</sup> and those resulting from acts of man<sup>4</sup> – whether such act results in the change directly or indirectly. Since the law does not address any other creature except man and advises only his behavior, so the law does not intervene to regulate the dealing man with environment and its resources and imposes the liability on environmental aggression acts<sup>5</sup>.

Criminal law protects declared and recognized rights regulated by other laws. It protects rights determined by civil law such as property protection by determining a penalty on theft, fraud, dishonesty, fire and damage. It protects rights determined by personal status law such as protection matrimonial rights by incriminating adultery and penalizing it. Furthermore, it protects rights determined by constitutional law and administrative law such as protection the state right to keep the shape of governance defined by the constitution by penalizing crimes acted upon state security, protecting its right in the neutrality of Public jobs by penalizing bribery, state's rights in its funds by penalizing embezzlement. This means that criminal law faces the lack of penalty determined by other law and so it provides them with the strong and deterrent penalty ensuring the observation of their provisions and contributes to enable them to carry out their social function.

In environmental field, we also find the criminal law intervenes to prevent and to combat some acts prejudicing the safety of the environment, including potable water contamination crime considered to be from the most dangerous crimes prejudice human life<sup>6</sup>. So, our research shall be limited to describing such crime and

<sup>1</sup> Kamel, Nabila (1993): *Towards a Unified Law for Protection the Environment*. Cairo: Dar alnahda alarabiya. P.14

<sup>2</sup> Rabayea, Assem (1996): *Intact Environment is a Right of Human Rights*. *Environment Message*, Issue 16. P.12.

<sup>3</sup> Salameh, Ahmad (1999): *Environment Protection In Islamic Legislation*. Survey Submitted In The Conference: *Towards An Active Role for Law In Protection The Environment and Developing It*. Emirates University. 2 – 4 May 1999. P. 10.

<sup>4</sup> Through survey (natural environment pollution and damages caused by it), we can say that man in such case is the perpetrator and the victim at the same time.

<sup>5</sup> Salameh, Ahmad (1999). P. 10.

<sup>6</sup> Incrimination potable water pollution is not only for protecting the right in environment but it is also for protecting the citizen's right to get clean water. Such right is related with his right in health. See: Aljundi, Ghassan (2012): *Comfort and Repose in International Law for Human*

analyzing its elements.

## 2. Determining the Crime and distinguishing it from other crimes

Such crime shall find its legitimacy in Article No. 458 of Jordanian Penal Law stipulates: (every person who pollutes a spring of water, water or well used for drinking by others shall be punished with ...)<sup>1</sup>.

The first thing to be noticed in such crime is that it is similar with such crime stipulated in article No. 457/3 of penal law that punished with imprisoning a period no more than one year and a fine no more than 20 Dinars for each person who (did any act resulting in polluting the spring, source or water used for drinking). One of the researchers deems such two articles similar to each other. The two texts are considered from the general texts for them it is impossible to apply the rule that says the special text has the precedence to be applied. In addition, it is difficult to apply the rule says that the original text suffices the application of the reserve text. So, we reach a conclusion that: (since there is no legislative explanation for determine the intention of the legislator in such two cases, the matter of explaining the texts and defining the due applicable one are left to the judge of subject trying the crime. Such matter forms a real problem in which discretion is not possible)<sup>2</sup>.

We do not deem such opinion right as it demonstrates a difference existing in the meaning of the *actus reus* for such two crimes. Article No. (458) – penalties says (who did the pollution) while article No. 457/3 says (who did any act resulting in polluting) since polluting water is made – directly or indirectly<sup>3</sup> – we see that the text of article No. 458 (subject matter of the research); is related to direct pollution while the text of article No. 457/3 is related to indirect pollution.

In addition, it is necessary to distinguish between the crime – subject matter of the research – and the crime of polluting water resources stipulated in Article No. 20 of environmental protection law No. 6 of the year 2017 whose text is as follows:

(A- Every person who committed unintentionally any act resulting in polluting any water resource is punished by imprisonment for a period no less than six months but no more than two years or with a fine no less than 1000 Dinars but no more than 5000 Dinars.

B- Every person who committed intentionally any act resulting in polluting any water resource is punished by imprisonment for a period no less than five years but no more than ten years or with a fine no less than 20000 Dinars but no more than 50000 Dinars.

C- Every person who committed intentionally any act resulting in polluting any water resource severely in the manner impossible to remove the pollution or in the manner that leaves negative impact in water components and elements is punished by temporary hard labor imprisonment for a period no less than five years but no more than ten years or with a fine no less than 100000 Dinars but no more than 1000000 Dinars.)

The difference between such two crimes is that the subject matter of the crime mentioned in environment protection law is water without specifying a certain type for such resources. So, the text is here is considered a general text<sup>4</sup> while article No. 458 of penal code defines the subject matter of the crime as a source, spring, water or a well used for drinking by others.

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*Rights*. Amman, P. 206.

<sup>1</sup> About crime history in Jordanian Law: such crime was stipulated in Jordanian penal code No. 58 of the year 1951, article No. 446 stipulates: (the person who polluted a water source, spring or water used for drinking by others shall be punished by imprisonment for a period ranging from one year to three years and with a fine no less than 50 Dinars). Penal Law No. 16 of the year 1960 that cancelled the previous law kept such crime in article No. 458 with the same previous text. Then, the legislator made an amendment to such text pursuant to the amended law No. 27 of the year 2017 and so its text has become as follows:

- 1- Any person who polluted a water source, spring, water or a well used by others for drinking shall be punished with penal labor imprisonment for a period no less than 7 years and with a fine no less than 10000 Dinars.
- 2- No estimating alleviated judgments may not be applied at any case – whatever their type may be – or suspending the execution of the penalty.
- 3- The court can put into considerations the merits and facts mentioned in the arrested objects and reports written down by the employees of the concerned agencies responsible for water in acts stipulated in such article and in articles No. 455, 456 and 457 of this law.

<sup>2</sup> Aldemery, Amer (2010): *Penal Protection For Environment In Jordanian Legislations*. Master Thesis. Amman: Middle East University, Faculty of Law.

<sup>3</sup> "The method of water pollution can fall into two categories: direct and indirect. Direct pollution comes from releasing fluids directly into water, such as a business expelling contaminated water or toxic solids mixed in with a water directly into the sea or a river. This makes the water poisonous for fish and other aquatic creatures, often resulting in death. Not only this, but animals drink this water, causing ill-health or death to them also. Humans can be affected.

Indirect Pollution of water is not caused by contaminants being introduced directly into water, but instead from those which end up in there. An example includes chemicals from fertilizers and pesticides which are slowly washed through the soil and find their way into groundwater and then into various watercourses." See: ATC risk management, *Direct and Indirect Water Pollution*. available at: <http://www.atcrisk.co.uk/environmental-health-and-safety/direct-and-indirect-water-pollution.php> (visit in: 6/4/2018).

<sup>4</sup> Article No. 2 of Environment Protection law defines water resources as: (they all surface and ground water resources such as seas, lakes, rivers, springs, rain water, dams, ponds, tanks, mineral water and hot water usable for human consumption or unusable for such consumption).

There is a difference in *mens rea* for such two crimes as the legislator punishes the crime of polluting water resources – whether committed on purpose or not – while potable water pollution crime has no punishment except if it is committed on purpose.

### 3. Crime Elements

After checking the text of Article No. 458 of Penal Law, we find out that such crime is based on three elements: *actus rea*, *mens rea* and the object of the crime.

#### 3.1 Actus rea

The *actus rea* for such crime is represented in the behavior resulting in pollution. Such conduct may be positive, such those throwing garbage and other wastes in water leading to its pollution. It is also anticipated that such conduct may be negative such as the factory refuses to repair sewage and drainage pipes which in turn resulted in polluting a near water resource from such factory.

Then, we will not take into our account a certain conduct since the crime can be based on any conduct resulting in polluting water – object of the crime. As an application to such principle, the crime is considered existing upon placing Sulphur material in a water tank of a residential flat<sup>1</sup>; when the criminal puts a piece of iron, a piece of CD, a piece of soap and a black leather in a house water tank of another person allocated for drinking and household works<sup>2</sup>. The crime is considered committed if the criminal pours chlorine in a water tank<sup>3</sup>.

The question raised in this point: What is meant by pollution in this text?

There is no definition mentioned in penal law for pollution or for polluting potable water. In general, pollution is defined as: (it is a direct spoilage for organic, thermal, biological or radiological characteristics for any part of the environment such as by releasing, emitting or throwing any wastes or materials affecting the good use or resulting in deterioration taken place to the natural elements<sup>4</sup>).

By referring to the relevant laws, Article No. 2 of environment protection law defines pollution as follows: (any negative change in any elements of environment directly or indirectly exceed the environmental standards and specifications approved by the ministry, caused by such change – whether occurred by a sensitive or insensitive degree, resulting in limiting the use of such elements, decreasing its economical, aesthetical or social value, resulting in eradicating it entirely or partially, affecting the practice of natural life of living organisms and everything disturbing their natural equilibrium<sup>5</sup>).

With respect to the definition of water pollution, World Health Organization issued in 1961 a definition for fresh water pollution as follows: (we consider the watercourse polluted when the composition of its elements changes, its status changes – directly or indirectly – due to human activity so that water becomes less valid for natural uses to which water is used or any part of them or which endanger human health or hinders aquatic activities.) Such definition is considered noting more than those definitions inserted in the international agreements<sup>6</sup>.

In Jordanian legislations, water pollution definition is mentioned in the second article of water authority law of the year 1988 as follows: (any change in the natural, chemical or life characteristics of water to the degree that limits or decrease its validity for the aimed use)<sup>7</sup>.

Therefore, pollution meant in this crime is defined as: (it is any change taken place to natural, chemical or biological properties of potable water to the degree limiting or decreasing their validity to be used in drinking.

<sup>1</sup> Decision issued by Al-Aqaba penal court of first instance No. 664/2014 on 07/06/2015 .Qistas Publishing.

<sup>2</sup> Decision issued by Amman penal court of first instance No. 50/2011 on 22/02/2011 .Qistas Publishing.

<sup>3</sup> Decision issued by Amman court of Appeals No. 1422/2006 on 27/04/2006 .Qistas Publishing.

<sup>4</sup> Some persons consider such word as a general word but it is possible to define acts or conscious or unconscious acts that may cause damage to an element or elements of nature that can be determined and distinguished and so defining its location with atmospheric pollution, water pollution or dust pollution. To know more about the purport of the word, see: Romi, Raphael (1997): *Droit et administration de l'environnement*. Paris: Montchrestien. P.10.

<sup>5</sup> The concept of pollution has been subjected to a number of developments and amendments in Jordanian Environmental Protection Law. In Environmental Protection Law No. 12 of the year 1995, pollution was defined as (the existence of anything harming the environment and affecting its elements negatively or disturbing their natural equilibrium). In Environmental Protection Law No. 52 of the year 2006, pollution was defined as (any change in the elements of nature that may lead – directly or indirectly – to damaging the environment, affecting its elements negatively, affecting the exercise of man for her natural life or distributing the natural equilibrium). The current law No. 6 of the year 2017 that cancelled the previous laws extended the definition as mentioned in the text.

<sup>6</sup> Such definition was indicated by: Saad, Ahmad (1994): *Investigation for the rules of civil liability in environmental Pollution disputes*. Cairo: Dar alnahda alarbiya. P.84.

<sup>7</sup> Article No. 2 of natural resources affairs regulatory law No. 12 of the year 1968 defines water pollution as: (it is a change in natural, chemical or biological properties of water to the degree limiting or decreasing their suitability for use). Some scientists defined water pollution as (causing a default and damage in the water quality and its ecological system so that water becomes unfit and invalid for its basic uses and unable to contain particles and microorganisms and various wastes in its ecological system). AlAly, Wedad. *Environmental Pollution – its concept, its sources, its degrees and forms*. Available at : <http://www.greenline.com.kw/ArticleDetails.aspx?tp=539> (visit date: 13/04/2018).

There is another question that can be raised to this point as follows: did the legislator determine a certain limit for the pollution for committing such crime? Or does the law equalize among all its degrees?

In fact and pursuant to the text of article No. 458 – penal law, the legislator has not defined a certain degree of pollution, yet, in accordance with the definition of pollution mentioned in environmental protection law, such pollution should exceed environmental standards and specifications approved by Ministry of Environment. This means that the determination of the degree of pollution upon which the crime is based can be through knowing the approved standards and specifications.

Yet, what is proven is pollution has three degrees as follows<sup>1</sup>:

- Accepted Pollution: it is a degree of pollution degrees with which the ecological equilibrium is not affected and it is not accompanied with any basic environmental dangers or problems.
- Dangerous Pollution: It is considered an advanced stage of pollution stages since the quantity and type of pollutants exceed the critical ecological limit with which the negative impact on the natural environmental and human elements begins.
- Devastating Pollution: it is the stage in which the ecological system is destroyed and becomes unable to provide its benefits due to the core variance in equilibrium level.

So, which degree of such degrees required by the crime?

In fact, we think that the crime takes place with the availability of the last two degrees, i.e. dangerous pollution or devastating pollution but the accepted pollution has no justification to be considered a crime as it does not cause any dangers.

In this regard, it is worthy to mention that we are not interested in the means or the method with which pollution takes place – whether it is a biological, chemical, physical or radiological means<sup>2</sup>.

*Attempt to commit the crime:*

Pursuant to general rules, inception is defined as: (the commencement of doing an act of the apparent acts resulting in committing a felony or a misdemeanor not committed due to reasons not attributed to the criminal's will (Article No. 68 – Penal). The rule says that the inception to commit felonies is punished unless otherwise is stipulated by law. With respect to inception in misdemeanors, there is no punishment to be applied on them except in cases determined with a text of law (Article No. 71 – Penal).

Pursuant to the previous law, potable water pollution crime was a type of misdemeanors. So, inception to commit them had no punishment due to the non-existence of a text.

However, after amending the text according to the amended law No. 27 of the year 2017, such crime has become a felony. Consequently, the inception to commit it is penalized according to general laws. Therefore, if the criminal has prepared some materials to contaminate water in them, and when he began to implement without achieving the result because his act is revealed prior to committing the crime, he shall be considered incepted to commit the crime and shall be punished on his act.

### 3.2 *Mens rea*

Such crime is considered from the intentional crimes for which it is conditioned that general criminal intention is available – i.e. the availability of the elements of awareness and will. This means that the criminal is aware that the act he does results in pollution in addition to being aware that the water he pollutes is used for drinking by other people. With respect to will, it is oriented to causing pollution.

On such basis, the crime is not considered to be taken place if the person caused pollution without any intention (by mistake). An example for such acts is the occurrence of a road accident taken place with the driver of a truck loaded with poisonous chemicals resulting in vacating such materials in water used for drinking and so they caused its pollution. Furthermore, the crime is considered nonexistent if the criminal does not know that the acts he does leads to pollution such as those throwing materials in water and think that they are not pollutants but they were pollutants<sup>3</sup>.

### 3.3 *Object of The Crime*

Not all water sources can be considered a object for aggression in such crime. Legislator defines them for

<sup>1</sup> Ibid.

<sup>2</sup> Biological Pollution: it results from the increase of micro-organisms causing diseases such as bacteria, viruses, parasites and algae in water. Chemical Pollution: it often results from the increase in the industrial or agricultural activities near water surfaces resulting in the leakage of various chemicals into it.

Physical Pollution: it results from the change in the standard specifications of water through changing its temperature, salinity or increasing the suspended materials in it – whether from an organic source or inorganic source.

Radiological Pollution: such kind of pollution often takes place through radiological leakage from the nuclear reactors or by disposing of the nuclear wastes in seas, oceans or rivers.

See: water journal on the website:

<http://www.almyah.com/modules.php?name=News&file=article&sid=1>

<sup>3</sup> It is possible to be punished according to the Environmental protection law.

example but not limited to as (spring or water or well). The spring is (a water source from a ground origin appears on the surface due to geological and hydrological factors continuously or interruptedly). Well is defined as (any hole or pore made by a machine or a special tool used to reach the layer of the groundwater automatically or by machines above the earth surface)<sup>1</sup>. Therefore, the purport of water word includes any space in which potable water is placed other than the spring or the well. In fact, the word "water" is sufficient solely<sup>2</sup>.

The text also stipulates that the spring, water or the well (is used for drinking by other persons). So, polluting water not used by anyone is not included the scope of such crime. Article No. 35 of Jordanian public health law No. 47 of the year 2008 defines potable water as: (It is the water in conformity with technical rule or approved standard specifications related to potable water or packed water or mineral water).

With referring to the text of article No. 458 of penal law, we believe that the term other persons includes both of man and animal as the text is general without any limitation. The word said by the law is not limited to man. Trees and cultivated crops are beyond the meaning of the word (others) since the latter is irrigated and does not drink. The difference is clear between irrigation and drinking.

But what is the element determining for us that such water is drunk by others or not?

In fact, if we leave such determination in the hands of the competent authorities, the field shall be narrow. So, in our opinion we should leave such determination to the custom as the springs and water recognized by people to drink from them are the meant places in such crime provided that the competent authority prevents their utilization.

#### 4. Crime Penalty

The perpetrator of such crime is punished – whenever his liability is proven – by a hard labor imprisonment for a period no less than seven years and with a fine no less than 10000 Dinars (Article No. 458/1 Penal)<sup>3</sup>. It is noted that the legislator defines the minimum limit for the penalty without defining the maximum limit. So, it is necessary to return back to general rules determining the maximum limit for temporary hard labor penalty by 20 years (article No. 20/2 Penal). The two penalties (hard labor and fine) are obligatory. So, the judge has no option to choose between them as he is obliged to issue his judgment with two of them together.

Pursuant to clause No.2 of article No. 458 – penal law, it may not – by any case – to apply estimating alleviating causes – whatever their type may be – or halt the execution of the penalty. This confirms the keenness of the legislator to harden the penalty of such crime.

With respect to the liability of the corporate person<sup>4</sup>, the Jordanian legislator recognizes his penal liability whereas article No. 74/2 of penal law stipulates: (with the exception of the governmental circle or public official institution, the corporate person is considered liable for the acts of his boss or the acts done by any of his administration or directorate members or any of his representatives or any of his employees when they do such acts in his name or by any of his means due to being liable for them in person and corporate). But the punishment of a corporate is limited to the fine or the confiscation (article 74/3 of the penal code). Each time in which the law stipulates an original penalty other than the fine is replaced with the fine. At the end of clause No. 3, it is mentioned: (if the law stipulates an original penalty other than the fine, the fine shall replace the said penalty and shall be applied to the corporate persons within the limits defined in articles No. 22 to 24).

It is certain that the penal accountability of corporate institutions does not prevent the accountability of natural characters who committed the crimes in the name of such institutions. This means that the penalty of the corporate person is an additional penalty to the penalty of the ordinary persons. As an application to such rule, Jordanian Court of Cassation adjudicated with what follows: (managers of corporate institutions and their members of boards are not exempted from penal liability for any penalized acts they did in the name of the said institutions or by one of their means and they considered liable for such acts as independent doers as long as they did the acts through awareness and will. In addition, the company they represent shall be also liable since the legislator did not mean when he stipulates punishing the corporate agency to exempt the original doers from liability)<sup>5</sup>.

#### 5. Conclusion

There is no doubt that the criminal law has become intervened in more than one aspect in the latest time to

<sup>1</sup> Such definitions were mentioned in article No. 2 of groundwater controlling regulation No. 85 of the year 2002 and article No. 2 of water resources protection instruction of the year 2011. It is noticed that the legislator does not differentiate between the public well and the private well in incrimination.

<sup>2</sup> Article No. 35 of General Health Law defines the water source as: (it is all public and private groundwater sources and public and private surface water resources).

<sup>3</sup> Prior to the amendment, the penalty was imprisonment for a period ranging between one year to three years and with a fine no more than 50 Dinars.

<sup>4</sup> Article No. 50/6 of civil law defines the corporate person as: (every group of persons or funds for which corporate and provisional person is proven pursuant to the text of the law).

<sup>5</sup> Judgment issued by Jordanian Criminal Court of Cassation No. 31/61, Journal of Bar Association, 1961, P. 421.



protect the environment by incriminating positive and negative acts causing damage to the environment at one of its three elements. Such protection is achieved by providing them with criminal penalties. Yet, the criminal law remains providing the other laws only with the idea of penalty. Yet, in a lot of cases, it remains refers to the rules of the administrative law. So, it remains to be appeared weakly and not serving in general the main purpose which is protecting and conservation of the environment from the danger of pollution and extinction.

After clarifying the elements of such crime and its penalty, there are some important proposals as follows:

- 1- We hope that the legislator extends the scope of incrimination in the field of environment by enacting an environmental criminal law concerned more greatly than conventional criminal law, with the aim of unifying the provisions and terminologies in one code instead of being spread in a number of laws.
- 2- With respect to the place of the crime, it should include water used for irrigating trees since it is clear that such water has a basic role in the environment and has an impact on the health of people.
- 3- Finally, it is necessary to enact more had penalties for the corporate persons. As we noticed before, the penalty of the corporate person is limited to fine or confiscation without including the closure of the institution and facilities or stopping their businesses. In addition, the fine penalty is not sufficient. The law defines the maximum limit for the fine with 200 Dinars unless otherwise is stipulated by the law (according to the text of article No. 22 of Penal Law). Therefore, the fine penalty has become non-deterrent.

### References

- Aldemery, Amer (2010): *Penal Protection For Environment In Jordanian Legislations*. Master Thesis. Amman: Middle East University, Faculty of Law.
- Aljundi, Ghassan (2012): *Comfort and Repose in International Law for Human Rights*. Amman.
- AlAly, Wedad. *Environmental Pollution, its concept, its sources, its degrees and forms*. Available at: <http://www.greenline.com.kw/ArticleDetails.aspx?tp=539> (visit on: 13/04/2018).
- ATC risk management, *Direct and Indirect Water Pollution*. available at: <http://www.atcrisk.co.uk/environmental-health-and-safety/direct-and-indirect-water-pollution.php> (visit on: 6/4/2018).
- Kamel, Nabila (1993): *Towards a Unified Law for Protection the Environment*. Cairo: Dar alnahda alarabiya.
- Rabayea, Assem (1996): *Intact Environment is a Right of Human Rights*. Environment Message, Issue 16.
- Romi, Raphael (1997): *Droit et administration de l'environnement*. Paris: Montchrestien.
- Saad, Ahmad (1994): *Investigation for the rules of civil liability in environmental Pollution disputes*. Cairo: Dar alnahda alarabiya.
- Salameh, Ahmad (1999): *Environment Protection In Islamic Legislation*. Survey Submitted In The Conference: *Towards An Active Role for Law In Protection The Environment and Developing It*. Emirates University. 2 – 4 May 1999.