

Legislative Confrontation of the Crime of Environmental Pollution in Jordan

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Abstract

This research is concerned with stating the legal provisions set for environmental pollution crime as stated by the Environmental Protection Law No. 6 of 2017 and its amendments. In fact, and at the beginning, the research approached the definitions of each of the terms of polluting the environment according to the methodology of the Jordanian legislators and the international conferences. Further, the Environmental Protection Law No. 6 of 2017 and its amendments were analysed. Finally, the elements on which the crime is based were concluded, followed by examining some of the cases presented to the Jordanian judiciary.

Keywords: Environmental Protection Law, Environmental Pollution, Environmental Pollution Crime, Jordanian Law, Justice.

Introduction

Every era has an issue that presents itself and preoccupies the minds of thinkers. Our time is the issue of environmental pollution and the problems that affect the environment and threaten humankind. In his life, the atmosphere is considered the vital medium in which the creatures live, including humans, animals, and plants. Humans have worked to attack the natural resources of the environment, to adapt and adapt The atmosphere for my desires until they cross the limits, or there is nothing more dangerous than what is happening today, from destroying the environment to the A limit that has made it difficult to repair what has been spoiled. The problem of global warming is only an example. Live for this, which threatens to make life harsh on our planet, so this phenomenon has become It constitutes a human problem, especially after the tremendous technological progress that has reached humankind and the revolution. The industrial sector that contributed to the advancement of

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humanity, one way and another, was reflected in a negative way in my environment (Al-Hasban, 2011).

The topic of environmental protection and the need to preserve it, and how to face the effects of the Infection is one of the topics that concern international agreements as well as national legislation; it attained the highest standards of legal scholars in all of its branches, where she received many different studies from All members of the community have legal studies (Ahmed,Al-Din,2000).

With the development of this phenomenon and the seriousness of environmental problems, the efforts of countries to reduce These are harmful practices and activities that destroy the environment, so international conferences on the environment were held, Such as the Stockholm Conference of 1972 and the third Rio, Brazil Conference of 1993. Then Countries are required to enact the necessary legislation to preserve and protect the environment (Soleimani, 2016); for this issue, the Jordanian legislator issued Environmental Protection Law No. 6 of 2017 and its amendments to reduce These harmful practices and activities that destroy the environment.

The Jordanian legislator provides the legal rules that guarantee the preservation of the environment and the fight against all kinds of Violating the balance between the components of the ecosystem and identifies the actions that lead to ocean pollution. The vital sector includes aquatic, aquatic, and terrestrial parts, and it also establishes legal means to monitor these works. Hold perpetrators accountable, and impose appropriate punishment on their perpetrators in Environmental Protection Law No. 6 of 2017 and its amendments.

This study was divided into four parts: the first part deals with the concept of the crime of environmental pollution, the second part deals with the elements of the crime, the third part deals with the punishment prescribed for the crime, and the fourth part deals with an appropriate conclusion of this study.

Methodology

In the research, the analytical method will be followed to analyse the provisions of the legal articles related to the study due to the diversity and to arrive at the strengths and weaknesses of the various jurisprudential, legal and judicial trends as well as the extent of their adoption to identify their contents, implications and goals as well as to criticise and comment on them and to highlight the critical aspect of the researcher as the research necessitated the use of several approaches due to its complex nature between the provisions of the legislation, opinions and jurisprudence trends.

Results & Discussion

What is Environmental pollution Crime?

The study of the crime of environmental pollution from the legal point of view requires defining the concept of the environment. The concept of pollution as being unique to one currency and perhaps one of the most important difficulties facing this type Studies include determining the exact meaning of the environment and pollution.

The Concept of the Environment

Where the Jordanian legislator defined the environment under Environmental Protection Law No. 6 of 2017 and its amendments: "The medium that includes living and non-living organisms, the materials it contains, the air, water and soil surrounding it, and the interactions of any of them, and the facilities or activities that man establishes in it.

Through the Jordanian definition, we find the composition of the environment as composed of two elements:(1) Natural element: It is made by the Creator and is represented in the natural elements and all that is in them from different resources, where preservation is essential for the continuity of life, and this element includes water air, soil, plants, and animals. (2) The industrial element: It is made by a human, including the tools and means that they make, in the main to meet his needs and requirements.

Defining the environment in international conferences, namely: (1) The Human Environment Conference held in Stockholm, Sweden, in 1972 the environment; defined the environment: "Everything that surrounds human beings is sufficient, natural or human." (2) As for the Belgrade Conference in 1975, stated that: "The relationship that exists in the natural world." Moreover, the biophysicist between him and the socio-political world is the creation of humanity (Khsellat, 2020). The term "environment" is a broad term that is not necessary to Include in a comprehensive definition, and all we can say is that the environment has constituent elements. One is natural, and the other is artificial.

The Concept of Pollution

Getting to the definition of environmental pollution crime under Jordanian law requires going through the description of pollution and its types. Therefore, environmental pollution is the core of studies that deal with the environment, as it is the main problem and the most dangerous thing in environmental protection until it

became firmly established in the minds of researchers that pollution is the only one that suffers from the environment.

The Jordanian legislator defined pollution in Article Two of the Environmental Protection Law No. 12 for the year 1995: “Any negative change to any of the elements of the environment that directly or indirectly exceeds the environmental standards and specifications approved by the Ministry, or causes this change, whether it occurs to a tangible or intangible degree, or leads to a limitation of the use of these elements or reduces their economic, aesthetic or social value, or It leads to their partial or total elimination, or affects the practice of the normal life of living organisms, and everything that disturbs their natural balance.”

The Jordanian legislator defined pollution in Article Two of the Environmental Protection Law No. 6 of 2017 and its amendments: Environmental elements: living and non-living elements in the environment such as environmental water, air, soil, species, and genetic origins (Soleimani, 2016).

Basic elements for the occurrence of pollution; namely: (1) a change in the environment, and this is what the legislator explicitly referred to in Article 2. (2) that the change is caused by human beings, as pollution is subject to criminalisation if the perpetrators are sufficient It is the action of man, pollution resulting from the action of nature does not enter Include this definition. (3) the occurrence of damage to the environment, as this change causes damage to public health for humans, plants, edges, and elements of the environment (air, water, land).

The United Nations Convention on the Law of the Sea of 1982 defined marine pollution as: "the introduction of humanity in the marine environment, including estuaries, directly or indirectly, substances or energy that it produces or is likely to cause harmful effects, such as damage to living matter and life Marine, endangering human health dangers to marine activities, including fishing and other legitimate uses of the sea and the deterioration of the quality of the seawater For use and recreation (Quinas, 2007).

Types of Environmental Pollution

Pollution is divided into several types because of several different criteria, including the polluting substance or the nature of the pollution that occurred and the source and the effects of the pollution (Emar; Abu Issa, 2021).

- Types of pollution because of its source: (1) Natural pollution: It is pollution that occurs by the action of nature, such as what volcanoes do and

earthquakes where people have no income. This type of pollution does not include legal protection. (2) Industrial pollution: The pollution caused by man due to his life activities. It is this type of pollution that is covered by legal protection.

- Types of pollution because of its geographical scope: Pollution, given its geographical scope, is divided into two types, limited pollution and unlimited pollution. (1) Limited pollution: It is pollution whose effects do not exceed the territorial scope of its origin. so that its effects do not extend beyond this border. (2) Unlimited pollution: It is pollution whose organic source is either wholly or partially present in an area subject to the national jurisdiction, and if antiquities are found in a subject area to the national jurisdiction of another country.
- Types of pollution because of its effects: - (1) Reasonable pollution: This pollution does not pose a significant threat to the environment. A specific degree of pollution does not affect the environmental balance. (2) Dangerous pollution: In this type of pollution, the quantity and quality of polluting materials exceed the environmental pressure line, so that It poses a threat to the elements of the natural, industrial and human environment and thus affects the equilibrium Environmental and it is widespread in industrialised countries. (3) Destructive pollution: This is considered the most dangerous type of pollution, as it crosses the environmental security line to reach the destructive level or a killer, destroys the ecosystem, and disrupts the ecological balance. This includes destroying nature and human beings caused by leaks and nuclear weapons.
- Types of pollution, given the environment in which it occurs: This pollution is divided according to the environment in which it is located: air pollution and water pollution. Furthermore, soil pollution, as this type represents all types of pollution (Abdellaoui, 2004).

The Elements of Environmental Pollution Crime

The Jordanian legislator has given the environment the utmost importance and utmost care (Alkseilat, Abu Issa, Al-refou, 2020), as he enacted laws to ensure its preservation and to maintain the stability of its composition and not be exposed to pollution of all kinds because of the danger to all elements of the ecosystem,

whether human, animal or plant and the Environmental Protection Law No. (6) of 2017 and its amendments are among the means of legislative protection. The Jordanian legislator defined environmental crimes in Article Two of the Environmental Protection Law No. 6 of 2017 and its amendments as any act that harms the elements of the environment and any violation of the terms and conditions stipulated in the regulations, instructions, and specifications. Technical rules and decisions are issued for this purpose.

1. ***The legal pillar*** is the legal basis for deeming an act a crime and determining its penalty. It consists of three elements: The existence of a provision in the law to criminalise the act and the presence of a text defining a punishment or precautionary measures for the criminal act, and the fact that the act is not subject to one of the justification reasons stipulated by the law (Muqadas, 2019). In this case, the legal pillar is represented by the text of Articles (6,7,8,9,10) of the Environmental Protection Law No. (6) of 2017, Where Article (6) stipulates ((A. The hazardous materials whose entry, import, storage, circulation, or use in any way in the Kingdom for environmental reasons are prohibited or restricted shall be determined following a regulation issued. If hazardous materials whose entry, import, storage, circulation, or use is prohibited or restricted are entered into the Kingdom following the provisions of Paragraph (a) of this Article, the Ministry, in coordination with the relevant authorities, shall return the hazardous materials to their source at the expense of the violating party and bear the fines, fees, and losses that were caused without prejudice to any penalties stipulated in this law or any other legislation and any other compensation or liabilities arising from that place.

Article (7) stated: It is prohibited to enter any hazardous waste into the territory of the Kingdom or to import, store, handle, use, destroy or dump it in any way, and these wastes are determined according to a system issued for this purpose. Furthermore, it shall bear the fines, expenses, and losses it caused, without prejudice to any penalties stipulated in this law or any other legislation, and any further compensation or liabilities arising from that place. In addition, article (8) stated: It is prohibited to collect, transport, throw, sort, treat, throw, burn, exhume, tamper with, dispose of or dispose of by any means in violation of the conditions,

procedures, and sites approved by the Ministry of any of the waste, rubble, or solid or liquid waste.

The article (9) stated: It is prohibited to throw any materials, devices, or equipment, or dispose of any of them, or pour them, collect, bury, dump or place them in any way in water sources, water basins, and the marine environment or within their safe limits if these materials cause under their physical, chemical, or biological properties or any Another cause is pollution or environmental damage to those sources or causes them to lower or raise their temperature, or any change to their natural properties, or cause harm to live organisms. Furthermore, it is prohibited to dump any wastewater resulting from manufacturing or domestic use or to discharge, pour or collect it in violation of the conditions and standards determined by the Ministry or in places other than those specified by the Ministry in coordination with the relevant authorities. Furthermore, article (10): It is prohibited when using machines, engines, vehicles, or any other sources to exceed the permissible limits for noise and vibration specified in the approved technical specifications and rules and instructions issued for this purpose.

2. **Actus Rea:** It means criminal activity, and its three elements are criminal behaviour, the criminal outcome, and the causal relationship between them. Moreover, this result was caused by criminal behaviour, so the cause-effect link is linked to it (Muhammad, 2019).

Criminal behaviour is every movement or several muscular movements made by the offender that lead to damage to the interests to be protected or exposing them to danger. For example, in polluting the environment, the criminal behaviour in polluting is realised by introducing substances Into a certain environmental medium, which means that pollution is achieved by adding, throwing, or leaking substances.

Criminal outcome: The criminal behaviour may produce a specific material consequence to complete the material work. For the crime of environmental pollution, the legislator may stipulate that the unlawful material behaviour occurs as a result of a crime specific.

The causal relationship in the crime of polluting the environment: The causal relationship is the third element added to the criminal behaviour and the result of Criminality. To complete the material dependence of the crime and for the crime

of environmental pollution to be established, there must be a causal relationship between the criminal behaviour and the criminal consequence, as the commission of this behaviour may lead to a result. However, there is no causal link in the nouns of pure conduct or what is known as the verbal pronouns because the law does not require an outcome to occur (Alkseilat, Abu Issa, Al-refou, 2020).

3. **Mens Rea:** The Jordanian legislator defines Article 63 of the Penal Code as "the will to commit the crime as defined by the law." It is stipulated in establishing the criminal intent that the offender directs his will to commit the crime in the manner specified by the law, so the intention is directed to achieve all its elements, elements, circumstances, and conditions, provided that the offender's knowledge also encompasses all these matters (Comiti, 2000).

It is not sufficient for the crime to commit a material act for which the law is punishable; rather, it must be issued on the offender's will, which is the relationship between the material action and the active one, which is known as The Mens Rea. The Mens Rea of a crime is the intentional mistake that entails the perpetrator's guilt. Therefore, the material act of Hungary justified the suppression of crime (Muqadas, 2019).

Jealousy or ambiguity can be used in the law in the context of the environment. It is difficult for ordinary people to note it as a new initiative. Therefore, there is no criminal liability if the offender proves that he acted after deception in the law, not what they should try to avoid. There must be a distinction between ordinary persons, operators, managers, and facility employees. They are excluded in the rule of ambiguity and generation in the law because I am the one to whom the addressee is speaking. So legal, it is assumed that they know it (Al-Hassan, 2019).

The Penalties of the Crime

The penalties for these crimes have been set in articles (17-27) of the Environmental Protection Law No. 6 of 2017 and its amendments, whereby the article (18) stated that: A- The facility that obtains the environmental approval shall be penalised with a fine of no less than five hundred dinars and not more than one thousand dinars when violating the conditions, specifications and technical rules specified for the activity it engages in. B - An establishment that does not obtain

environmental approval shall be penalised with a fine of no less than one thousand dinars and not more than three thousand dinars when violating the conditions, specifications, and technical rules specified for the activity. C- A fine of no less than three thousand dinars and not more than five thousand dinars shall be imposed on anyone who violates the terms of the environmental license. d- A fine of no less than twenty thousand dinars and not more than one hundred thousand dinars, and the closure of the facility until the situation is corrected, shall be penalised by anyone who engages in an activity of high environmental risk without obtaining an environmental license following the provisions of this law and the regulations issued according to it. E - Anyone who violates the terms of the environmental permit or does not renew it shall be punished with a fine of no less than one thousand dinars and not more than three thousand dinars. F- A fine of five hundred dinars and not more than a thousand dinars shall be imposed on anyone who carries out an activity without obtaining an environmental permit. The facility is closed until the situation is rectified.

Article (19/C) of the Environmental Protection Law No. 6 of 2017 and its amendments stated: C- Shall be punished by imprisonment for no less than six months and not exceeding a year or a fine of no less than five hundred dinars and not more than two thousand dinars, or both penalties, whoever violates the provisions of Article (8) of this law, and the court may confiscate the materials, tools, and machines used to commit the violation in a manner If one of these materials or tools are means of transportation, the court may decide to release them in return for an additional fine equal to (50%) of the value of the fines and compensations awarded in the case.

For water pollutions crimes, article (20) of the Environmental Protection Law, No. 6 of 2017 and its amendments stated: A- A penalty of imprisonment for no less than six months and no more than two years, or a fine of no less than one thousand dinars and not more than five thousand dinars, shall be imposed on anyone who unintentionally causes the commission of any act that pollutes any water source.

B- A penalty of imprisonment for no less than five years and not exceeding ten years and a fine of no less than twenty thousand dinars and not more than fifty thousand dinars shall be imposed on anyone who intentionally pollutes any of the water sources in a non-serious manner.

C- Shall be punished by temporary hard labour for no less than five years and not exceeding fifteen years, and a fine of no less than one hundred thousand dinars and not more than one million dinars, whoever intentionally pollutes any water source

in a profound way that prevents the removal of pollution or keeps Negative impact on its components and components.

Article (21) of the Environmental Protection Law No. 6 of 2017 and its amendments stated the crime of throwing, leaking, pouring, or dispensing any substance that is seriously harmful to the marine environment.

Article (22) of the Environmental Protection Law, No. 6 of 2017 and its amendments stated for the throwing, leaking, pouring, or dispensing of any substance harmful to the natural reserve or the areas around it or the areas within the special protection.

Article (25) of the Environmental Protection Law No. 6 of 2017 and its amendments stated the crime: Picking coral and shells, taking them out of the sea, fishing for marine life, trading in any of them, and causing damage to them.

Case Law

Judgment No. 1706 of 2021 South Amman Magistrates court stated that: Within the framework of the case presented, we find that the crime ascribed to the defendant is burning asphalt, which led to the emission of environmental pollutants, and that this crime, like other crimes, requires the following elements:

First: The legal pillar: The legal basis for deeming an act a crime and determining its penalty. It consists of three elements: The existence of a text in the law criminalising the act and the existence of a text defining a penalty or preventive measures for the criminal act, and the absence of the act being subject to one of the reasons for justification stipulated by the law. In this case, the legal pillar is represented by the text of article (8) of the Environmental Protection Law No. (6) of 2017.

Second: Actus Rea: it means the criminal activity, and its three elements are the criminal behaviour, the criminal outcome, and the causal relationship between them. Furthermore, it constituted a danger to the environment. The criminal outcome is represented in environmental crimes in general by causing a negative change in the components and elements of the environment or the so-called environmental pollution. This result was driven by criminal behaviour, so the cause and effect are linked to it.

Third: Mens Rea: The Jordanian legislator defines Article 63 of the Penal Code as "the will to commit the crime as defined by the law." It is stipulated in establishing the criminal intent that the offender directs his will to commit the crime in the manner specified by the law, so the will is required to Achieve all its pillars,

elements, circumstances, and conditions, provided that the offender's knowledge also encompasses all these matters.

Through the facts of the case, it appears that the defendant had directed his will to carry out the work of burning plastic to extract copper, which led to the emission of environmental pollutants in the area despite his knowledge of the violation of this act to the provisions of the law, and was proved through the facts of the case and the evidence presented in it represented exactly organised by the investigation men The environment and the defendant's clear and explicit confession of his committing the ascribed offence and the necessity of convicting him of it and imposing the legally prescribed penalty against him.

Therefore, and based on the preceding, the court decides: According to the provisions of Article [177] of the Code of Criminal Procedure, convicting the defendant of violating the provisions of Article (8) of the Environmental Protection Law, which is represented by the emission of environmental pollutants, contrary to the provisions of Articles [8 and 19/c] of the Environmental Protection Law. Under the provisions of article (19/C) of the same law, he was sentenced to a fine of 500 dinars and fees.

Conclusions

In this study, the researchers have dealt with the legal regulation of the crime of environmental pollution under Jordanian law, the Environmental Protection Law No. 6 of 2017, and its amendments, as the problem of environmental pollution is one of the most serious problems that has become the security and safety of humanity is threatened in our time, as a result of the tremendous development that has reached it. The human being is reflected in his environment, and since most of the polluting environmental measures fall from the legal person, we focused our study on this aspect. Moreover, this topic is modern, as it is considered one of the Topics related to environmental protection.

Through all of what was mentioned in this research, we reached the following results:

1. It is not easy to put an accurate definition of the environment, but the thing that is agreed upon is defining its elements; the environment is composed of two elements, one natural and the other artificial.
2. The Jordanian legislator acknowledges the double criminal responsibility of legal persons and natural persons for polluting the environment. Partially holding a legal person accountable does not absolve people. According to articles (15-17) of the

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Environmental Protection Law, No. 6 of 2017 and its amendments, natural persons in charge of the administration are subject to criminal responsibility when they commit criminal acts. On behalf of the legal person, the facility manager or the manager in his capacity as an actor shall be punished as a principal or an accomplice in the crime and shall also be asked for presumed responsibility for the crimes he committed. The follower except that the crime was committed intentionally or negligently because it falls on the shoulders of the leader Commitment to monitoring and supervising subordinates.

References

- Ahmed, J. Al-Din, M. (2000). The role of tax legislation in protecting the environment. Egypt, Unpublished article.
- Al-Hassan, E. (2011). The Constitutional System of the Right to the Environment in Constitutional Systems, An Analytical Comparative Constitutional Study Studies, Sharia and Law Sciences, 38 (1).
- ALKSEILAT, A. ABU ISSA, H. AL-REFOU, A. (2020) Criminal Protection of the Environment in Jordanian Legislation. *Journal of Advanced Research in Law and Economics*, [S.l.], v. 11, n. 1, p. 6 – 12, Mar. 2020. ISSN 2068-696X. Available at: <<https://journals.aserspublishing.eu/jarle/article/view/4742>>. Date accessed: 02 Jan. 2021. DOI: hDOIs://doi.org/10.14505//jarle.v11.1(47).01.
- KHSELLAT, A. (2021) The Historical Development of the Tourism Criminal Law. *Journal of Environmental Management and Tourism*, [S.l.], v. 12, n. 8, p. 2096 - 2098, dec. 2021. ISSN 2068-7729. Available at: <<https://journals.aserspublishing.eu/jemt/article/view/6653>>. Date accessed: 06 Jan. 2021.
- Emar, O. Abu Issa, H. (2021). The Legislative Shortcomings Aspects in the Jordanian Environmental Law. Comparison with International Law. *Journal of Environmental Management and Tourism*, (Volume XII, Winter), 7(55): 1850 - 1860. DOI:10.14505/jet.vjet(55).10.
- COMITI, A. (2000). *Prévention et réparation du dommage écologique*, thèse, Lille (2, 2000, 743) pp, spéc. Vol. (1)
- Jordanian Environmental Protection Law No. 6 of 2017 and its amendments.
- Muqadas, A. (2019). *Al Himaya Al Jinayiya li Al Biya Fi Al Tashri' Al Jazay'iri* (Criminal protection of the Environment in Algerian Legislation An Analytical Study in the Light of the Algerian Penal Code and Environmental Legislation), A research published in Djillali Liabes University.
- Muhammad, N. (2019). *'Usul Almuhamakat Aljaza'iyya* (Algerian Criminal Procedure), Dar Al-Thaqafah, Amman.
- Ouinan, Y. (2007). *Al'Aliyat Al Qanunia li Himayat Al Biya fi Al Jazayir* (Legal Instruments for the Protection of the Environment in Algeria), Ph.D. thesis in Public Law, University of Abu Bekr Belkaid.

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- Abdellaoui, D.(2004). Al Himaya Al Jinayiyya li Al Biya. (Criminal Protection of the Environment), Master Thesis, Faculty of Law and Political Science, University of Abu Bekr Belkaid, 2004.
- Soleimani, M. (2016). Al Biya fi 'Itar Al Tanmia Al Mustadama bayn Al Aliat Al Duwalia was fi Al Qanun Al Duwali (the Environment in Terms Sustainable Development, the International Legal Mechanism, and the International Law), Master Thesis, Faculty of Law, Abderrahmane University of Béjaïa 2016.