

The Idea of Criminal Liability of the Commercial Company

Maher Ali Al-Khalidi

Amman, Jordan

Abstract

The subject of the research acquires special importance, as it relates to the rule in criminal jurisprudence that responsibility is only related to the human person, although the legislator did not explicitly stipulate this rule, he presupposes it with the commands and intentions contained in the texts of the law that are directed to the people, because the actions that are criminalized by the texts of the law are supposed to be issued by a human being, and the prescribed penalties cannot be imagined being sent down to anyone other than a person, as a jurisprudential dispute arose about the criminal responsibility He acts through his representatives and does not have criminal capacity, and most criminal penalties cannot be applied to him, except that denying the will of the commercial company means the impossibility of him being a party to a contract, and therefore the impossibility of civil accountability, because he has no will, and this is a realistic and legally unacceptable result.¹

However, in reality, it is proven for entities other than the human being, just by their validity, as if they have one right, no matter how simple this right is, It proves to groups of human beings who have gathered together to achieve a common goal, or to groups of funds earmarked to achieve a specific purpose; this is due to the expansion of the circle of activity of these people in the modern era and their entry into most areas of life, especially commercial ones, which led to the commercial company occupying a dangerous position on the decisions of society and its basic interests, which led to the intervention of legislators by criminalizing some forms of behavior that occur from the representatives of these people The morale - the most important of which are commercial companies - during the performance of their work, and to decide on some measures or measures directed to protect the interests of society and its members from the dangers of these persons.²

The topic of the research acquires special importance, as it relates to a contemporary and advanced topic that keeps pace with modern developments in our contemporary life and relates to the scope of criminalization and punishment in the field of commercial companies that have become using modern technology, where previously unknown crimes have appeared that require the intervention of the legislator to set penal rules to punish violators of the economic and commercial systems in force.

Hence the problem of the study arose; Because the criminal penalties prescribed for combating crimes in violation of corporate provisions still include a set of traditional penalties included in the Penal Code and special legislation.

We have addressed through this research the positions of the criminal responsibility of the commercial company and the nature and conditions of that responsibility.

We also reached a set of results, most notably: the general rule is that criminal responsibility is personal, and only the person who committed the crime or participated in it is criminally responsible. However, the modern trend in punishment seeks to prosecute people who facilitated the commission of the crime because of their mere presence or because of their financial liability; we also reached a set of results, most notably: the general rule is that criminal responsibility is personal, and only the person who committed the crime or participated in it is criminally responsible. However, the modern trend in punishment seeks to prosecute people who facilitated the commission of the crime because of their mere presence or because of their financial liability; thus, it constitutes a departure from the principle of personal punishment. However, the criminal responsibility of legal persons does not prevent the liability of natural persons as principals or partners for the same facts. In terms of punishment, the law pertains to the commercial company with a special type of penalties: such as fines, confiscation, closure...etc.

By extrapolating the crime within the scope of commercial companies and the responsibility for them, it becomes clear to us that a large number of them can only be imagined by a special person and not an ordinary person, with regard to refraining from carrying out an obligation imposed by law, as this obligation falls on certain persons. The legislator intervenes by establishing the criminal responsibility of the commercial company and by imposing a set of rules that must be respected in the commercial field, and this is supported by the

¹ Dr. Fathi Anwar Ezzat, *Economic Crime*, Dar Al-Nahda Al-Arabiya, Cairo, first edition, 2009, p. 162.

² Dr. Muhammad Subhi Najm, *Penal Code, General Section, The General Theory of Crime*, 3rd Edition, Dar Al Thaqafa Publishing, Amman. p. 286.

necessary sanctions with the aim of ensuring trust and credit among traders as well as ensuring the stability of the economic situation in the country.

Keywords: Corporate law, Penal law, Criminal liability of the commercial company.

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Introduction

The transactions of some commercial companies have become of a large size, and they have large financial capabilities of savings, which made them possess power and influence; Therefore, these companies, when exercising their various tasks to achieve their multiple goals, may behave illegally, resulting in a breach of the transaction system, legitimate competition and trust in credit to a degree that can only be prevented through sophisticated punitive sanctions. Accordingly, the legislation did not stop at the punishment of natural persons, but rather expanded the criminalization and punishment of commercial companies, which the legislation gave them rights and gave them the opportunity to practice economic activity and obligated them not to violate the laws, and if they did otherwise, they must bear the penal and civil responsibility.

This is due to the expansion of the commercial companies' activity in the modern era and their entry into most areas of life, which led to the intervention of legislators by criminalizing some forms of behavior that occur from the representatives of these people during the performance of their work, and to decide on some procedures or measures directed to protect the interests of society and its members from the dangers of these persons.¹

In addition, the practical transformations in the form of commercial companies led to successive adjustments in their legal system, due to the transition of economic activities from relying on the capabilities of one individual to the capabilities of large groups of individuals, which combined to accumulate funds using modern technology within huge commercial companies that have an economic, political and social impact.

The Study Importance

The importance of the study is highlighted by the transformation in the legal system for commercial companies, which kept pace with the development in the use of modern technologies, which in turn was reflected in the development of the criminal law for companies, which led to the imposition of a punitive character on commercial companies by supplementing civil and other penalties with criminal penalties.

Moreover, the various legislations tend to tighten the penalties for the crimes of commercial companies that aim to achieve illegal profit. Although these crimes fall under the category of violations, the fine reaches a limit unparalleled in ordinary crimes, and many misdemeanors are met with harsh penalties that exceed the maximum penalty prescribed in the common law. In addition, the judge does not allow the use of a stay of execution or punishment or considering extenuating circumstances.

Objectives of the Study

The study aims to clarify the position of the legislator on the tremendous development that accompanied the social and economic life in society due to the qualitative shift in the emergence and activity of commercial companies and the extent of their criminal accountability and to clarify the positions of the idea of criminal accountability for these companies. The study also aims to clarify the most prominent legal rules of criminal responsibility that the legislator enacted to apply to commercial companies and their activities, which received great attention from him, as he singled out laws aimed at regulating them due to their attachment in the field of finance, business and trade, as it aims to confer criminal protection on certain interests.

The Study Problem

The problem of the study is clear; It is necessary to admit the social danger that the commercial company may pose and his ability to commit crimes, as saying his criminal responsibility is not easy to accept, from the premise that criminal responsibility can only fall on a real person who enjoys free will and awareness in accordance with the provisions of the law. The problem of the study emerged; Because the criminal penalties prescribed for combating crimes in violation of corporate provisions still include a set of traditional penalties included in the Penal Code and special legislation.

The Study Questions

1. Is the criminal responsibility of the commercial company agreed upon between legislation, jurisprudence and the judiciary?

¹ Dr. Muhammad Subhi Najm, Penal Code, General Section, The General Theory of Crime, 3rd Edition, Dar Al Thaqafa Publishing, Amman. p. 286.

2. Do you state that the legislator acknowledged the criminal liability of the commercial company?
3. Has the legislator classified the penalties to which commercial companies are subject and has the legislator made the fine the only original penalty that can be imposed on commercial companies?
4. Did the legislator consider other penalties - other than a fine - that could be inflicted on modern commercial companies as complementary penalties?

Study Approach

We will follow the comparative analytical descriptive approach when dealing with the topics of the research, by standing on the legal texts that deal with the topics that are analyzed, and explaining the judicial rulings that they dealt with and the jurisprudential opinions that were exposed to them.

Study Plan

The research will be divided as follows:

The first topic: Attitudes from the criminal responsibility of the commercial company.

The second topic: Conditions of criminal liability for the commercial company.

The third topic: the nature of criminal responsibility for the crime of the commercial company.¹

Conclusion: We include the most important results that we have reached through this research, and the most prominent recommendations that we propose to address the negatives that we have observed.

The idea of criminal liability of the commercial company

Legislation did not stop at the punishment of natural persons, but rather expanded the criminalization and punishment of legal persons, who were granted rights and the opportunity to practice economic activity and obligated them not to violate the laws, and if she did otherwise, she must bear the criminal and civil responsibility, as one of the justifications for accepting the penal responsibility of the commercial company is that those in charge of its management are natural persons, if we hold them criminal responsibility in addition to their civil responsibility, this attitude will contribute to deterring them from violating the law and making them more eager to implement it and respect its obligations.²

And criminal responsibility for a commercial company means its ability to bear the penalty prescribed for the crime, similar to the natural person who committed this crime for the company's account and in its name, and this is through expressing its will.³

The commercial company, as a legal person, cannot operate by itself in legal life, and therefore it had a representative expressing its will legally, or natural persons who sign the various decisions taken by the company, which leads to the latter's commitment to all actions carried out by its representatives, even if it ends The tasks assigned to them, and the company cannot protest against a third party for its rights, or for a third party to protest against the company to fulfill its obligations unless the actions that create these rights or obligations are issued by those who have a capacity to represent the company.⁴

The Jordanian Civil Law No. 43 of 1967 called the legal person a legal person, and defined it in Article 50 of it as: a group of persons or funds with a legal personality in accordance with the text of the law.

And jurisprudence sees what is meant by a legal person: a group of people or funds aimed at achieving a specific purpose, and the law grants them legal personality to the extent necessary to achieve this purpose, and they are either public or private. The public: they are bodies that carry out the realization of interests of interest to the whole or part of the society, so that these interests are considered the prerogative of the public authority. As for private legal persons: they carry out purposes that are represented by individuals or the state as an ordinary person and not as an authority holder.⁵

The rule in criminal jurisprudence is that responsibility is only related to the human person, although the legislator did not explicitly stipulate this rule. It is not possible to imagine its descent without a human being.

¹ Mireille Delmas-Marty: Les conditions de fond de mise en jeu de la responsabilité pénale des personnes morales, Revue des sociétés, 1993.p.1-4.

² Dr. Aboud Al-Sarraj, Combating Economic Crimes and Deviant Phenomena, Naif Arab Academy for Security Sciences, Riyadh, 1998, p. 90.

³ Zadi Safia, Master's thesis entitled Commercial Companies Crimes, University of Mohamed Lamine Debaghin Setif, Algeria, 2016, p. 54.

⁴ Salami Saed, The Implications for the Moral Personality of a Commercial Company, Master Thesis, Abou Bakr Belkaid University, 2012, Algeria, p. 14.

⁵ Dr. Mohamed Farouk Abdel Rasoul: Criminal Protection of the Stock Exchange, New University House, Alexandria, 2007, p. 214

However, this characteristic can be established for entities other than the human being just by its validity, as if they have one right, no matter how simple this right is. This is due to the expansion of the circle of activity of these people in the modern era and their entry into most areas of life, especially commercial ones, which led to their occupation of a dangerous position on the decisions of society and its basic interests, which led to the intervention of legislators by criminalizing some forms of behavior that occur from the representatives of these people during performance of their duties, and to decide on some measures or measures directed to protect the interests of society and its members from the dangers of these persons.¹

The French legislator stipulated the criminal liability of the commercial company and established it in Article 121-2 of the Penal Code of 1992, which states: With the exception of the state, legal persons are criminally responsible in accordance with the rules set forth in Articles 121-4 to 121-7 for crimes committed on its behalf by its agencies or representatives.²

The first topic **Attitudes towards the criminal responsibility of the commercial company**

In this topic, we will review the positions of the criminal responsibility of the commercial company with three demands, in terms of the position of legislation, jurisprudence, and the judiciary.

The first requirement: the position of the legislation on the criminal responsibility of the commercial company

Some countries' legislation has gone to determine the liability of a legal person as a general principle. The Jordanian legislator explicitly stipulates the criminal responsibility of persons in Article 74/2 of the Penal Code of 1960 by saying: "Legal bodies, with the exception of government departments and official public bodies and institutions, are criminally responsible for the crimes committed by them." its directors, representatives or agents in its name or on its behalf. As for Article 442 of the same law, it states: "If the crime is committed in the name of or for the account of a company, this company shall be targeted for precautionary measures."³ The penalties provided for in the previous article are also targeted at the responsible persons in the company, who contribute to the criminal act, facilitate or allow it to be committed with intent on their part.

While other legislations, such as the Egyptian legislation, have restricted them to specific crimes, most of them fall under the category of financial and economic crimes. As the Egyptian legislator did not stipulate the criminal responsibility of legal persons as a general rule, because the determination of this responsibility requires explicit texts that specify the appropriate penalties for the nature of the commercial company, as well as the procedures to be followed.⁴ An exception was made for the criminal liability of the commercial company in some crimes of a special nature, the most important of which is crime within the scope of commercial companies, and did not recognize this responsibility as a general principle.⁵

¹ Dr. Muhammad Subhi Najm, Penal Code, General Section, The General Theory of Crime, 3rd Edition, Dar Al Thaqafa Publishing, Amman. p. 286.

² Dominique Guirmand: La responsabilité pénale des personnes morales, La mise en oeuvre du nouveau dispositif, Droit social, 1994, p2.

³ They are preventive measures taken independently of punishments with the aim of protecting society from the danger inherent in the character of persons feared to commit crimes. The Jordanian legislator has taken these measures in the legislative texts that regulate various economic activities. These penalties can be applied to the perpetrator of the economic crime, whether he is a legal person or a natural person. The importance of determining this type of penalties is due to the inadequacy of traditional penalties in suppressing crime and deterring the offender. Freedom-restricting penalties are rarely imposed, and financial penalties are often charged to others. Therefore, punitive measures that are penalties of the same nature or kind of work seem of utmost importance in deterring crime. Dr. Mustafa Mounir El-Sayed, Crimes of Abuse of Economic Power, Ph.D. Thesis, Cairo University, 1989, p. 339 and beyond.

⁴ Dr. Mahmoud Najib Hosni, Criminal Contribution to Arab Legislation, Dar Al-Nahda Al-Arabiya, Cairo, Edition 2009, pp. 519-520.

⁵ Dr. Mazhar Farghali, Criminal Protection of Trust in the Capital Market, Arab Renaissance House, first edition, 2000, p. 1. The general rule: that legal persons may not be held criminally accountable: The Egyptian Penal Code did not include a text establishing the criminal responsibility of legal persons. The prevailing view in jurisprudence and judiciary is that the legislator does not recognize this responsibility, except in the exceptional cases for which a special text is mentioned. The current texts, as jurisprudence sees, It was formulated for human beings... and in application of the rule that a legal person may not be held criminally accountable, the Court of Cassation ruled that: (The principle is that legal persons are not criminally questioned about the crimes committed by their representatives while they perform their duties, but rather the one who is questioning is the perpetrator of the crime from them personally)" for details, kindly see , Dr. Sherif Sayed Kamel,

Examples of applications of the idea of commercial company liability in Egyptian legislation is what Article 24 of Law No. 146 of 1988 estimates to guarantee company funds to meet fines.¹ As well as the text of Article 6 of Law No. 281 of 1994, which includes the amendment of some provisions of fraud and fraud, which states: “Without prejudice to the responsibility of the natural person stipulated in this law, the legal person shall be criminally responsible for the crimes stipulated in this law, if you sign for his account, or in his name, through one of his agencies, representatives, one of his representatives, or one of his employees...”

The legislator based the recognition of the criminal liability of the commercial company indirectly or jointly with the natural person on the basis of the truth, which means that the commercial company is responsible for the actions of its representatives because it is the beneficiary of the committed criminal act, and is more able to fulfill these obligations than the natural person, provided that The actions that the manager conducts for his own account, the company is not asked about them, and the contractor has no right to refer to the company, but to the manager personally. As for the actions conducted by the manager for the company’s account that exceed his powers or fall within the restrictions placed on these actions; He differentiates between the restrictions that have been declared legally, as they are not adhered to by companies, and those that have not been published, and they are the ones that the company is bound by even if he exceeds his authority.²

As for the French legislation, the principle of the criminal liability of the commercial company was expressly decided by the issuance of the French Penal Code of 1992. Article 121 stated that: “Except for the state³, Legal persons are criminally responsible in accordance with the rules set forth in Articles 121-4 to 121-7 for crimes committed on their behalf by their agencies or representatives.

Commercial companies have a legal personality, and the most important result of this is eligibility, which means the freedom to contract and enter into all financial transactions within the scope of their activity and the limits of their purpose. As for the second result, it is represented in the financial liability, which is independent of the liability of the partners, and it includes all the rights and obligations it owes in the present and the future. As for the third result, it is represented by the name and address, each company has its own name that distinguishes it from others, and it is different in people’s companies from it in money, and the company, since it is a legal person, has an independent domicile and is distinct from the domicile of the partners, and it serves as the legal center of the company. Damages that it may cause to others, whether through its representatives or partners.⁴

Article 54 of the Jordanian Civil Code enumerated legal or legal persons, whether private or public, and did not give a criterion for differentiating between them, whether regionally, qualitatively, or specialized, and the state began to engage in economic activity: (industrial and commercial) through public bodies and institutions and their affiliated companies or associations, and therefore we must know whether it is a person of administrative law or is outside its enumeration. If it is considered within the administrative law and is subject to its provisions and all its rules are simplified by it, then this entails its exit from the circle of criminal law, and the

The Criminal Responsibility of Legal Persons, Dar Al-Nahda Al-Arabiya, Cairo, 1997, pp. 61 and beyond.

¹ Adly Ismail Darwish, Explanation of the Felonies of the Companies Act in the Field of Receiving Funds for Investment, 1, 2008, Dar Al Haqqania for Printing and Publishing, Cairo, p. 85.

² Dr. Hosni Ahmed El-Gendy, Criminal Law for Commercial Transactions, Dar Al-Nahda Al-Arabiya, Cairo, 1989 edition, p. 185.

Adoption of the principle of dual responsibility between the manager and the commercial company: the dual criminal responsibility of legal and natural persons means combining the two responsibilities for the same crime. The same facts that you do...; The rule of multiple or double criminal responsibility for the same crime committed between the company as a legal person and the manager as a natural person, this rule was explicitly articulated by the Algerian legislator within the provisions of the Penal Code in Article 51 bis, paragraph 02 of it. To several considerations, the most important of which are: that the legislator requires for the liability of the legal person to have a certain natural person or certain natural persons, who have the authority to act in the name of this person and commit the crime for his account. Because it is difficult, since the accountability of the natural person alone, represented by the director or the manager without the company, constitutes a veil that obscures the responsibility committed by its body. On the other hand, saying that there is no double responsibility in this case contradicts justice and impairs the principle of equality before the law and the scope of the principle of double criminal responsibility. What is meant by the scope of the principle of dual criminal responsibility between a natural and a legal person: it is the extension of this principle to both intentional and non-intentional crimes, as we find that the Algerian legislator has built the principle of dual responsibility in accordance with the text of Article 51 bis of the Penal Code and made it legally enshrined in double and similar follow-up to the company and its conduct as a natural person without distinguishing whether the crime was intentional or unintentional, the scope of follow-up is generally without limitation, even if there is a conflict between the interests of the natural person. Karkouri Mubarak Hanan, The Criminal Responsibility of the Manager in the Commercial Company, Master Thesis, Kasdi Merbah University, Algeria, 2015, p. 46.

³ Bernard BOULOC: Abus de biens sociaux, Répertoire de droit des sociétés, July 2015 (actualization: février, 2018), p: 14

⁴ Salami Saed, previous reference, p. 13.

exact opposite if its nature leaves the circle of administrative law and does not fall within its persons, then it can be considered as a person of criminal law.¹

The Jordanian legislator took Article (279) of the Companies Law; The responsibility of the commercial company and in commercial laws and in all economic legislations, for example, as stated in Article Two of the Industrial Designs and Models Law, and Article Two of the Foreign Currency Control Law², the Economic Crimes Law No. 11 of 1993, as amended by Law of 2003, was also exposed to the responsibility of the commercial company, as Article 5 of it states: "A. If the manager or employee of any corporate body, or any of its board members or directors, including the head of a corporate body, commits The council, the commission, or any of the employees of the bodies mentioned in paragraph (b) of Article (2) of this law, any crime in violation of its provisions, and it was found that this crime was committed intentionally, and he shall be punished according to the penalties stipulated in the Penal Code and this law. Anyone mentioned in Paragraph (A) of this Article commits such an offense as a result of a grave mistake, and he shall be punished by imprisonment for a period not exceeding two years.

In Article 68/2 of the Jordanian Code of Criminal Procedure, the legislator decided this by saying: "If the suspect is a legal person who is justified in the misdemeanor lawsuit, he may represent him as an attorney, unless the court decides that his representative will be present."

Based on the above; We find that the Jordanian legislator has explicitly and clearly established the criminal responsibility of the commercial company for all crimes, except for what was not consistent with the nature of the commercial company. As for the penalties and precautionary measures, we will talk about them later when discussing criminal penalties in the field of commercial companies.

The second requirement: the position of the judiciary on the criminal responsibility of the commercial company

In a judgment of the Jordanian Court of Cassation, we find that it laid down a rule for the basis and conditions of the criminal responsibility of a commercial company, and said: "Article 74/a of the Penal Code has established a rule in which the basis of responsibility is established, which is that whoever commits the act consciously and voluntarily is punished for his act with the penalty prescribed in the law, and that The second item considered the legal entities criminally responsible for the actions of their managers, members of their departments and their representatives. The legislator intended from this to put an end to the jurisprudential controversy that was revolving around whether the legal personality has a will like a human being or not. Is he criminally questioned other than the human being, and he mentioned a special provision to punish her when the element of responsibility is available, on the basis that she enjoys a legal existence and exercises her activity in this capacity, and she must bear all the legal consequences that result from her act, including punishing her according to the rules established in the law, in addition to The responsibility of the person who committed the crime in order to protect the interest of society, because the criminal responsibility of the legal person does not mean denying responsibility for the people who commit criminal acts in its name, because they commit the crime consciously and willingly in the manner indicated in the first item of this article. If one of them commits the sanctioned act, he deserves the punishment in addition to the penalty of the commercial company, and the jurisprudence of the Court of Cassation has established in accordance with the decision issued by its general body that punishing the company according to Article (74) does not mean that the perpetrator should not be punished even if he committed it in the name of the legal person.³

The Egyptian Court of Cassation has ruled that the basic principle is that a legal person is not criminally responsible for the crimes committed by his representatives during the performance of their duties, but rather the one who is questioned is the perpetrator of the crime personally⁴. And it ruled that according to the text of Articles 162 and 163 of the Egyptian Companies Law, acts that are considered a crime may require a

¹ Dr. Ibrahim Ali Saleh, *The Criminal Responsibility of Legal Persons*, Dar Al Maaref, Cairo, 1980, p. 155.

² Dr. Anwar, Assistant, *Criminal Responsibility for Economic Crimes*, House of Culture, Amman, 2009, 1st Edition, pg. 407.

³ The Jordanian Court of Cassation, in many of its rulings, has always referred to the legal person, and among these rulings: "What is stated in the second paragraph of Article 74 of PR does not consider not punishing the perpetrator who committed the crime, even if he inflicted it in the name of the legal person or by one of his means"(20) Also in its ruling, "Paragraph 3 of Article 74 of qq stipulates that legal persons shall not be sentenced except to a fine and confiscation. Q p". Criminal Discrimination, May 16, 2001, Qistas Law Encyclopedia (www.qistas.com), Case No. 36/2001. And it said: "...a legal person, with the exception of a government department or official or public institution, is criminally responsible for the actions of his boss when these actions come in his name, based on the text of Article (74/2) of the Penal Code...". Criminal discrimination, dated 02-22-2015, Jordan's Qistas Legal Encyclopedia: (www.qistas.com). Judgment No. 2296 of 2014

⁴ Criminal Cassation, dated: 16/5/1967, the website of the Egyptian Court of Cassation: (www.cc.gov.eg). Case No.: 131 for the year: 18.

qualification such as the fourth paragraph of Article 162, which requires that they be committed by a founder or manager, and may specify the person responsible for the crime without specifying a capacity such as the first paragraph of the same. Subject. But if this is true, then the rule and principle is that a person is not criminally responsible except for the actions that he commits that lead to the crime, "A person is not asked as a doer or accomplice except for what his activity is involved in from the acts that the law stipulates criminalizing, whether that is by doing or omission that is criminalized by law.¹

The third requirement: the position of jurisprudence on the criminal responsibility of the commercial company

The jurists did not unanimously agree on the concept of criminal liability for the commercial company, as part of the jurisprudence rejects the possibility of penal accountability of the commercial company, on the other hand, the commercial company's criminal liability is built. So there are two directions:

Section one: The tendency to reject the criminal responsibility of the commercial company

A jurisprudential dispute arose about the criminal responsibility of the commercial company: an aspect of jurisprudence that sees the commercial company cannot be criminally questioned because it is nothing more than a legal presumption, he does not have the will and cannot carry out a self-activity, rather he acts through his representatives and does not have the criminal capacity, likewise, most criminal penalties cannot be applied to him, except that denying the will of the commercial company means that he is not a party to a contract, and therefore the impossibility of his civil accountability, because he has no will, and this is a realistic and legally unacceptable result.²

This trend was based in its denial of the criminal responsibility of the commercial company, on a set of arguments, namely:

First - the impossibility of attributing the crime to the commercial company because it is based on assumptions and metaphors: the proponents of this trend believe that the commercial company does not exist and has no will, and therefore excludes his ability to commit the crime to commit the crime, not even the ability to punish him, and therefore in their view the commercial company is a legal assumption made by the legislator, just as the capacity Criminality requires discrimination and free will, this is what can only be provided by a natural person, as the psychological capabilities required for criminal capacity to be established cannot be available in a commercial company.³

Second - it was said that the responsibility of the commercial company contradicts the principle of personal punishment: as the principle of personal punishment requires that each person is responsible for what he has committed, and no person is penally responsible for the act of others, and therefore in determining the criminal responsibility of legal persons constitutes a departure from this principle, although The imposition of the penalty on the commercial company will cause it to affect all the natural persons who constitute it and its employees, although there are many among them who did not participate in any way in committing the crime, and even some of them who did not know about it at all, meaning that the punishment will extend to all those persons who did not They contribute to committing the error, and then the punishment extends to them, and the punishment extends to them for a mistake in which they have nothing to do with, and for a behavior in which they have no fault.⁴

Third - The rule of specialization of the commercial company that prevents the possibility of committing the crime: This trend considers that the legislator's recognition of the legal existence of the commercial company is intended to achieve a specific social purpose within its limits, and this is what was expressed by the principle of specialization, the perpetration of the crime by a natural person for the account of the commercial company is outside the scope in which the law recognizes the legal personality.⁵

Fourth - Inapplicability of criminal penalties to the commercial company: There are penalties that cannot be imposed on the commercial company, such as freedom-depriving penalties. There are even financial

¹ "...as it is established in modern criminal legislation that a person is not asked as a doer or accomplice except for the actions that are involved in his activity that the law stipulates criminalizing, and there is no room for the assumed responsibility in punishment except as an exception and within the limits stipulated by the law and must be avoided. In interpreting the law, one must be careful in interpreting criminal laws, adhere to the aspect of accuracy in this, and not place their expressions above what they can bear... Criminal Cassation, dated: 6-7-1993, the website of the Egyptian Court of Cassation: (www.cc.gov.eg), No.: 24966 for the year: 59.

² Dr. Fathi Anwar Ezzat, Economic Crime, Dar Al-Nahda Al-Arabiya, Cairo, first edition, 2009, p. 162.

³ Dr. Mamoun Salameh, Penal Code, Special Section, Part One, Crimes Harmful to the Public Interest, p. 268.

⁴ Dr. Sheriff Sayed Kamel, Criminal Responsibility of Legal Persons, Dar Al-Nahda Al-Arabiya, Cairo, 1997, p. 15.

⁵ Dr. Sheriff Sayed Kamel, previous reference, p. 15.

penalties that obstruct their implementation, even if the penalty is imposed on the commercial company, this does not achieve the most important purposes of the penalty, such as reforming the convict or achieving general deterrence, but these functions of punishment can only be achieved by a natural person who has awareness and will.¹

Section Two: the trend in favor of the criminal liability of the commercial company

This aspect of jurisprudence, which sees the criminal responsibility report on the commercial company as a basis for the advanced nature of life, and the intertwined commercial relations, which led to the emergence of large numbers of legal persons, and their arguments were as follows:

First - Perception of the legal and actual existence of the person of the commercial company: This trend sees not accepting that the legal personality is just a metaphor or assumption, made by the legislator, and that it does not exist in the first place, since the criminal law deals with what is a reality and does not recognize metaphor or fiction, this theory is one of the The theories are old, and the Romans said them and the French quoted them from them until recently, but this theory has been abandoned, whether in the world of administrative law or civil law, and it has been criticized, on the grounds that it is incorrect, as the assumption cannot create from non-existence, This idea cannot provide a correct and convincing legal explanation for the existence that is not owned by a natural person. Every money or right has an owner who owns, protects and defends it.²

Second - As for the statement that the commercial company does not have the will, then what matters in personality in the eyes of the law is not in the characteristics and organic components that distinguish a person from others, but rather in the capacity to enjoy rights and bear obligations, and every being - a human person or a legal person - is qualified to be a right holder, or subject to the right, and he is, therefore, a real person and not metaphorical in the eyes of the law.³

Third - Proponents of this trend assert that the recognition of the criminal responsibility of the commercial company is not considered a violation of the rule of personal punishment, and that through the punishment imposed on the commercial company has indirect effects, as it extends to those who are associated with it by certain ties and this does not affect the personality of the punishment and therefore the direct effect of the punishment stipulates that trading company, as for the indirect effect, it is in the penalties imposed on the natural person.⁴

Fourth - The possibility of imposing penalties of a special kind on the commercial company: As for the statement that the criminal responsibility of legal persons applies to those who are not responsible for the crime, and the statement that the penalties are specifically set for human beings, this saying cannot be applied to legal persons, not to financial penalties such as fines and confiscation, and the death penalty and freedom-depriving penalties are offset by closing the facility, narrowing the scope of the permitted activity, or dissolving it.⁵

However, the recent legislation that decided the criminal liability of the commercial company. In terms of punishment, the law pertains to the commercial company with a special type of penalties, which are financial penalties, fines, confiscation and closure...etc. Indeed, many of the penalties in the Companies Penal Code are motivated by prevention or precaution so that crime does not occur in the future. It is decided that the measures can be signed merely to show the dangerous situation, without requiring fault or discrimination.⁶

¹ Zady Safiya, previous reference, p. 56.

² Dr. Ali Khattar Shatnawi, Al-Wajeez in Administrative Law, Wael Publishing House, Amman, 2003, p. 74.

³ Dr. Ahmed Muhammad Qaid, The Criminal Responsibility of the Legal Person, Cairo, Dar Al-Nahda Al-Arabiya, 1, 2005, p. 63.

⁴ Dr. Ahmed Mohamed Qaid, previous reference.

⁵ Dr. Mahmoud Najib Hosni, previous reference 516 - 517.

⁶ Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code, General Section, previous reference, pp. 135-136. "...and dangerous is considered an alteration in the outer universe, as is the case with a harmful event. The point of the matter is that this modification does not consist in achieving actual harm, but in creating a state that warns of harm.) or refrained from realizing it (negative behavior) and the attempt to commit a felony or misdemeanor - given that the event that constitutes it, i.e. the attempt and is a crime - is materially represented by the danger of the felony or misdemeanor, as there is no attempt where there is no such danger. It is that behavior that is criminalized by law, because it is "directed" to the realization of a specific harmful event, or because it "would" achieve this event according to what is learned from experience and experience, without stipulating the actual occurrence of that harmful event, but without the necessary occurrence of the foreboding It is not necessary for the judge, before conviction for that crime, to ascertain whether harm has occurred or the appearance of danger. Rather, it is sufficient for him to verify its existence to conclude that the behavior of the accused would, according to the majority of the course of things, produce the event referred to by the criminal model, regardless On his actual outcome in

He responds to this by saying that legal persons have become numerous in society, in a state of commercial competition and the expansion of various circles of activity, and all this means that inflicting any punishment on any legal person will lead to the dissemination of a bad idea about him, which may cause him millions of losses, thus, the commercial company's own deterrence is achieved, in an effort to restore confidence in it in the market among the atmosphere of competition, and in an effort to acquire customers and customers, and some even went to say that there are some criminal penalties, which can achieve the reform of this person, such as placing him under guard or judicial supervision.¹

As for general deterrence, it is for the rest of the legal persons who see that there is legislation that applies the penal code when committing the crime within the scope of commercial companies, and that there are many cases in which legal persons have been dissolved² and imposed on them deterrent penal penalties similar to the penalties imposed on human or human persons. natural, and all this will lead to the achievement of deterrence; general. In light of the development in the means of committing crime, including organized crime, which no longer recognizes political borders or even geography, it was necessary to confront this with advanced legislation, to establish criminal responsibility for it, and the possibility of its accountability for crimes committed within its framework, and the imposition of punishment on it, which Prove that the criminal liability of the commercial company has become an urgent necessity.³

The Jordanian legislator has gone along with other legislations in this matter and has approved the principle of criminal responsibility for the commercial company in many legislations.

And modern jurisprudence has turned to the requirement to determine the criminal responsibility of legal persons. As a result of the spread of commercial companies such as banks, financial companies, insurance companies, and other financial and economic institutions, which depended on the accumulation and concentration of individuals, wealth and modern technologies, and resulted in negative aspects such as crime within the scope of commercial companies, which made it likely that these legal persons should be subject to the provisions of the Penal Code. Similar to natural persons, the same consideration that prompted many contemporary laws of Latin origin to soften their strict positions regarding the principle of criminal responsibility of legal persons despite the differences in these laws, in determining the scope of that responsibility.⁴

The responsibility arising from things is based on the idea of an error in guarding, since the error of the guard is assumed and does not accept proof of the opposite, and this is the guard of things who assumes the error in (1) his side can be a natural or legal person, such as commercial companies, because guarding is the actual control over the thing in directing or controlling it, as this control can be achieved with the company, as it is a legal person as it is achieved with a natural person. This, and if the responsibility for doing something is based on an assumed error, which cannot be issued by a non-discriminator, then this rule does not apply to the company, as long as it has someone to express, as the most likely jurisprudence is that the responsibility of the guardian over things is based, even if this is from its legal will, the latter It is not distinguished, so the company is subject to what a natural person is subject to in the responsibility for doing a thing according to the rules of civil law when the necessary conditions for this responsibility are fulfilled from the company's civil liability for it. Accordingly, we can conclude in the light of what has been presented all the harmful acts committed by its representatives, on the basis of error, and it is civilly questioned about those harmful acts that may be committed by its workers or employees on the basis of the liability of the subordinate for the actions of his subordinates, and with regard to the damages arising from the things placed under Guardianship, the company is subject to the same rules that apply to the natural person in the responsibility of doing the thing and related to tort liability.

the case, Zubaydah Jassim Muhammad, the result as an element in the material mortgage of For Crime (a comparative study), PhD thesis, Cairo University, p. 218.

¹ Dr. Sherif Sayed Kamel, previous reference, p. 27.

² The dissolution of the legal entity means the termination of its legal existence, contrary to what is the case with the suspension of the legal entity, and the dissolution naturally requires the liquidation of the funds of the legal entity, as the second paragraph of (Article 38) of the Jordanian Penal Code stipulates that in its saying "The dissolution requires the liquidation of the corporate body's funds, and the directors or members of the administration and everyone personally responsible for the civil crime loses the establishment or management of a similar body. Dr. Kamel Al-Saeed, Explanation of the Penal Code, Crimes Harmful to the Public Interest, House of Culture for Publishing and Distribution, Amman, Edition 2005, p. 819 .

³ Dr. Anwar, Msassdeh, previous reference, p. 397.

⁴ Dr. Sherif Sayed Kamel, previous reference, pp. 22-26.

Bernard BOULOC, op. cit, p.14

The second topic: Conditions of criminal liability for the commercial company

The criminal responsibility of the commercial company begins, as a rule, with the birth of this person and ends with his judgment. It is clear from Article 50 of the Jordanian Civil Code that it has set several conditions for establishing the criminal responsibility of legal persons; Whereas Article 74/2 of the Jordanian Penal Code of 1960 stipulates the liability of a legal person if one of its representatives and members commits a violation in the name of the legal entity or by one of its means in the sense that it is required to assign a specific act to the legal person the identification of the natural persons who embody the will of the legal person so that this committed act is considered to have been issued by the legal person. Therefore, the conditions for criminal accountability of the commercial company¹ are determined by the following:

Accordingly, we note that the legislator stipulated two conditions for the issue of the commercial company, namely: that the offense be committed by its manager, representative, agent or any person working for it, and the second that the criminal act was committed in the name of the Authority.

The first requirement: the commission of the crime by a member or representative of the commercial company

The crime must have been committed by one of the persons who represent him, manage his administration, or work for him, given that the nature of the commercial company is not able to carry out its activity except through these persons. The Jordanian legislator did not distinguish between the member, the representative, and the worker; Legal persons are criminally responsible for the actions of their manager, members of their management, representatives or workers. When the crime is committed by these people, the criminal responsibility of the commercial company is assigned according to what was stipulated in Article 74/2 of the Jordanian Penal Code of 1960.²

The Egyptian legislator also took the same direction by not giving importance to this distinction or discrimination between the member, the representative and the worker in the text of Article 6 of the Fraud and Fraud Law, which equated the criminal accountability of legal persons between the actions of its director, members of its departments, representatives and workers, so the crime is attributed to them equally.

The second requirement: committing the crime in the name or for the account of the commercial company

The crime is considered a commercial company when it is committed by natural persons for the account or in the name of the commercial company,³ i.e. it is stipulated that the perpetrator who committed the crime had his intention to act in the name of the commercial company, not in his personal capacity, meaning that the crime was committed with the aim of achieving his interest, such as making a profit or avoiding harm. Whether this interest is material or moral, direct or indirect, realized or potential⁴. This is what was approved by the Jordanian legislator in Article 74/2 of the Penal Code of 1960.⁵

Accordingly, we find that the law stipulates that for the commercial company to be criminally responsible for the crimes committed by its members, representatives, or workers, that the crime be committed on its behalf, it is not sufficient to attribute the crime to the commercial company for this crime to be realized on its behalf, and it is not sufficient to attribute the crime to the commercial company that this crime be materially realized, but rather In addition, there must be an element of predicate, which is intended for the criminal behavior and its effects to be directed to the commercial company itself, as the criminal accountability of the legal representative on the side of the commercial company requires committing the criminal activity for the account of the commercial company and not for his own account.⁶

The third requirement: committing the crime through one of the means of the commercial company

¹ Dominique Guirimand , op. cit, p:4

² Rami Youssef Muhammad Nasif, The Criminal Responsibility of the Legal Person for Crime in the Commercial Companies, Master's Thesis, An-Najah National University, pp. 4-41, 2010.

³ Dominique Guirimand, op. cit, p:5

⁴ Dr. Sherif Sayed Kamel, previous reference, p. 129.

⁵ Karkouri Mubarak Hanan, previous reference, pg 4.

⁶ Dominique Guirimand , op. cit, p:4

This means a link between the work of the managers and the means that the commercial company puts at their disposal to carry out their work, meaning that one of the actions that managers usually perform within their powers¹ with the legal persons, and that the means they use are those that the legal persons put at their disposal to carry out these actions. And limiting the means in this way enables the legal persons to effectively control these means, as long as these means are the ones that can be misused, resulting in criminal acts. In order for the commercial company to be asked about the actions and deeds that are committed in its name, conditions must be met, which are: The doer² shall be legally and administratively authorized by the commercial company, and that the act undertaken by the doer is within the authorized business, and that the doer has acted during his work and through the means that the commercial company puts at the disposal of his agent.³

The third topic: the nature of criminal responsibility for the crime of the commercial company⁴

In light of the foregoing; We dedicate this topic to studying the issue of attributing liability within the scope of the company, whether criminal responsibility is attributed to the company itself or to a natural person, and what is the matter with regard to the liability of others for the crime in the field of the commercial company. And we will talk about the issue of attribution through the following sections.

The first requirement: direct criminal responsibility

In direct criminal liability, the commercial company alone bears the full criminal responsibility resulting from the actions issued in its name, regardless of the responsibility of the natural person who manages or represents him.⁵

In this regard, the Jordanian legislator took Article 279 of the Companies Law, which stipulates that if a public shareholding company, a partnership limited by shares, a limited liability company, or a private joint stock company commits a violation of the provisions of this law, it shall be punished by a fine of no less than one thousand dinars and not more than ten thousand dinars with Annulment of the violating act if the court finds a reason to do so. And in Article 46 of the Central Bank Law No. 23 of 1971, which relates to violations committed by licensed banks, whether they are in violation of the provisions of the law, regulations, instructions, or orders issued pursuant thereto. The French legislator took the principle of direct responsibility of the commercial company when the act is attributed to him directly or the act is committed in his name. In such a case, the commercial company shall be liable to a fine or permanently or temporarily ban from practicing the professional activity, as practicing this activity was a means to committing the crime. Examples of this are what was included in Article 12 of the Law issued on May 30, 1945, regarding monetary control, Article 2-49 of the Supply Law, and Article 302 of the Industrial Products Distribution Law. In application of this responsibility, the public right lawsuit is filed directly against the legal person.⁶

The second requirement: indirect criminal responsibility

Indirect liability is when the law stipulates that the commercial company is jointly responsible with the natural person for the implementation of the penalties imposed on it such as fines, expenses, confiscation and

¹ "... the perpetrator of the crime, is the one who commits the material element of the crime from activity, consequence and a causal link associated with the moral element according to the text of Article (75) of the Penal Code..." Criminal Discrimination, dated 07-26-2017, Qstas Jordanian Legal Encyclopedia: (www.qistas.com), Judgment No. 863 of 2016 and Judgment No. 2149 of 2017, 10-23-2017, and Judgment No. 1510 of 2017.

² Rami Youssef Muhammad Nasif, op. reference, p. 44. Also, Article 74/2 of the Penal Code states: "... 2- A legal person, with the exception of a government department or official or public institution, is considered criminally responsible for the actions of a principal, member of his administration, directors, or any of his representatives, or his workers when they come to these actions in his name or by one of his means as a legal person. Penalty Appeal, 04-28-2016, Jordan's Qistas Legal Encyclopedia: (www.qistas.com). Judgment No. 208 of 2016.

- Salami Saed, previous reference, p. 19.

³ Mireille Delmas-Marty: Les conditions de fond de mise en jeu de la responsabilité pénale des personnes morales, Revue des sociétés, 1993.p.1-4.

⁴ Dr. Mahmoud Mahmoud Mustafa, Economic Crimes in Comparative Law, previous reference, p. 136.

⁵ Dr. Mahmoud Mahmoud Mustafa, Economic Crimes in Comparative Law, previous reference, p. 137.

⁶ Karkouri Mubarak Hanan, previous reference, p. 5.

Klaus Tiedemann: La responsabilité pénale dans l'entreprise: vers un espace judiciaire européen unifié?, Séminaire de l'Association de recherches pénales européennes sous le haut patronage de la Commission européenne (Paris, 13 décembre 1996 - Cour de cassation) Rapport introductif, RSC, 1997, p.5

others. This double responsibility means the criminal responsibility of legal and natural persons to combine the two responsibilities for the same crime. In this matter, it is strange that the commercial company represents the main engine of the movement of development in the commercial field, societies and countries, and thus deserves effective organization and protection from cases of abuse. The legislator had to keep pace with commercial developments and clarify the appropriate legislation for them by approving the principle of double criminal responsibility for the representative of the company and the company together.¹

The Jordanian legislator approved this general rule in the Penal Code, Article (442) of it, and it states the following: “If the crime is committed in the name of or for the account of a company, this company shall be targeted for precautionary measures, as well as the penalties stipulated in the previous article, the persons responsible in the company who participate in the act or Facilitate or allow it to be committed intentionally by them,” which is considered this case as a basis for indirect responsibility.

This was stated in the Companies Law in Article 278, which imposes a penalty on any person, whether moral or natural, by saying: “A. Every person who commits any of the following acts shall be punished by imprisonment from one to three years and a fine of no less than one thousand dinars and not more than ten thousand dinars. B- The penalties stipulated in Paragraph (A) of this Article shall be applied to the intervening and instigating the crimes stated therein.

And the French law explicitly took indirect responsibility in Article (56/3) of the Law on Crimes of Economic Legislation of 1945 and stated the following: “The establishment, the institution, the company and the association shall be jointly responsible for the amount of confiscations or the fines to be imposed on violators.”

In this regard, we find the text of Article 121-2/3 of the French Penal Code, which states: “The criminal responsibility of legal persons does not prevent the liability of natural persons as principals or partners for the same facts, taking into account the provisions stipulated in the fourth paragraph of Article 121-3”.²

Although the Jordanian judiciary was unsettled over the responsibility of the persons who contribute to the act, facilitate or allow its commission, it has recently approved this rule by jurisprudence of the Court of Cassation in its general assembly in 2017. Where it decided to retract it from any previous jurisprudence, the partner authorized to sign on behalf of the company is responsible from a civil and criminal point of view, for the crimes he commits in the name of the company, as he is bound by the works entrusted to him within the limits of the laws and regulations.³

The third requirement: attributing criminal responsibility to others

By others, in this context, other than the company and partners, the manager may delegate some of his powers to another person, such as being an employee of the company or affiliated with it, and he may also perform the tasks of an administrative advisor.

Section one: the principle of attributing criminal responsibility to others

Responsibility for the actions of others in common law: It is agreed that criminal responsibility is personal, so the penalty for the crime is not imposed except on the person who committed it or participated in it, that is, on the one against whom the two elements of the crime are met: the material and moral elements of the crime. However, many of the penal laws include cases of little responsibility for the act of others, so a person is asked about a crime committed by another and did not participate in it. The presumption does not exceed the moral element in order to facilitate its proof in those crimes for which the criminal policy requires expanding the circle of those responsible, otherwise it will not be possible to combat them. However, the accused can deny his responsibility for any other reason, whether this reason is one of the reasons that preclude criminal capacity, or one of the reasons precluding wrongdoing, such as moral compulsion and a state of necessity.⁴

¹ AlainCoeuret, op. cit p5.

² In this regard, we find the text of Article 121-2/3 of the French Penal Code, which states: “The criminal responsibility of legal persons does not prevent the liability of natural persons as principals or partners for the same facts, considering the provisions stipulated in the fourth paragraph of Article 121-

Appeal Rights, Qastas Legal Encyclopedia of Jordan: (www.qistas.com). Judgment No. 14991 of 2011.

³ Dr. Mahmoud Mahmoud Mustafa, Economic Crimes in Comparative Law, previous reference, pp. 123-124.

⁴ Dr. Mahmoud Mahmoud Mustafa, Economic Crimes in Comparative Law, previous reference, p. 124. Geneviève

The trend towards expanding the circle of those responsible for the actions of others prevails in the Companies Penal Code. If the worker or employee commits an economic crime, he is not solely responsible for it, but also the owner, exploiter or manager of the facility, i.e. the person charged with implementing economic laws. This responsibility is justified. If the owner or manager of the facility knows that he will be criminally responsible for every economic crime committed by one of the workers or employees of the facility, he will work to avoid that by improving the selection of his workers and issuing the necessary instructions to observe the commercial provisions and ensure their implementation. Moreover, the crime may be imposed with a large fine, and the resources of the worker or employee do not allow it to be paid. If the owner or manager of the facility will sometimes benefit from what the facility gains from violating economic laws, then it is fair to bear the responsibility for the crime if it is revealed. All of this is due to the fact that achieving the objectives of the state's economic policy is contingent upon the implementation of economic laws, and this can only be achieved by expanding the circle of those responsible for that implementation. However, the scope of this department varies according to legislation.¹

As for liability for the actions of others, Article 128 of the Central Bank Law states: “In cases where the crime is committed by a legal person, the person responsible for the actual management of the violating legal person shall be punished with the same penalties prescribed for acts committed in violation of the provisions of this law, when it is proven that he was aware of them. The crime occurred due to his breach of the duties of the position, and the legal person shall be jointly responsible with him for fulfilling the financial penalties and compensation rulings, if the crime was committed by one of his employees in his name on his behalf. And what is stipulated in the second paragraph of Article Three of Law No. 22 of 1975 regarding the practice of banking operations, that ((each of the board members and those responsible for management in other companies shall be considered responsible for any violation of the provisions of this law)). Article 61 of Law No. 163 of 1957 on Banking and Credit stipulates that ((the person responsible for the violation if it is issued by the company or association of the responsible partner, the manager, the managing director or the chairman of the board of directors, as the case may be)).

Two conditions must be met for this type of criminal responsibility to be established. The first is the law of the dependency relationship, and the second is the violation by the subordinate in the case of performing the job or because of it.

First - the dependency relationship, and the dependency relationship is based on two elements, namely:

- 1. Actual power component:** This power enjoyed by the subordinate towards a subordinate may stem from a consensual contract basis, as it may be based on an employment relationship or an employment contract; “The work, the servant, the cook, the driver, the employee and the employee are all subordinate and their follower is the boss, the master of the house, the owner of the shop or the government, just as this authority does not have to be a legitimate authority, but it is sufficient for it to be an actual authority.” That the subordinate is free to choose the subordinate, and also that the subordinate is not required to receive a wage for his work until the dependency relationship is established, whether he works for free or for a wage, and whatever the type of remuneration is in terms of duration or piece, or the type of work always or casual, then the dependency relationship is established if it is available to the subordinate The subordinate has real authority.²
- 2. Control and direction element:** Actual authority must be focused on oversight and direction, and the delegation of authority does not mean the permanent relinquishment of authority by the manager, but rather means granting others the right to work within a specific and voluntary scope. When the delegate accepts the authority, he places on himself an obligation to perform the tasks assigned to him and to make good use of the authority delegated to him.³

Second: Committing the violation by the subordinate in the case of performing the job or because of it.

In order for the subordinate’s responsibility to be established, there must first of all be a violation committed by the subordinate, and this leads to the liability of the legal person if the crime is committed for his own account by the subordinate.

Giudicelli-Delage, op. cit, p.5

¹ Dr. Anwar, Masadeh, previous reference, pg. 260.

² Qasi Abdullah, previous reference, p. 90.

³ Dr. Anwar, Masadeh, previous reference, p. 264.

Second section: *Mitigating the principle of attributing criminal responsibility to third parties.*

Economic necessities, especially commercial ones, dictated the attribution of criminal responsibility to the subordinate for the criminal offenses committed by the subordinate, but this principle is not taken for granted. Therefore, the criminal responsibility of the subordinate does not negate the liability of the subordinate in all cases; The responsibility of the follower may exist without the follower, and the responsibility of the follower may exist without the follower, and in a third case, the responsibility of the follower and the follower may take place together, and this is what we will address next:

First- Responsibility of the subordinate without the subordinate:

In the absence of the responsibility of the subordinate Back to the original: The duties that fall on the manager of the commercial establishment in supervision, direction, follow-up, observation and good selection of the worker, do not in any way categorically deny the criminal responsibility of the worker, or the material and direct actor, as the criminal accountability of this perpetrator for the actions he committed with his own hands is in harmony with common sense and general rules, and a return to the origin in approving the principle of personal criminal responsibility.¹

Second - Responsibility of the subordinate rather than the subordinate:

There are many cases in economic legislation of the criminal responsibility of the subordinate for the actions of the subordinates, without these subordinates bearing any penal responsibility. Criminally based on the role of this subordinate in the proper organization of the facility, which leads to the absence of mistakes by his subordinates, or to the mistake committed by him based on a form of negligence, lack of caution or non-observance of laws and regulations, and in any case must It is proven that the perpetrator committed this mistake, as the lack of intent and the mistake together leads to the denial of criminal responsibility.²

Third - double responsibility between the subordinate and the subordinate:

The commission of the error by the subordinate requires accountability according to the general rules, and the superior or the subordinate must be held accountable for committing negligence in follow-up, oversight, or otherwise. Therefore, the responsibility in most cases is shared between the subordinate and the subordinate, the basic rule in this is “that the error of the material actor does not obscure the error of the one who is considered responsible, just as the error of the latter does not obscure the error of the material actor, each of them is responsible for his personal error.”³

In French legislation: Article 56 of the 1945 law on economic crimes states: “The penalties and penalties prescribed in this law shall be imposed on those who are entrusted in any capacity with the management of an establishment, institution, company or association if they violate the provisions of the said law or leave the violation. fall from a person subject to their authority or supervision)). Accordingly, the manager of the facility is responsible for a violation committed by others, as he did not compose the act and therefore does not have the moral element in his right, but he is responsible for the crime as the result of his failure to perform his duty in management, and supervision to ensure that the provisions of economic laws are not violated. And Article 121-2 of the French Penal Code, which established the criminal liability of legal persons and that this does not prevent the liability of natural persons as principals or partners for the same facts, considering the provisions stipulated in the fourth paragraph of Article 121-3.

Endnotes

- 1) Dr. Fathi Anwar Ezzat, Economic Crime, Dar Al-Nahda Al-Arabiya, Cairo, first edition, 2009, p. 162.
- 2) Dr. Muhammad Subhi Najm, Penal Code, General Section, The General Theory of Crime, 3rd Edition, Dar Al Thaqafa Publishing, Amman. p. 286.
- 3) Dr. Muhammad Subhi Najm, Penal Code, General Section, The General Theory of Crime, 3rd Edition, Dar Al Thaqafa Publishing, Amman. p. 286.
- 4) Mireille Delmas-Marty: Les conditions de fond de mise en jeu de la responsabilité pénale des personnes morales, Revue des sociétés, 1993.p.1-4.
- 5) Dr. Aboud Al-Sarraaj, Combating Economic Crimes and Deviant Phenomena, Naif Arab Academy for Security Sciences, Riyadh, 1998, p. 90.

¹ Dr. Anwar, Masadeh, previous reference, p. 267.

² Dr.. Anwar, Masadeh, previous reference, p. 263.

³ Dr. Mahmoud Mahmoud Mustafa, Economic Crimes in Comparative Law, previous reference, pp. 124 - 125.

- 6) Zadi Safia, Master's thesis entitled Commercial Companies Crimes, University of Mohamed Lamine Debaghin Setif, Algeria, 2016, p. 54.
- 7) Salami Saed, The Implications for the Moral Personality of a Commercial Company, Master Thesis, Abou Bakr Belkaid University, 2012, Algeria, p. 14.
- 8) Dr. Mohamed Farouk Abdel Rasoul: Criminal Protection of the Stock Exchange, New University House, Alexandria, 2007, p. 214
- 9) Dr. Muhammad Subhi Najm, Penal Code, General Section, The General Theory of Crime, 3rd Edition, Dar Al Thaqaqa Publishing, Amman. p. 286.
- 10) Dominique Guirimand: La responsabilité pénale des personnes morales, La mise en oeuvre du nouveau dispositif, Droit social, 1994, p2.
- 11) They are preventive measures taken independently of punishments with the aim of protecting society from the danger inherent in the character of persons feared to commit crimes. The Jordanian legislator has taken these measures in the legislative texts that regulate various economic activities. These penalties can be applied to the perpetrator of the economic crime, whether he is a legal person or a natural person. The importance of determining this type of penalties is due to the inadequacy of traditional penalties in suppressing crime and deterring the offender. Freedom-restricting penalties are rarely imposed, and financial penalties are often charged to others. Therefore, punitive measures that are penalties of the same nature or kind of work seem of utmost importance in deterring crime. Dr.. Mustafa Mounir El-Sayed, Crimes of Abuse of Economic Power, Ph.D. Thesis, Cairo University, 1989, p. 339 and beyond.
- 12) Dr. Mahmoud Najib Hosni, Criminal Contribution to Arab Legislation, Dar Al-Nahda Al-Arabiya, Cairo, Edition 2009, pp. 519-520.
- 13) Dr. Mazhar Farghali, Criminal Protection of Trust in the Capital Market, Arab Renaissance House, first edition, 2000, p. 1. The general rule: that legal persons may not be held criminally accountable: The Egyptian Penal Code did not include a text establishing the criminal responsibility of legal persons. The prevailing view in jurisprudence and judiciary is that the legislator does not recognize this responsibility, except in the exceptional cases for which a special text is mentioned. The current texts, as jurisprudence sees, It was formulated for human beings... and in application of the rule that a legal person may not be held criminally accountable, the Court of Cassation ruled that: (The principle is that legal persons are not criminally questioned about the crimes committed by their representatives while they perform their duties, but rather the one who is questioning is the perpetrator of the crime from them personally)" for details, kindly see , Dr. Sherif Sayed Kamel, The Criminal Responsibility of Legal Persons, Dar Al-Nahda Al-Arabiya, Cairo, 1997, pp. 61 and beyond.
- 14) Adly Ismail Darwish, Explanation of the Felonies of the Companies Act in the Field of Receiving Funds for Investment, 1, 2008, Dar Al Haqqania for Printing and Publishing, Cairo, p. 85.
- 15) Dr. Hosni Ahmed El-Gendy, Criminal Law for Commercial Transactions, Dar Al-Nahda Al-Arabiya, Cairo, 1989 edition, p. 185.
- 16) Adoption of the principle of dual responsibility between the manager and the commercial company: the dual criminal responsibility of legal and natural persons means combining the two responsibilities for the same crime. The same facts that you do...; The rule of multiple or double criminal responsibility for the same crime committed between the company as a legal person and the manager as a natural person, this rule was explicitly articulated by the Algerian legislator within the provisions of the Penal Code in Article 51 bis, paragraph 02 of it. To several considerations, the most important of which are: that the legislator requires for the liability of the legal person to have a certain natural person or certain natural persons, who have the authority to act in the name of this person and commit the crime for his account. Because it is difficult, since the accountability of the natural person alone, represented by the director or the manager without the company, constitutes a veil that obscures the responsibility committed by its body. On the other hand, saying that there is no double responsibility in this case contradicts justice and impairs the principle of equality before the law and the scope of the principle of double criminal responsibility. What is meant by the scope of the principle of dual criminal responsibility between a natural and a legal person: it is the extension of this principle to both intentional and non-intentional crimes, as we find that the Algerian legislator has built the principle of dual responsibility in accordance with the text of Article 51 bis of the Penal Code and made it legally enshrined in double and similar follow-up to the company and its conduct as a natural person without distinguishing whether the crime was intentional or unintentional, the scope of follow-up is generally without limitation, even if there is a conflict between the interests of the natural person. Karkouri Mubarak Hanan, The Criminal Responsibility of the Manager in the Commercial Company, Master Thesis, Kasdi Merbah University, Algeria, 2015, p. 46.

- 17) Bernard BOULOC: *Abus de biens sociaux*, Repertoire de droit des sociétés, July 2015 (actualization: fevrier, 2018), p: 14
- 18) Salami Saed, previous reference, p. 13.
- 19) Dr. Ibrahim Ali Saleh, *The Criminal Responsibility of Legal Persons*, Dar Al Maaref, Cairo, 1980, p. 155.
- 20) Dr. Anwar, Assistant, *Criminal Responsibility for Economic Crimes*, House of Culture, Amman, 2009, 1st Edition, pg. 407.
- 21) The Jordanian Court of Cassation, in many of its rulings, has always referred to the legal person, and among these rulings: "What is stated in the second paragraph of Article 74 of PR does not consider not punishing the perpetrator who committed the crime, even if he inflicted it in the name of the legal person or by one of his means"(20) Also in its ruling, "Paragraph 3 of Article 74 of qq stipulates that legal persons shall not be sentenced except to a fine and confiscation. Q p". *Criminal Discrimination*, May 16, 2001, Qistas Law Encyclopedia (www.qistas.com), Case No. 36/2001. And it said: "...a legal person, with the exception of a government department or official or public institution, is criminally responsible for the actions of his boss when these actions come in his name, based on the text of Article (74/2) of the Penal Code...". *Criminal discrimination*, dated 02-22-2015, Jordan's Qistas Legal Encyclopedia: (www.qistas.com). Judgment No. 2296 of 2014
- 22) *Criminal Cassation*, dated: 16/5/1967, the website of the Egyptian Court of Cassation: (www.cc.gov.eg). Case No.: 131 for the year: 18.
- 23) ..."as it is established in modern criminal legislation that a person is not asked as a doer or accomplice except for the actions that are involved in his activity that the law stipulates criminalizing, and there is no room for the assumed responsibility in punishment except as an exception and within the limits stipulated by the law and must be avoided. In interpreting the law, one must be careful in interpreting criminal laws, adhere to the aspect of accuracy in this, and not place their expressions above what they can bear... *Criminal Cassation*, dated: 6-7-1993, the website of the Egyptian Court of Cassation: (www.cc.gov.eg), No.: 24966 for the year: 59.
- 24) Dr. Fathi Anwar Ezzat, *Economic Crime*, Dar Al-Nahda Al-Arabiya, Cairo, first edition, 2009, p. 162.
- 25) Dr. Mamoun Salameh, *Penal Code, Special Section, Part One, Crimes Harmful to the Public Interest*, p. 268.
- 26) Dr. Sheriff Sayed Kamel, *Criminal Responsibility of Legal Persons*, Dar Al-Nahda Al-Arabiya, Cairo, 1997, p. 15.
- 27) Dr. Sheriff Sayed Kamel, previous reference, p. 15.
- 28) Zady Safiya, previous reference, p. 56.
- 29) Dr. Ali Khattar Shatnawi, *Al-Wajeez in Administrative Law*, Wael Publishing House, Amman, 2003, p. 74.
- 30) Dr. Ahmed Muhammad Qaid, *The Criminal Responsibility of the Legal Person*, Cairo, Dar Al-Nahda Al-Arabiya, 1, 2005, p. 63.
- 31) Dr. Mahmoud Najib Hosni, previous reference 516 - 517.
- 32) Dr. Mahmoud Mahmoud Mustafa, *Explanation of the Penal Code, General Section*, previous reference, pp. 135-136. "...and dangerous is considered an alteration in the outer universe, as is the case with a harmful event. The point of the matter is that this modification does not consist in achieving actual harm, but in creating a state that warns of harm.) or refrained from realizing it (negative behavior) and the attempt to commit a felony or misdemeanor - given that the event that constitutes it, i.e. the attempt and is a crime - is materially represented by the danger of the felony or misdemeanor, as there is no attempt where there is no such danger. It is that behavior that is criminalized by law, because it is "directed" to the realization of a specific harmful event, or because it "would" achieve this event according to what is learned from experience and experience, without stipulating the actual occurrence of that harmful event, but without the necessary occurrence of the foreboding It is not necessary for the judge, before conviction for that crime, to ascertain whether harm has occurred or the appearance of danger. Rather, it is sufficient for him to verify its existence to conclude that the behavior of the accused would, according to the majority of the course of things, produce the event referred to by the criminal model, regardless On his actual outcome in the case, Zubaydah Jassim Muhammad, the result as an element in the material mortgage of For Crime (a comparative study), PhD thesis, Cairo University, p. 218.
- 33) Dr. Sherif Sayed Kamel, previous reference, p. 27.
- 34) The dissolution of the legal entity means the termination of its legal existence, contrary to what is the case with the suspension of the legal entity, and the dissolution naturally requires the liquidation of the funds of the legal entity, as the second paragraph of (Article 38) of the Jordanian Penal Code stipulates that in its saying "The dissolution requires the liquidation of the corporate body's funds, and the

- directors or members of the administration and everyone personally responsible for the civil crime loses the establishment or management of a similar body. Dr. Kamel Al-Saeed, *Explanation of the Penal Code, Crimes Harmful to the Public Interest*, House of Culture for Publishing and Distribution, Amman, Edition 2005, p. 819.
- 35) Dr. Anwar, Msassdeh, previous reference, p. 397.
 - 36) Dr. Sherif Sayed Kamel, previous reference, pp. 22-26. Bernard BOULOC, *op. cit.*, p.14
 - 37) Dominique Guirimand , *op. cit.*, p:4
 - 38) Rami Youssef Muhammad Nasif, *The Criminal Responsibility of the Legal Person for Crime in the Commercial Companies*, Master's Thesis, An-Najah National University, pp. 4-41, 2010.
 - 39) Dominique Guirimand, *op. cit.*, p:5
 - 40) Dr. Sherif Sayed Kamel, previous reference, p. 129.
 - 41) Karkouri Mubarak Hanan, previous reference, pg 4.
 - 42) Dominique Guirimand , *op. cit.*, p:4
 - 43) ...“the perpetrator of the crime, is the one who commits the material element of the crime from activity, consequence and a causal link associated with the moral element according to the text of Article (75) of the Penal Code...” Criminal Discrimination, dated 07-26-2017, Qstas Jordanian Legal Encyclopedia: (www.qistas.com), Judgment No. 863 of 2016 and Judgment No. 2149 of 2017, 10-23-2017, and Judgment No. 1510 of 2017.
 - 44) Rami Youssef Muhammad Nasif, *op. reference*, p. 44. Also, Article 74/2 of the Penal Code states: “... 2- A legal person, with the exception of a government department or official or public institution, is considered criminally responsible for the actions of a principal, member of his administration, directors, or any of his representatives, or his workers when they come to these actions in his name or by one of his means as a legal person. Penalty Appeal, 04-28-2016, Jordan's Qistas Legal Encyclopedia: (www.qistas.com). Judgment No. 208 of 2016.
- Salami Saed, previous reference, p. 19.
 - 45) Mireille Delmas-Marty: *Les conditions de fond de mise en jeu de la responsabilité pénale des personnes morales*, *Revue des sociétés*, 1993.p.1-4.
 - 46) Dr. Mahmoud Mahmoud Mustafa, *Economic Crimes in Comparative Law*, previous reference, p. 136.
 - 47) Dr. Mahmoud Mahmoud Mustafa, *Economic Crimes in Comparative Law*, previous reference, p. 137.
 - 48) Karkouri Mubarak Hanan, previous reference, p. 5 .Klaus Tiedemann: *La responsabilité pénale dans l'entreprise: vers un espace judiciaire européen unifié?*, Séminaire de l'Association de recherches pénales européennes sous le haut patronage de la Commission européenne (Paris, 13 décembre 1996 - Cour de cassation) Rapport introductif, RSC, 1997, p.5
 - 49) AlainCoeuret, *op. cit* p5.
 - 50) In this regard, we find the text of Article 121-2/3 of the French Penal Code, which states: “The criminal responsibility of legal persons does not prevent the liability of natural persons as principals or partners for the same facts, considering the provisions stipulated in the fourth paragraph of Article 121- Appeal Rights, Qastas Legal Encyclopedia of Jordan: (www.qistas.com). Judgment No. 14991 of 2011.
 - 51) Dr. Mahmoud Mahmoud Mustafa, *Economic Crimes in Comparative Law*, previous reference, pp. 123-124.
 - 52) Dr. Mahmoud Mahmoud Mustafa, *Economic Crimes in Comparative Law*, previous reference, p. 124. Geneviève Giudicelli-Delage, *op. cit.*, p.5
 - 53) Dr. Anwar, Masadeh, previous reference, pg. 260.
 - 54) Qasi Abdullah, previous reference, p. 90.
 - 55) Dr. Anwar, Masadeh, previous reference, p. 264.
 - 56) Dr. Anwar, Masadeh, previous reference, p. 267.
 - 57) Dr.. Anwar, Masadeh, previous reference, p. 263.
 - 58) Dr. Mahmoud Mahmoud Mustafa, *Economic Crimes in Comparative Law*, previous reference, pp. 124 - 125.