

# The Crime of Electoral Bribery in the Law of the Election of the Jordanian Council of Representatives No. 6 of 2016

Wejdan Suleiman Artaimeh \*

Faculty of Law , Jadara University –PO Box 840225 Amman 11180 Jordan

## Abstract

Election is the mainstay of the democratic ruling system. So the electoral legislation has cared about adding the criminal protection to the electoral process by criminalizing the electoral bribery to avoid the threatening risks to the integrity of the elections and to undermine the power of money on the electoral process. The Jordanian legislator stipulated this crime in Article 59 of the Election Law of the House of Representatives No. 6 of 2016. The purpose of this research is to shed light on the crime of electoral bribery in terms of its rules and penalties, and to explain the problems of its application.

**Keywords:** Electoral Bribery, Election Law, Jordanian Parliament.

## 1. Introduction

The will of the nation is the basis of governance. As the parliamentary elections is one of the mechanisms of democracy which express the will of the nation in the selection of its representatives in the House of Representatives , so this volition have to be translated through fair elections to produce a parliamentary council that truly reflects the will of the electorate, so the electoral legislation has cared about adding the criminal protection to the electoral process by criminalizing the acts that would disrupt its conduct and influence its integrity. Election is a constitutional process that is constitutionally and legally protected. The Jordanian Constitution of 1952 and its amendments and the election law provided for the guarantees and conditions of the electoral process and the criminalization and punishment of acts affecting the freedom of voters. And in order to ensure the integrity of the parliamentary elections, Article 67 of the Jordanian Constitution stipulates the following:

**"The House of Representatives shall be composed of members publicly and directly elected in accordance with an electoral law guaranteeing the following principles: A - the right of candidates to monitor the electoral work B - the punishment of the abusers of the will of the voters. (C) The integrity of the electoral process at all stages".**

The crime of electoral bribery is one of the most serious and widespread electoral crimes, because it is easy to commit and difficult to prove. The Jordanian legislator has criminalized the electoral bribery to undermine the power of the money on the electoral process in Article 59 of the Election Law of the House of Representatives No. 6 of 2016, which reads as follows: **" shall be punished by hand labor for a period of not less than three years and not more than seven years anyone who: (a) directly or indirectly gives, lends, offers or pledges a sum of money, interest or any other remuneration in order to induce the voters to vote in particular or abstain from voting or to influence others to vote or abstain from voting (B) Directly or indirectly accepts an amount of money, a loan, a benefit or any other remuneration for himself or for another person with a intention to make him vote particularly or abstain from voting or to influence others to vote or abstain from voting "**. Although the crime of electoral bribery was stipulated in the electoral law, it remained in the theoretical text. The provisions of the limitations and the parliamentary immunity of the members of the House of Representatives and its procedures have restricted their application. Therefore the provisions governing the crime of electoral bribery should be reviewed to ensure the punishment of the abusers of the will of the voters and to strengthen the democracy.

## 2. The Quiddity of the Electoral Bribery Offense:

We will address the nature of the crime of electoral bribery through defining it and indicating its legislative development in the successive Jordanian election laws.

### 2.1 The Definition of the Crime of Electoral Bribery:

Electoral legislation has followed the path of punitive laws by not defining the crime of electoral bribery as an electoral crime.

As the crime of electoral bribery is characterized by what the electoral crime is characterized, the jurisprudence has listed several definitions for the electoral crime. Some have defined it as: **"Any activity related to the political parties, their supporters and agents of governments that aims to obstruct or disrupt any part of the electoral process. This activity includes threats, attacks, murders, intentional vandalism, kidnapping , slander and defamation. This activity takes places on people, places and things."**<sup>212</sup>

1 Afifi, Kamel Afifi: Parliamentary Elections and Constitutional and Legal Guarantees, Comparative Study, Academic's House, 2002, p. 1034.

Others defined it as: **"Any criminalized act whether positive or negative resulting in an attack on the electoral process or a breach of its proper conduct and impartiality, arising out of criminal intent. And the law imposes a criminal penalty for it".<sup>1</sup>**

we conclude the definition of electoral bribery as: "The electoral crimes are the offenses influencing the will of the voters, that aim to influence the integrity of the electoral process by influencing the will of the voter by the use of the money or inducement or the offering of a promise or donations or any work that would affect the voter's freedom and influence him by Internal or external factors that depart him from the right choice."

## 2.2 Legislative Development of the Crime of Electoral Bribery in Jordanian Law.

The crime of electoral bribery was stipulated as an influencing crime on the will of the voters for the first time under Article (2-3) of the appendage of the electoral law Legislative Council of 1928. Which stipulates that: **" whoever gives, lends, accepts to give or lend or offers money or anything else directly or by mediation or offers a job or a place or a position to a voter with an intent to induce him to vote or to abstain from voting, before or during or after the election, shall be subjected to imprisonment after the conviction by a court of the first instance for a period not exceeding one year or a fine not exceeding two hundred Palestinian pounds, in addition to the deprivation within six years from the date of conviction from registering as an elector or voting in the election in Eastern Jordan or to hold a public or judicial office, and if he was occupying such position on the date of his conviction, his services shall terminated. "**<sup>2</sup>

As for the election law of 1947<sup>3</sup>, article 37 provided for the electoral crime of bribery within eleven electoral crimes<sup>4</sup> and punished the perpetrator being a candidate or a voter or other person by imprisonment for a period not exceeding one year or a fine not exceeding 100 Palestinian lira and the deprivation of the right to vote for five years from the date of his trial. Article 41 intensified the punishment of an employee, who is convicted of the crime of electoral bribery if he committed it during the performance of his job, by dismissal from his job in addition to any other penalty imposed on him. This law has punished the attempt to crime as a complete offense<sup>5</sup>.

As for the temporary election law no. (24) Of 1960, the Jordanian legislator has kept the criminalization of electoral bribery within the crimes set forth in Article 63<sup>6</sup> and gave the jurisdiction of hearing these crimes to the the Court of First Instance only and has punished the perpetrators of the crime of electoral bribery with imprisonment for not less than one month and not more than one year or a fine not less than 50 dinars and not exceeding 150 dinars or both penalties. From the examination of the text of Article 63 of the Temporary Election Law No. (24) Of 1960 we note that the Jordanian legislator has narrowed the scope of criminal protection of the crime of electoral bribery. He granted the competent court the power to choose the appropriate penalty between imprisonment or a fine or both of them. The judge is not adhered to choose the penalty of imprisonment. The Jordanian legislature, satisfied by the criminalizing of the attempted electoral bribery other than the previous law which considered the attempt to crime as a complete crime, abolished the penalty of deprivation of election as a supplementary penalty provided for in Article 37 of the Election Law No. 9 of 1947. Article 68 defines the statute of limitations of the electoral crime in article 68 which is 6 months from the date of the announcement of the election results.

As for the electoral law no. (22) Of 1986<sup>7</sup>, the Jordanian legislator criminalized the electoral bribery as part part of the electoral publicity offenses in Article (65), which stipulated the following: **"It is prohibited for any candidate to offer during the electoral publicity gifts, donations, cash or in-kind benefits or other advantages, or to promise to offer it to a natural or legal person, directly or indirectly, with an intent to influence the voting. It is also prohibited for any person to request such gifts, donations, benefits or the promise of it from any candidate"**. The Jordanian legislator punished the perpetration of the electoral bribery by imprisonment for a period not less than three months and not exceeding one year or a fine not less than two hundred dinars and not exceeding five hundred dinars or both penalties. This law subjected the attempted electoral bribery to the general provisions of the Penal Code. And this law contained a text that punished any violation of the provisions of the electoral law, that no penalty was imposed for which, by imprisonment for a period not less than one month and

<sup>1</sup> Al-Hadithi, Omar Fakhri Abdul Razzaq, Prevention of Electoral Crime. Research published in the Journal of the Faculty of Law, Anbar University, 2010, p 109.

<sup>3</sup> Article (2-3) of the Election Law of 1928, published in the Official Gazette No. 301 dated 6/9/1928, pp. 2-3.

<sup>4</sup> The Election Law of the House of Representatives and its amendments No. 9 of 1947, published in the Official Gazette No. 898 on page 744 dated 1947-04-16

<sup>5</sup> Article 37 stipulates that: " Any person who gave a voter, directly or through a medium, a loan or offered to loan or pledged to give him money or benefit or anything else to induce him to vote or abstain from voting", Article 37, paragraph (f) reads as follows: "Any person who, before or during the election or in the course of the election, accepts or requests directly or through a medium money, loan, benefit or any other thing for himself or for others or to abstain from voting or otherwise to make others vote or abstain from voting

<sup>5</sup> Article 42 of the Election Law of the Council of Representatives and its amendments No.9 of 1947.

<sup>6</sup> Paragraphs(G) and (j) of Article 63 of the Election Law of the House of Representatives and its amendments No. 24 of 1960 published in Official Gazette No. 1494 on page 606 dated 11/6/1960..

<sup>7</sup> Election Law for the House of Representatives and Amendments No. 22 of 1986, published in Official Gazette No. 3398 dated 17/5/1986.

not more than three months or a fine not less than fifty dinars and not more than two hundred dinars or both penalties. In accordance with the provisions of Article (71) , the crime of electoral bribery shall be subject to prescription after 6 months from the date of the announcement of the election results.

The temporary Election Law No. (34) Of 2001<sup>1</sup> has kept the crime of electoral bribery within the crimes of election publicity in accordance with the provisions of Article 20 thereof. According to article 47 the perpetrator of the crime of bribery shall be punished by imprisonment for a period not less than three months and not more than one year or a fine not less than two hundred dinars and not more than five hundred dinars or both penalties. This law does not specify the court competent to hear the crime of electoral bribery as an electoral crime, which means that it is subject to the general provisions in the light of the punishment and according to the prescribed penalty it is considered a misdemeanor not a felony. In accordance with the provisions of Article (50) any violation of the provisions of this law that no penalty was provided for which shall be punishable by imprisonment for a period of not less than one month and not exceeding three months or by a fine not less than 50 dinars and not exceeding two hundred dinars or both penalties. The crime of electoral bribery shall be subject to prescription after six months from the date of the announcement of the election results in accordance with Article (51) of the same law.

In the Temporary Election Law no. (9) Of 2010<sup>2</sup> the Jordanian legislator kept the criminalization of the crime of electoral bribery within the provisions of electoral publicity in accordance with the provisions of Article 20. The Jordanian legislator differentiated in the penalty between the candidate, who offers during the election campaigning gifts , donations cash or in-kind benefits or other advantages or promises to provide them to a natural or legal person, whether directly or through others including the purchase of votes , which shall be punished by hand labor for a period not exceeding seven years in accordance with article 46 / A , and the punishment of a person who requests such gifts, donations or assistance or a promise from any candidate in which according to article 44 paragraph, (e) shall be punished by imprisonment for a period not less than three months and not more than one year, or a fine not less than two hundred dinars and not exceeding five hundred dinars or both penalties. In accordance with the provisions of Article (48) of the Temporary Election Law No. (9) of 2010, any violation of the provisions of this law that no penalty was provided for which shall be punishable by imprisonment for a period of not less than one month and not exceeding three months or a fine not less than 50 dinars and not exceeding two hundred dinars or both penalties.

According to Article (49), this crime shall be subject to prescription after six months from the date of the announcement of the election results.

In the Election Law no. (25) Of 2012<sup>3</sup> , the Jordanian legislator criminalized the electoral bribery as a crime independent of the crimes of the electoral publicity and gave it a special text. He considered it a felony punishable for years in accordance with article 63<sup>4</sup> And from examining the text of Article 63 we note that the Jordanian legislator enumerated the forms of bribery and means of its commission and did not differentiate in the penalty between the candidate or the mediator or the voter. Article (65) states that any violation of the provisions of this law, that no special penalty was provided for which, its perpetrator shall be punished by imprisonment for a period of not less than one month and not exceeding six months or a fine not less than one hundred dinars and not exceeding three hundred dinars or both penalties. This law included new provisions that expanded the scope of the criminalization of electoral bribery; it punished the partner and instigator by the penalty of the original actor<sup>5</sup>. It allowed the application of any more severe punishment provided for in any other law in force<sup>6</sup> And gave the status of the judicial control to the President and members of the Council and the heads of election committees and their members and the heads of polling and counting committees and the heads of any other committees formed under the provisions of this law to control any of the electoral crimes provided for in this law in accordance with the provisions of the Code of Criminal Procedure<sup>7</sup>. Unlike the previous electoral laws, the crime of electoral bribery shall be subject to prescription as an electoral crime after three years from the date of the final election results<sup>8</sup>.

<sup>1</sup> The temporary Election Law No. 34 of 2001 of the House of Representatives published in the Official Gazette No. 4497 dated 19/7/2001.

<sup>2</sup> The temporary Election Law No. 9 of 2010 of the House of Representatives, published in Official Gazette No. 5032 dated 19/5/2010

<sup>3</sup> Published in Official Gazette No. 5165 on page 2965 in 2012-07-01

<sup>4</sup> Article (63) stipulates that: " shall be punished by hand labor for a period of not less than three years and not more than seven years anyone who: (a) Directly or indirectly gave a voter, loaned him or offered or pledged to give him a sum of money or any other consideration in order to induce him or her to vote in particular or to abstain from voting or to influence others to vote or abstain from balloting b) Accept or directly or indirectly request a sum of money, loan, interest or any other consideration for himself or To vote in particular or to abstain from voting or to influence others to vote or abstain from voting. (B) Accepted directly or indirectly or requested a sum of money, loan, interest or any other consideration for himself or for another person with a view to vote in particular or to abstain from voting or to influence others to vote or abstain from voting.

<sup>5</sup> Paragraph (b) of Article 68 of the Election Law No. 25 of 2012.

<sup>6</sup> Paragraph (a) of Article 68 of the Election Law No. 25 of 2012

<sup>7</sup> Article 68 of the Election Law No. 25 of 2012.

<sup>8</sup> Article 67 of the Election Law No. 25 of 2012.

The Electoral Law No. (6) Of 2016<sup>1</sup> has criminalized the electoral bribery offense in Article 59 and kept the text of the criminalization as in the Electoral Law No. 25 of 2012. However, it contained new provisions represented in the following:

- 1- Provide for an excuse instead of punishment. Article 59 / B / 1 of the Election Law 2016 provides for exemption from the penalty of hand labor for a period of not less than three years and not more than seven years for any of the perpetrators of any of the acts stipulated in item (2) of paragraph A, which are the forms of the electoral bribery, that are committed by the voter or others by acceptance or asking for benefit, if it was revealed by him to the competent authorities or admitted before the case is referred to the court. We believe that it is a commendable position for the Jordanian legislator as the crime of bribery is a hidden crime that is difficult to prove.
- 2- Criminalizing the submission of malicious information in order to harm or beat the candidate. Article 59 / b / 2 of the Election Law of 2016 punished this act with the penalty of the electoral bribery which is hand labor for a period of not less than three years and not more than seven years for anyone who submits any malicious information in order to harm or beat the candidate.

### 3. Elements of the Electoral Crime

By reference to Article 59 of the Election Law of 2016, the crime of electoral bribery is based on three elements: a presumed element manifested in the status of the bribe taker, a material element, and a moral element.

#### 3.1 The Presumed Element in the Crime of Electoral Bribery.

The crime of electoral bribery assumes the existence of a briber, a bribe-taker, an intermediary. The briber in the crime of electoral bribery is the person who submits the gift or the promise to voters to vote or abstain from voting. A special status is not required in the perpetrator of the bribery election. The briber can be one of the candidates or delegates or mediators due to the general legislative drafting of the text of Article 59 on the crime of electoral bribery, which provided for "**Whoever gave a voter directly or indirectly ...**". The crime of electoral bribery does not fall within the traditional bribery crimes contained in the Jordanian Penal Code which requires special status in the perpetrator, namely, the status of public official. The briber may be the candidate himself or one of his supporters which bribes the voters to vote for his candidate and in contrast the briber may be one of the enemies of the candidate who is bribing voters to abstain from voting for him<sup>2</sup>.

As for the bribe-taker in the electoral bribery, he is the one who accepted or asked directly or indirectly for a sum of money, a loan, a benefit or any other enumeration. The existence of the status of the voter is required, that is to be from the voters in accordance with the House of Representatives Election Act of 2016. The law requires the existence of such status at the time of the perpetration of the criminal offense and does not require the continuation of its enjoyment after the conduct has been completed. The validity of his registration in the voters' lists is not required<sup>3</sup>. Thus the status of the voter is a prerequisite for the crime of the briber in the electoral bribery crime<sup>4</sup>.

The mediator in electoral bribery is that person who is the link between the candidate and the voter. Article 59 did not require any special status in him as it came absolute using the term "**all who gave ....**". The mediator may be one of the electors or another and he is addressed by the criminalization if he perpetrated the act of giving or offering or promise of interest to induce voters to express opinion in a particular way<sup>5</sup>.

The report issued by the National Center for Human Rights in Jordan has pointed out the spread of the phenomenon of buying votes through brokers who collect the civil status cards from the voters and offer them to the candidates to determine who pays more. Half of the agreed amount is paid upon the receipt of the card, and the rest is paid at the poll.<sup>6</sup>

#### 3.2 The Material Element in the Crime of Electoral Bribery:

The material element in the crime of electoral bribery consists of three elements: criminal behavior, criminal result and causal connection between them.

The Jordanian legislator defined the criminal conduct of the material element in the crime of electoral bribery in Article (59) of the Election Law No. 6 of 2016. By examining the text of Article (59), the criminal conduct of

<sup>1</sup> The Supreme Royal intention was issued to approve the Election Law of the House of Representatives No. 6 of 2016 on Sunday 13/3/2016. It was published in the Official Gazette no. (5386) dated 15/3/2015.

<sup>2</sup> EL Feal, Ali Adnan, The crime of Electoral Bribery, Comparative Study, New University House, Alexandria, 2012, p.38

<sup>3</sup> Asadi, Dia, Election Crimes, 2009, Zain Law Library, First Edition, p359.

<sup>4</sup> Shawqi, Yaash & Azizah, Shubri, 2017, The Crime of Electoral Bribery between Electoral Legislation and Judicial Application, Journal of In-depth Legal Research Issue 15, 2017, p. 41

<sup>5</sup> Al-Kandari, Faisal Abdullah, (2000), Electoral Crimes Judgments, Scientific Publishing Council, Kuwait, p. 16 et seq.

<sup>6</sup> Report of The National Center for Human Rights on the Jordanian Parliamentary Elections 2016, p9

the crime of bribery is determined by the act of the perpetrator whether he was the briber or the bribe-taker. In paragraph (1) of Article (59), the Jordanian legislator stipulated the material behavior of the bribery crime committed by the briber in the offering of the bribe and its forms which are to give directly or indirectly, loan or promise of interest. In paragraph (2) of Article (59), the Jordanian legislator provided for the material behavior of the electoral bribery crime committed by the voter, which is represented according to the text in the acceptance and demanding directly or indirectly, and taking. All these forms are for one object which is the benefit, the subject of the electoral crime.

### 3.2.1 *Forms of the Reimbursement or Benefit and Interest Subject of Electoral Bribery:*

The Jordanian legislator has expanded the definition of electoral bribery, using loose terms for the benefit of the crime without elaboration. According to the provisions of Article 59 / A, it is a sum of money or benefit or for any other reimbursement. He did not limit it to certain forms leaving it to the competent court. According to this concept cash, donations, cash and in kind gifts or promises of (gifts, benefits, public or private jobs) shall be regarded as interest or benefit. In addition the Egyptian legislator in article 65 of the Political Rights Act No. 4 of 2014, expanded in determining the subject of electoral bribery by using a single loose word "interest"<sup>1</sup>

While the French legislator also went to expansion, he insisted on the stipulation of different terms for the "benefit" (the object of the crime) in Article (106L) of the French Election Law. He stipulated more than one form for the benefit including financial and in-kind donations, appointment in important jobs or any other benefit as well as the provision of administrative services to one or some members of the electorate. Jurists differed on the appropriateness of expanding the concept of utility in the crime of electoral bribery into two opinions:

The first opinion: This trend supported the course of the Egyptian legislator in the use of the word "interest" in the criminalization text without specifying it which would allow the judges to expand the interpretation of the meaning of interest<sup>2</sup>.

The second opinion: This opinion supports the course of the French legislator in the enumeration of the interest forms<sup>3</sup>. Supporters of this view believe that the word (interest) used by the Egyptian legislator without elaboration would lead to left the door wide open for the jurisprudence and would lead to a judge's discretionary power in determining the concept of interest. The Jordanian legislator has used more than one term in the experimental text to indicate the interest or benefit which is the amount of money or benefit or any other reimbursement. The term "interest" used by the Egyptian legislator was not used in line with that of the French legislator. We believe that the legislative policy of the Jordanian legislator to widen the scope of criminalization is a successful policy, since it is difficult to limit the forms of interest or limit it to certain forms, and this would widen the scope of penal accountability for the crime of electoral bribery.

The form of the benefit or interest is irrelevant. It may be cash and may be in kind such as clothing and food. The benefit or interest is not limited to the material aspect but it includes non-material things such as a voter receiving a job or a promotion. One of the forms of the benefit that was indicated by the report of the National Center for the Human Rights on the elections of the Jordanian Council of Representatives for 2016, which adopted the principle of limited proportional list, is the use of some lists to complete the number of candidates in the list by attracting some people to join the list in return for not incurring any expenses, including the costs of running and campaigning. Some candidates assign specific people to monitor the voters until the polling day to ensure that they vote for a specific person or list.

In this regard reports of the National Center for Human Rights on the elections held in 2013 and 2016 reported many of the practices and irregularities that occurred in these elections such as collecting voter cards for a direct payment or In exchange for in-kind support (such as providing heaters, cell phones, parcels, etc.) or to promise the appointment of the unemployed or in exchange for bearing the cost of performing Umrah or Hajj for the voters or the provision of large amounts of money by the candidates to build mosques, clubs or schools in the polling stations in which these voters are registered or the collection of cards in order to destroy them to deprive the competing candidates of the votes of the holders of these cards in exchange for direct payments<sup>4</sup>

### 3.2.2 *The Criminal Result in the Crime of Electoral Bribery:*

In order to complete the elements of the material element of the crime of electoral bribery the acts of offering, loaning, offering, pledging, acceptance, demanding, offering to provide compensation or interest or the promise of it must achieve the criminal result which was intended from them. The result intended here is to influence the will of the voters to vote in a particular way sought by the briber or abstain from voting in accordance with the interest of briber. These acts are contrary to the integrity and the proper conduct of the electoral process. They are a clear violation of the principle of free choice of voters. The electoral legislations were keen to determine the purpose of providing the equivalent or benefit in the crime of electoral bribery, which is here contrary to the

<sup>1</sup> Article 65, second clause, which stipulates that: gave another, offer or commit to give or give other interest ..."

<sup>2</sup> From the supporters of this opinion d. Faisal al-Kandari, in his book *The Provisions of Electoral Crimes*, op. Cit, P. 77.

<sup>3</sup> Hossam El-Din Mohamed, 2003, *Criminal Protection of the Principles Governing Elections in Different Stages*, Cairo, p175

<sup>4</sup> Report of the National Center for Human Rights on the Parliamentary Elections 2013, pp. 20-21, and 2016, p9.



purpose of the normal crime of bribery<sup>1</sup>. There are multiple hypotheses in which the votes of the voters can be obtained, which can equally be a positive act or an abstention. The voter may be asked to vote for a specific candidate or a list<sup>2</sup> or to abstain from voting or to vote in a manner that invalidates the voting papers such as putting the voting paper blank or voting in a manner that invalidates the voting paper according to the legislation governing the electoral process<sup>3</sup>. Some of the common practices that occur during the elections are the acceptance of the candidate or the candidates within the lists for the consideration provided by other candidate or candidates in order to withdraw from the elections, so that the competitors of that candidate or candidates will obtain the votes that are supposed to be obtained by that candidate or candidates what raises the question of the criminalization of these practices. By reference to the election law, we see that the Jordanian legislator did not explicitly criminalize these practices, but due to the superficiality of the text and its generality, we believe that these forms can be criminalized. There is also the question of the extent to which the criminal responsibility for calling for a boycott of the elections is established. Are they considered perpetrators of an electoral bribery? Unlike other legislation<sup>4</sup>, abstaining from voting without a legal excuse is not an electoral offense in the Jordanian Election Law No. 6 of 2016.

In accordance with the principles of legality of crimes and penalties, it cannot be said that the crime of incitement to commit an electoral crime is to refrain from voting without a legal excuse for not being stipulated in the Jordanian Election Law 2016. But we believe that the responsibility of the advocates of boycotting the elections can be held as a form of protest against the electoral system or for any other reason if they provide benefits to voters so that they can abstain from voting. So we believe that they have committed an electoral bribery crime based on the provisions of paragraph (1) of Article (59) of the Jordanian Election Law 2016.

### 3.2.3 Causal Link in the Crime of Electoral Bribery:

The causality between behavior and result must exist as the crime of electoral bribery is one of the harm offences that require a result<sup>5</sup>.

### 3.3 The Moral Element of the Crime of Electoral Bribery:

The electoral bribery crime is an intentional crime in which the moral element takes the form of the general criminal intent which is based on knowledge and will. The question arises whether the general intent is sufficient or does it require special intent? Part of the jurisprudence<sup>6</sup> went on to say that the existence of the general intent with its two elements, the knowledge of the elements of crime and the will of the offender to commit them, suffices the establishment of the moral element. They added that a special intent is not required. It is sufficient that the voter intends to obtain the benefit or the consideration in return for voting in a certain manner or abstaining from voting. It is not necessary that his intention aims to achieve the work required from him. The crime is committed even if he was not going to carry out the required action. And another part of the jurisprudence<sup>7</sup> believes that the general intent is not sufficient to establish the moral element of the crime of electoral bribery. Rather, there must be a specific criminal intent that is his purpose and aim from receiving the consideration or interest or benefit. This trend therefore requires the existence of a special intent along with the general intent. We agree with this opinion that there is a need for special intent which can be proven by all means of proof which was explicitly expressed by the Jordanian legislator in Article 59 of the Election Law No. 2016 in which he stated in paragraph (a) (... **in order to induce him to vote in particular**) and paragraph 59 (b).

The responsibility of the candidate shall cease if the third party from his supporters or campaigners commit an act constituting the material element of the electoral bribery crime without his knowledge<sup>8</sup>. According to the general rules the intention must be contemporary to the moment of committing the act constituting the material element of the crime. This applies to the crime of electoral bribery, so the intention must be contemporary to the acts constituting the material element of the crime of electoral bribery, namely, requesting, acceptance and taking. This time-binding is not sufficient at a later time<sup>9</sup>.

<sup>1</sup> The purpose of the ordinary bribery in accordance with Article 171 of the Jordanian Penal Code is that the employee or the person who has been assigned to a public service shall request or accept for himself or any another gift, promise or benefit to perform a work without a right or to refrain from work that he should have done by virtue of Function.

<sup>2</sup> In accordance with Article 9 / A of the Jordanian Election Law 2016, the nomination of the electoral district shall take place through the open proportional list.

<sup>3</sup> Dr.. Mustafa Mahmoud Afifi, op. Cit., P. 113, d. Pink Brahimi, op. P. 155.

<sup>4</sup> According to article 57 of the Political Rights Act No. 45 of 2014, failure to vote is considered a crime punishable by a fine of LE 500

<sup>5</sup> Asadi, op. Cit., P. 401

<sup>6</sup> Afifi Kamel Afifi, op. Cit., p. 1118-1119 .

<sup>7</sup> Hossam El-Din Mohamed Ahmed , in his book Criminal Protection of the Principles Governing Elections in Different Stages, op. Cit., Pp. 178-179

<sup>8</sup> Dr.. Al-Asadi, op. Cit., P. 402

<sup>9</sup> So if the voter takes a gift from a person believing that it was presented for an innocent purpose and then finds that it is intended to induce him to vote in a certain way or to prevent him from voting. The crime will not take place if the intent is not time-bind to the act, but if retained by the voter after knowing this intention, the criminal responsibility is established, as in the case of regular bribery.

#### 4. The Penalty of the Crime of Electoral Bribery

The Jordanian legislator punishes the perpetrator of the crime of electoral bribery by a custodial penalty which is hand labor for a period not less than three years and not more than seven years<sup>1</sup>. The Jordanian legislator considered the crime of electoral bribery a felony, in contrast to most of the electoral legislation which considered it a misdemeanor<sup>2</sup>. The Jordanian legislator had only the original penalty of hand labor for a period of not less than three years and not more than seven years without providing for a supplementary and mandatory punishment such as deprivation of election and nomination. A law appended to the electoral law of the 1928 Legislative Council punished all those who offer money to the voter to induce him or her to abstain from voting by deprivation of the registration for election or voting for six years from the date of his conviction. Article (37) of the Jordanian the Election Law No. (9) Of 1947 punishes all those who commit election crimes, including the temptation, threat or coercion of the voter to vote in particular or the use of fraud and deception to mislead the voters, by the deprivation of the right to vote for five years from the date of his trial.

The text of the Jordanian Municipalities Law No. 41 of 2015 provided for a supplementary penalty that is not provided for by the Election Law of the House of Representatives, namely, not to include the name of those convicted with any electoral offenses provided for in Article 56 in the voters' lists for the period that the Court decides as long as it is not less than four years and not more than eight. It invalidates his membership if he was the mayor or a member of the municipal council.

Also, the Elections Act of 2016 did not contain any provisions concerning the liability of the Juristic person, despite that the perpetration of the crime of bribery can be envisaged from his representatives which means the application of general provisions in the Penal Code contained in Article 74/2 of the Jordanian Penal Code, which is limited to fines and precautionary measures. The modern penal policy requires the imposition of modern sanctions on the Juristic person to achieve public and private deterrence, such as depriving the political party of running for parliamentary elections, depriving him of state support from the treasury funds or solidarity in paying any financial penalty imposed on the representatives of the Juristic person.

#### 5. The Extent of Effectiveness of the Criminal and Punitive Policy adopted by the Jordanian Legislator in the Election Law No. 6 of 2016 in reducing the Crime of Electoral Bribery.

The statute of limitations of the crime of electoral bribery and the parliamentary immunity of members of parliament and its procedures raises problems that prevent the application of the crime of electoral bribery. According to the report of the National Center for Human Rights on the parliamentary elections in Jordan for 2016, that "despite the widespread phenomenon of buying votes in various constituencies, none of the financiers or beneficiaries of the money reached the judiciary"<sup>3</sup>.

##### 5.1 The Statute of Limitations of Electoral Bribery

Article (63) of the Election Law No. 6 of 2016 stipulates that:

**"All the electoral crimes provided for in this law shall be subject to prescription three years after the date of the announcement of the final results of the elections"**. From the examination of the text of the article, it turns out that the Jordanian legislator has deviated from the general provisions of the statute of limitations, where he determined the statute of limitations of all criminal electoral crimes by three years<sup>4</sup> and did not provide for the statute of limitations of the penalty of the electoral bribery<sup>5</sup>. In our opinion, there is no justification for the legislator to equate the statute of limitations of the felony and the misdemeanor and to shorten the period of prescription of the electoral bribery to three years instead of ten years under the pretext of political stability. He thus rewards the criminals who are the abusers of the will of the electorate by bringing them to parliament instead of punishing them for their crimes. So whoever commits the crime of electoral bribery can run and participate in the upcoming elections. In the 17th parliamentary elections held in 2013 four candidates who had previously been arrested by the Public Prosecutor's Office on charges of electoral bribery won the elections<sup>6</sup>. Following the announcement of the results, they were released. The executive branch should have submitted a request to lift the immunity of these representatives to complete their trial, based on the decision of the Constitutional Court of their enjoyment of the parliamentary immunity even if the acts that they committed was before gaining the status of

<sup>1</sup> Article (59) of the Jordanian Election Law No. 6 of 2016.

<sup>2</sup> Article 65/1 of the Law of Egyptian Political Rights, which has been punishable by imprisonment for a period of not less than one year and a fine of not less than one thousand pounds and not exceeding five thousand pounds or one of these penalties.

<sup>3</sup> Report of the National Center for Human Rights on the Jordanian Parliamentary Elections 2016, p 9.

<sup>4</sup> Articles 338-340 of the Criminal Procedure Law stipulates that the statute of limitations for a felony is ten years and the statute of limitations for a misdemeanor is three years

<sup>5</sup> Which means the application of general provisions in Article 342, which set the period of limitation of temporary criminal penalties twice the sentence that court sentenced as long as it does not to exceed twenty years or less than ten years,

<sup>6</sup> Report of the European Union Mission for Parliamentary Elections 2013 p. 18, Report of the National Team on the Seventeenth House of Representatives Elections 2013, p. 11-22

membership of the House of Representatives<sup>1</sup>. The executive was not serious in prosecuting them, as the period of the three years has ended and their crimes have prescribed and some of them ran for the elections in 2016 and won the membership of the Eighteenth House of Representatives. In this regard we see that granting the executive authority the right to submit a request to lift the parliamentary immunity of the members of the House of Representatives is a flagrant violation of the Constitution and a violation of the principle of separation of powers. On this basis we see the unconstitutionality of Article 146 of the rules of procedure of the House of Representatives, which requires submission of a request from the executive to lift the immunity of the representatives, as it expanded the interpretation of the text of Article 86 of the Jordanian Constitution of 1953 and discharged the constitutional text out of its content. The penal policy requires that the electoral law adopts a procedural criminal protection to ensure that the will of the voters is not abused, by explicitly stating that the statute of limitations does not apply to the crime of electoral bribery and the penalties imposed on it<sup>2</sup>

## 5.2 Parliamentary Immunity of Members of the House of Representatives.

Article 86 of the Jordanian Constitution of 1952 states: "No member of the Senate or House of Representatives shall be arrested and tried during the term of the Council's meeting unless the Council to which he is a member issues a decision by the absolute majority that there is a sufficient reason for his arrest or trial or unless he is arrested in the case of flagrante delicto, and in the case of his arrest in this manner, the Council shall be notified immediately". Parliamentary immunity raises issues that prevent the application of the crime of electoral bribery as it impedes the filing of the public right case on the representative accused of the crime of electoral bribery after announcing his victory in the parliamentary elections. As the representative enjoys a procedural immunity during the statute of limitations that prevents him from being investigated until his immunity has been lifted by a majority of the members of the House of Representatives or after the end of the regular parliamentary session of six months in addition to the extraordinary sessions held in the remaining months, Thus impeding the work of the judicial authority on the one hand, and on the other hand, since the crime of electoral bribery is a felony, a preliminary investigation and the issuance of a decision in accordance with article 133/1 of the Code of Criminal Procedure is required by the prosecutor in accordance with the provisions of article 51/1 of the Code of Criminal Procedure, Then the referral to the competent court. Where the proceedings may take the duration of the Council, which loses the electoral process the criminal protection of the will of voters and the strengthening of democracy, So we see the need for a specialized chamber within the Court of First Instance including one or more bodies to consider the electoral crimes, on the basis of Article 4 of the law of the formation of regular courts, to adjudicate crimes within a certain period where the decisions for which are subject to appeal within a certain period not exceeding two months. And also not to declare the victory of any candidate referred to the judiciary for the crime of electoral bribery unless an acquittal final judicial ruling is issued.

## 6. Conclusion

Jordanian legislation governing the crime of electoral bribery is still far from the optimal application. There is a separation between the text and the application where the parliamentary immunity and the encroachment of the executive branch on the judicial authority have emptied the crime of electoral bribery of its content, namely, to protect the will of the voters and not to abuse them. Thus there is no value to the legal texts if they do not find their way to application under an independent and impartial judiciary.

After clarifying the rules of the crime of bribery and its penalty, and to explain the problem of its application, and to ensure the extension of the criminal protection of the will of the voters on the one hand, and to punish the abusers of this will on the other hand, we made the following suggestions:

1. Reviewing the criminal and punitive policy in the Jordanian Election Law No. 6 of 2016 extending the criminal protection of the will of the electorate by punishing the attempted electoral bribery as a complete crime and providing for the deprivation of election and voting for at least 10 years as a supplementary punishment for anyone who commits the crime of electoral bribery, as well as stipulating that the crime of electoral bribery or the penalties prescribed for it shall not be time-barred, and expressly stipulating the responsibility of the juristic person.
2. Abolishing the text of Article 146 of the Jordanian Parliament's Rules of Procedure for 2013 due to its violation of the provisions of the Constitution. It also violates the principle of separation of powers and prejudices the independence of the judiciary.
3. Reconsidering Article 86 of the Jordanian Constitution of 1952, and explicitly stipulating that the request to lift the parliamentary immunity of the members of the Houses of Representatives and the senate shall be directly by the judicial authority.
4. Establishing a specialized criminal body to consider the crime of electoral bribery, based on article 4 of the law

<sup>1</sup> Interpretation decision No. 7 of 2013 dated 5/5/2013.

<sup>2</sup> The Jordanian legislator has already provided that the statute of limitations shall not apply to economic crimes under article 10 of the Economic Crimes Law No. 11 of 1993 and its amendments



of forming the regular courts, and the adjudication of crimes within a certain period where the decisions for which can be challenged within a certain period not exceeding two months, and explicitly stipulating the non-declaration of the victory of any candidate referred to the judiciary for the crime of electoral bribery unless an acquittal final judicial ruling is issued.

**References:**

- Ahmed, Hossam El-Din Mohamed, 2003, *Criminal Protection of the Principles Governing the Election in its various stages*, Dar al-Nahda al-Arabiya, Cairo.
- EL-Asadi, Diaa Abdullah Aboud Jaber, (2009), *Election Crimes*, Zain Legal Library, Lebanon First Edition.
- Afifi, Afifi Kamel, Afifi Kamel Afif, (2002), *Parliamentary Elections and its Constitutional and Legal Guarantees, Comparative Study*, academics' House.
- Afifi, Mustafa Mahmoud, (2002), *Criminal Liability for Electoral Crimes for Voters, Candidates and the Administrator, comparative study*, Dar al-Nahda al-Arabiya, Cairo.
- EL-Hadithi, Omar Fakhri Abdul Razzaq, (2010), *Prevention of Electoral Crime*, Research published in the Journal of the Faculty of Law, Anbar University.
- EL-Kandari, Faisal Abdullah, (2000), *Electoral Crimes Rules*, Scientific Publishing Council, Kuwait.
- Shawqi, yaesh & Azizah, Shubri, (2017), *The Crime of Electoral Bribery between Electoral Legislation and Judicial Application*, Journal of Advanced Legal Research Issue 15
- EL-Wardi, Brahim, (2008), *The Legal System of Electoral Crimes*, University Thought House, Alexandria, First Edition.