

Penal Liability Of The Legal Person

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Abstract

This research aims to explore the concept of juridical persons and the penalties that can be imposed on them. It is divided into three sections: the first details the definition of juridical persons and applicable penalties; the second discusses jurisprudential discrepancies regarding the criminal responsibility of juridical persons, highlighting the division between supporters and opponents; the third section is dedicated to the nature of criminal liability for juridical persons, distinguishing between direct and indirect criminal responsibilities. The study concludes that attributing responsibility to juridical persons for actions carried out by their officials is crucial for protecting rights and emphasizes the necessity of imposing stricter penalties on juridical persons committing crimes affecting a large part of society.

Introduction

The purpose of the sanctions legislated for any crime is to serve both general and specific deterrence, and the commission of a crime is not limited to natural persons but also extends to juridical persons, given the nature of the activities they engage in. It is well understood that a natural person is deemed capable of bearing criminal responsibility; however, it is worth questioning whether a juridical person can similarly be considered competent to bear such responsibility and to have sanctions imposed upon them. Undoubtedly, the nature of the penalties prescribed by law varies between natural and juridical persons due to the differences in their essence.

Consequently, a judge may take into account the nature of the entity when determining the penalty, as imprisonment is not conceivable for a juridical person, unlike a natural person, who can be subjected to such a penalty. However, the imposition of fines is conceivable for both natural and juridical persons. Given that juridical persons are managed by natural persons; it raises the question of whether penalties such as imprisonment or capital punishment could be imposed on them as representatives of the juridical entities.

This study is significant from both theoretical and practical perspectives. Theoretically, its importance lies in elucidating the extent to which a juridical person is eligible for criminal penalties. Practically, its significance is in outlining the statutes and cases where juridical persons are convicted and the nature of the penalties imposed on them in Jordanian law and other legal systems.

The purpose of this research is to ascertain the criminal liability of juridical persons and the penalties that can be applied to them, as well as the extent to which criminal responsibility for juridical persons can be realized, especially in light of the developments and activities in all

fields that the principle of juridical personality witnesses, along with their rights and financial autonomy.

The study will be conducted in three parts: the first part addresses who the juridical person is; the second part examines the doctrinal differences regarding the criminal liability of juridical persons; and the third part explores the nature of the criminal liability of juridical persons.

Problem Statement

The research problem revolves around the feasibility of criminally penalizing a juridical person in the event of committing acts that constitute a crime, and whether it is possible to punish the legally authorized representative, examining this within legislations and jurisprudence, and identifying the situations that warrant punishment.

Research Significance

The significance of the study from a practical perspective lies in the fact that punishment is typically meted out to natural persons, whereas for a juridical person, there exists an authorized representative who manages its affairs. The study seeks to explore how the authorized representative of a juridical person can be punished.

Methodology

The researcher will employ inductive, descriptive, and analytical methodologies to determine the definition of a juridical person and the possibility of its legal punishment according to jurisprudence.

Chapter One

The Juridical Person and Punishment

It is an established notion in criminal law jurisprudence that criminal liability is solely attributed to natural persons, due to the individual's possession of a willful intent that drives them towards committing a criminal act. Additionally, from another perspective, an individual possesses what is considered a response to societal objectives by applying criminal sanctions to them, preventing future infractions.

However, modern criminal legislations and their developments have shifted towards establishing the principle of liability for juridical, conceptual, or judicial persons, regardless of the terminology used. This shift is attributed to the expansion of the scope of activities of juridical persons in the modern era².

In this chapter, I will address the definition of the juridical person according to legal texts, judicial discretion, and scholarly opinions in the first section. The second section will discuss the penalties that can be imposed on the juridical person.

Section One

Introduction to the Juridical Person

As we have indicated, a number of legislations, despite variations in terminology, have defined the juridical person. Among these legislations is the Jordanian law, which refers to the juridical person as "judicial persons" and defines it in Article (50) of the Jordanian Civil Law as:

² The state and municipalities, under conditions specified by law, public institutions, and other establishments that the law grants judicial personality.

"Any group of persons or assets that is granted judicial personality pursuant to a provision in the law."

Then, Article (51) of the same law clarifies that a judicial person enjoys all rights except those inherently linked to the natural human condition, within the limits set by the law, thereby having an independent financial liability³.

Article (50) of the Jordanian Civil Law specifies judicial persons as including:

1. The state and municipalities under conditions defined by law, public institutions, and other establishments that the law grants judicial personality.
2. Religious bodies and communities recognized by the state as having a judicial personality.
3. Endowments (Waqf).
4. Commercial companies.
5. Associations and institutions established according to the provisions of the law.
6. Any group of persons or assets that is granted judicial personality pursuant to a provision in the law.

This definition of juridical persons aligns with many legislations, such as the Syrian⁴, Libyan⁵, and Egyptian⁶ Civil Laws. Jurisprudence, however, has distinguished between the aforementioned categories, considering there to be public juridical persons and private juridical persons.

Section Two

The Penalties That Can Be Imposed on the Juridical Person

The application of criminal liability to the juridical person is seen in penal codes, which differ from one country to another. There are legislations that adopt the principle of establishing criminal liability for the juridical person as a general rule, while others consider this principle only as an exception. All these variations depend on the doctrine that the legislator embraces in establishing the nature of juridical personality⁷.

Therefore, the penalties imposed on the juridical person vary from one legislation to another. In this research, we will address the penalties stated in the Jordanian Penal Code No. (16) of 1960 and its amendments.

Firstly: The Definition and Objectives of Punishment.

Punishment is considered a therapeutic approach after the commission of a crime, especially if preventive methods fail to stop the crime from occurring. Linguistically, punishment is defined as: "The consequence imposed for a fault committed by a person."

In legal terminology, it is defined as: Intentional infliction of pain for the crime committed, which is proportionate. It is also defined as: A criminal sanction that is painful for the

³ Article 51 of the Jordanian Civil Law.

⁴ Article (54) of the Syrian Civil Law

⁵ Article (52) of the Libyan Civil Law.

⁶ Article (52) of the Egyptian Civil Law.

⁷ Dr. Mahmoud Suleiman Mousa, "The Criminal Liability of the Juridical Person," National Book House, Benghazi, p. 251.

perpetrator of the crime or those who participate in it, determined by law for committing or ordering not to commit the crime, and is proportionate to the crime⁸.

Secondly: The Purpose of Punishment.

The penalties prescribed in the Penal Code serve two main objectives:

1. Safeguarding Public Interest:

Every society has its comprehensive system to protect its members, allowing them to enjoy a life free from fear or disorder and to preserve against frivolity and assault on the interests of individuals and the community. Legislations have not hesitated to establish proportional penalties, for an attack on an individual is an attack on the community and could escalate to an assault on the state itself, as seen in some current scenarios. "He who feels secure against punishment is prone to misconduct." The care intended by the punishment also includes looking after the interest of the criminal himself as a member of society, by eradicating his criminal tendencies and rehabilitating him to become a productive member of society.

2. Crime Treatment:

Punishment serves as a treatment for crime by achieving deterrence, which can be either general or specific.

Thirdly: Financial Penalties

These are significant in the realm of crimes committed by juridical persons, largely because most economic crimes are committed out of greed and the pursuit of illicit profits. Thus, imposing financial penalties is appropriate, as such a punishment affects the financial standing of the offender. These fines are typically high and substantial to serve as a deterrent, ensuring that the penalty matches the nature of the offense.

Financial penalties are categorized into three types:

1. Fine:

The legislator prescribes fines, and the judge imposes them as a primary penalty. The legislator may set minimum and maximum limits for fines, allowing the judge discretion within these bounds to suit the severity of the crime committed. Fines are particularly applicable in cases involving juridical persons, as it is inconceivable to issue a physical or liberty-restricting punishment against a juridical entity. The legislator might not specify upper or lower limits for a fine; instead, it may be relative, determined by reference to a specific element, such as the amount of money involved in the crime or if the crime involves a specific material, as if imposed on different units of measurement.

2. Confiscation:

Confiscation pertains to the means and causes of the crime and is among the supplementary penalties imposed on the offender. This applies when the crime has identifiable means and causes, including tools, instruments, weapons, devices, and all material means through which

⁸ Dr. Ibrahim Anis and others, "The Intermediate Dictionary," Vol. 2, The Arabic Language Academy, Cairo, p. 613.

the crime was committed. The provisions for confiscation in economic penal law are obligatory and more definitively established than in general law⁹.

Thirdly: Disgorgement of Illicit Profits.

In some instances, the motivation behind committing a crime is to obtain illicit profits, such as a company stealing a patent from an individual for profit. Historically, the legislator would decree compensation equal to the damage. However, with economic development, some countries have felt the need to evolve the concept of compensation to introduce deterrent and punitive damages alongside compensatory damages for rectifying harm. This is due to the presence of large corporations committing harmful acts and causing damage, considering that such damage would result in higher economic profits than the amount of compensatory damages¹⁰.

Chapter Two

Doctrinal Disparities on the Criminal Liability of the Juridical Person

As with legislations, the debate over attributing criminal liability has extended to jurisprudential writings, presenting two directions. One does not conceive of holding the juridical person criminally accountable, representing the traditional viewpoint. The other views the criminal accountability of the juridical person as necessary, marking the modern jurisprudential direction.

Section One: The Traditional Perspective Rejecting the Liability of the Juridical Person

This perspective argues that there are justifications for not holding the juridical person criminally accountable, based on the following arguments:

Firstly: The Juridical Person is Predicated on Assumption.

This viewpoint considers the juridical person as a legal fiction without actual existence, lacking will, capacity, or financial responsibility¹¹.

The juridical person is but a creation of the legislator, conceived for practical necessities. However, in reality¹², they are not true persons but artificial entities granted legal personality through legal fiction or assumption.

One of the most prominent proponents of this perspective is the jurist Savigny, who asserts that legal personality can only apply to humans, as they alone possess the will that enables them to enjoy such status. According to him, the law does not create personality; rather, its role is limited to recognizing it¹³.

This viewpoint leads to the conclusion that juridical persons lack legal responsibility, granting the legislator extensive powers in terms of controlling their existence or dissolution. Thus, the legislator has the final say regarding their existence, and this perspective does not extend to a broad international scope but remains within the internal territory of the state.

This perspective results in the negation of legal liability for juridical persons, granting the legislator broad powers in terms of controlling their existence or dissolution. Thus, the

⁹ Dr. Mahmoud Mahmoud Mustafa, "Economic Crimes in Comparative Law," Vol. 1, p. 164.

¹⁰ Dr. Suhail Haddadin, Intellectual Property Lecture, 11/01/2022.

¹¹ Dr. Kamel Al-Saeed, "Explanation of General Provisions in the Penal Code," Jordan, Amman, p. 189.

¹² Dr. Anwar Musa'adah, op. cit., p. 291.

¹³ Dr. Kamel Saeed, op. cit., p. 231.

legislator is the ultimate authority concerning their existence, and according to this view, the applicability to juridical persons does not extend to a broad international scope but remains confined within the internal jurisdiction of the state.

Secondly, the liability of the juridical person contradicts the principle of personal liability.

In principle, the concept of personal liability entails that one should not be held responsible for the actions of others, and considering criminal liability for juridical persons deviates from this principle¹⁴.

As is well-known, a juridical person represents the will of natural persons who work within it, many of whom may not be involved in the commission of the offense¹⁵. Consequently, they would be punished for an offense they had no direct involvement in. Some jurisprudential perspectives have even called for a change in nomenclature, suggesting that instead of criminal liability for juridical persons, the liability should be shifted to the members of the juridical person¹⁶.

Thirdly: The principle of specialization of legal entities prevents them from the possibility of committing a crime.

In summary, this principle posits that companies, associations, unions, and other legal entities each have specific objectives for their establishment. Consequently, if any of them deviates from its objectives and commits a specific crime, it contradicts the principle of specialization. Therefore, they do not enjoy that legal personality when committing such crimes, resulting in a contradiction between specialization and the possibility of legal entities committing crimes.

Fourthly: The impracticability of applying criminal penalties to legal entities.

Those who argue this point believe that when the legislator established criminal penalties, the intention and purpose were to apply them to natural persons. These penalties can vary, including imprisonment, life imprisonment, or restrictions on their activities such as probation. Since legal entities are based on assumption, it is inconceivable to apply these penalties to them.

Furthermore, the effects of punishment are not deterrent for legal entities but rather for natural persons who possess genuine intent. In the case of legal entities, the existence of such intent is inconceivable. This perspective has even extended further into social relationships, as it advocated for the idea that dissolving a legal entity as a punishment would inevitably harm its employees. This would lead to these employees becoming unemployed, negatively impacting the state's economic situation.

The Second Branch:

The Supportive Perspective for the Criminal Liability of Legal Entities

This perspective asserts that determining the criminal liability of legal entities must be based on the evolution of life and the interconnection of economic relationships, which have led to the emergence of a significant number of legal entities. Taking into consideration the substantial size of these legal entities and their vast financial capabilities.

¹⁴ Dr. Anwar Masa'adeh, previous source, page 291.

¹⁵ Dr. Kamal Saeed, previous source, page 231.

¹⁶ Dr. Mahmoud Ahmed Taha, previous source, page 293.

In this regard, this perspective refuted the arguments put forth by proponents of the traditional approach, which we discussed in the previous section. They established the criminal liability of legal entities by debunking these arguments. Therefore, their viewpoints are based on the following principles:

Firstly, the legal entity is a reality and possesses legal existence.

They refute the arguments put forth by proponents of the traditional perspective, who claim that legal entities are based on fiction and assumption, and do not accept their viewpoint because criminal law deals with what is considered real. Supporters of this theory also argue that the legal capacity that enables a person to enjoy rights and bear obligations qualifies them to be the rightful owner or locus of the right. Consequently, they are a real person in the eyes of the law. If it is proven that states, their administrative units, companies, and associations have rights distinct from the rights of their individual members, we are compelled to recognize their legal personality¹⁷.

Secondly: The liability of the legal entity does not contradict the principle of personal punishment.

Supporters of this approach believe that assigning criminal liability to the legal entity does not constitute a violation of the principle of personal punishment or the principle of determining punishment because the punishment is directly imposed on the legal personality.

Similarly, with regard to the penalties imposed on the legal entity, it has been argued that they may lead to the dismissal of employees in that institution if a decision is made to dissolve it, even though they are not partners in the crime. However, these indirect effects of the penalties imposed also apply to penalties imposed on natural persons. Therefore, holding the legal entity criminally liable and imposing punishment on it in no way constitutes a departure from the principle of personal punishment¹⁸.

Thirdly: Considering the possibility of a legal entity committing crimes consistent with its legal nature.

It is known that a natural person is not created to commit crimes, and this is not a reason for their existence. This also applies to legal entities as they are established to achieve a specific purpose, which does not in any way mean that they are incapable of committing crimes. For example, a factory producing leather may cause severe environmental damage or contaminate drinking water as a result of not carrying out its designated work correctly¹⁹.

Fourthly: The possibility of imposing specific penalties on legal entities.

As we mentioned earlier, the traditional perspective believes that criminal penalties established in criminal legislation cannot be applied to legal entities, as it is not logically conceivable for a legal entity to be subjected to penalties involving deprivation of liberty or restrictions thereof.

The modern perspective refutes this argument and suggests that it is possible to establish criminal penalties that are suitable for legal entities, allowing for their application. Furthermore, there has emerged a jurisprudential trend advocating a reevaluation of traditional penalties applied to natural persons, including the death penalty and imprisonment. Many legislations have been influenced by this trend and have introduced provisions to disable or

¹⁷ Dr. Abdelmoneim Mahfouz, Administrative Law, Ain Shams Library, page 100.

¹⁸ Dr. Abdelmonem Mahfouz, Previous Source, Page 102.

¹⁹ Dr. Anwar Masa'adeh, previous source, page 297.

abolish these penalties, such as Finnish legislation and the amended Penal Code in Austria, among others.

Chapter Three

The Nature of Criminal Liability for Legal Entities for Crimes

In this section, we will elucidate the nature of this liability, whether it is established solely towards the legal entity itself or towards both the perpetrator of the act and the legal entity together. This will be discussed in the following two sections.

The First Branch: Direct Criminal Liability

According to direct criminal liability, economic crimes are attributed directly to the legal entity itself. Legal proceedings are brought against it, and it is sentenced to the prescribed penalties. Therefore, the legal entity bears full criminal responsibility arising from actions carried out in its name, regardless of the liability of the natural person managing or representing it²⁰.

We observe that the Jordanian legislator has aligned with this approach. Article 74/2 of the Jordanian Penal Code states, "Legal entities, excluding government departments, are considered responsible for crimes committed by their directors..."

Article 36 of the Penal Code states, "Any union, company, association, or corporate body, except for government departments, may be suspended when its directors, members of its board, representatives, or employees commit, in its name or using its means, a felony or an intentional misdemeanor punishable by at least two years of imprisonment."

Furthermore, the Jordanian Court of Cassation has ruled as follows: "Paragraph two of Article 74 of the Jordanian Penal Code stipulates that legal entities are responsible for the actions of their directors and representatives when these actions are carried out in their name or through their means as a legal person. This is the general rule established regarding crimes committed in the name of legal entities. The law has only exempted this general rule regarding crimes committed in the name of legal entities in the case of fraud causing harm to creditors, as stipulated in Article 441 of the same law. Article 442 of the law imposes penalties on the legal entity and on those responsible within it who intentionally contribute to or facilitate the commission of the act²¹."

The Second Branch: Indirect Criminal Liability

This liability becomes apparent when the law stipulates that a natural person is jointly liable with another natural person when carrying out penalties such as fines, expenses, confiscation, and others. There is no dispute that indirect liability is one of the general provisions in criminal law, and it achieves the same purposes as direct liability.

In the previous paragraph, we explained that the legislator and the judiciary in Jordan have adhered to the principle of direct liability for legal entities and refrained from holding natural persons accountable as long as the criminal act was committed in their name and for their benefit. The Jordanian legislator only deviated from this general rule in Article 442, which states: "If the crime is committed in the name of the company or for its account, this company is targeted for precautionary measures, as are the individuals responsible for the company who contribute to the act or intentionally commit it."

²⁰ Mahmoud Mohamed Mustafa, *Economic Crimes in Comparative Law*, previous source, page 136.

²¹ Dr. Anwar Massaad, previous source, page 304.

This is considered the only situation that represents indirect liability.

It is also noteworthy that French law has also adopted indirect liability in Article 56/3 of the law on economic legislative crimes for the year 1945, where it adopts the principle of joint liability for the establishment or company for the amount of exports or fines imposed on violators²².

Conclusion

The legal entity has become significant and engages in extensive activities in various aspects of economic, social, cultural, and political life. Therefore, it is necessary to regulate the activities of the legal entity, specifying its authorized actions and what is prohibited. Consequently, the general responsibility of the legal entity has emerged.

Criminal liability of the legal entity represents a crucial aspect of its overall responsibility. It is not permissible for the legal entity to operate beyond its authorized scope and engage in prohibited activities.

Through this research, the researcher has reached several conclusions, summarized as follows:

1. Exempting legal entities from criminal liability may lead to chaos in society and potentially harm people's rights. Therefore, it is essential to expand the protection of these rights, especially those in which the legal entity is directly or indirectly involved. Consequently, holding legal entities accountable for crimes committed in their name has become necessary and crucial in public life.
2. Determining the legal entity's liability for the actions committed by individuals responsible for it serves as an important guarantee for the protection of rights. Additionally, holding natural persons accountable for their roles in legal entities is imperative.

The researcher recommends the following:

1. The researcher believes that it is essential to establish stricter penalties for legal entities that commit crimes with a significant impact on society, which may include prohibiting them from engaging in their activities and holding those responsible for them accountable for a limited or permanent period, depending on the severity of the offense and the extent of the harm caused.
2. The researcher suggests legislative amendments to hold the authorized representative of the legal entity accountable if they neglect or fail in their duties.

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3. Dr. Kamel Al-Saeed, *Explanation of the Penal Code*, Dar Al-Thaqafah, Oman, 2017.
4. Dr. Mahmoud Naguib Hosni, *Explanation of the Penal Code*, Cairo, 2002.
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Laws:

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²² Dr. Anwar Massadeh, previous source, page 304.

2. Syrian Penal Code.
3. Lebanese Penal Code.
4. Egyptian Penal Code.

Resolutions

Resolution of the Court of Cassation No. 385/2017.