

Criminal and Civil Liability of the Wrongdoer in Economic Offences under Jordanian Legislation

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Abstract

Most countries tend to confront economic crimes through their own economic laws. The study focused on showing the specificity of the mental element of economic crimes, which has extraordinary rules that are outside the general rules of offences established in the Penal Code. Most economic legislation treats wrongdoing offences as intentional. Here, the weakness of the mental element of economic crimes appears, being presumed. So that the legislator merely finds a mistake to inflict punishment. Derogating from the general rules, where punishment is imposed for acts of wrongdoing in economic crimes. The study also examines civil liability for damages and financial compensation. The mere fact that the offender has achieved the criminal result is punishable regardless of whether the offender's will exists or not. Because of the nature of the error in economic offences, the unintended economic offence is not subject to the provisions of the general provisions of the Penal Code. Economic offences are characterized by the imposition of severe and deterrent penalties. To achieve public and private deterrence and maintain security and the national economy.

Keywords: Criminal liability, mental element, criminal intent, financial compensation, presumed error, economic crime.

Introduction

Economic crimes are one of the most important and serious challenges facing the State and the international community. Posing threats to all international and national institutions and the State's sovereignty over funds. Resulting in many negative economic, social, and political consequences (Bouzeina, M. 2018, p. 143). Contributing to the commission of this type of crime reveals great criminal gravity in the shareholder's personality. And the extent to which he seeks to realize personal benefits at the expense of the public interest. Without care for the damage, he causes (Mustafa, M. 1979, p. 120). We focus here on economic crime, specifically the question of the mental element. Which is one of its most prominent

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characteristics. Unlike general rules, this element of economic crime is often between exclusion and presumption at times. The mental element of economic crime has taken a place in the debate between those who argue that economic crime is physical. And others who see the importance of the mental element of each crime being committed. And those who tend to weaken it in favor of the physical element of criminal responsibility.

The importance of this research shows the determination of criminal responsibility for wrongdoing in economic crimes. And the determination of the responsibility of the perpetrator of the unintentional act and its difference from the intentional crime. The researcher's attempt to clarify the most prominent aspects of this criminal responsibility. The mental element and punishment of the perpetrator of the act are excluded, even if he does not have criminal intent. The researcher has adopted the analytical descriptive methodology. As it is the most appropriate for studying this subject in the context of the Jordanian Penal Code texts.

Research Questions

The researcher raises a multitude of inquiries, encompassing:

- 1- What is the legal nature of criminal liability for economic crimes in the form of error?
- 2- What is Jordan's legislation and the judiciary attitude towards presumed error in economic crimes?
- 3- What are the consequences of eliminating the mental element, in favor of the material element of unintentional crimes in economic crimes?
- 4- Is there civil liability on the wrongdoer, resulting in the obligation to compensate?

The first requirement: the legal nature of wrongdoing in economic crimes.

The Jordanian legislator did not provide a specific definition of error. An indication of what is an offence and its elements, but merely a statement of the types of this error. Article 64 of the Jordanian Penal Code stipulates that: "A crime is considered to be a deliberate one even if the criminal consequence of the act exceeded the intent of the perpetrator, provided that he / she expected such consequence and accepted the risk of its occurrence. It shall be considered a mistake if the act is the result of negligence, or lack of caution or lack of consideration for any laws or regulations." Where the lawmaker developed types of probable intent with types of error without any justification. It combines the two types of mental elements. And the types of error are divided into, conscious or simple error, which is the consequence of the act expected in accordance with the

ordinary course of matters (Nammour, M. 2019.p 175). And the grave error, which is achieved when the perpetrator expects the result to occur through his act, but the perpetrator does not accept it. The Jordanian legislature expressly stipulates the types of the error in the article (343) of the Jordanian Penal Code, namely negligence, lack of caution, recklessness and non-observance of laws and regulations.

As to the nature of the error in economic crimes. It was a departure from general rules, because of its specificity. And economic crimes, both intentional and unintended crimes are dealt with. There is a presumption from the legislator that there is the will of the actor to produce the criminal result. This is to provide greater protection for economic security. Because economic crime is a dangerous crime that is punishable once the act occurs. Without waiting for the result to be achieved. The jurisprudence held that economic crime occurred, whether or not the perpetrator deliberately achieved the result. The researcher therefore considered that the Jordanian legislature overlooked the mental element. Once the act occurs, punishment is imposed, even if the offence had been unintentionally committed (Al-Msa'adah, A., 2009, p.254).

Section I: The special legal nature of wrongdoing in economic crimes

The error can be defined as the offender's breach of the caution duties imposed by the law. Another definition is that the error is "the tendency of will towards criminal conduct without accepting the criminal outcome of such conduct and not preventing it despite its ability and necessity". (Qahwaji, A. 2002, p. 350).

In my view, the simple mistake is when the perpetrator's will does not tend to achieve the criminal result. Since the perpetrator did not expect it, as the perpetrator thought he could avoid the result. Whereas the grave error could be known as complacency in the commission of the act, despite the duty of caution on the person.

According to the general provisions, punishment shall be imposed on the offender as soon as the offender has committed the criminal act with the offender's criminal intent. While in the unintended economic offences, the legislator shall impose the penalty as soon as the criminal activity occurs. Without the need to accompany the activity with a criminal intent (Al-Zaini, M. 2004, p.163). Thus, the mental element exists as soon as it violates the law, where the intent is presumed if the criminal result occurs, and the error is treated as intentional in economic crimes. Whether the offence is deliberately committed, because of negligence and lack of precaution or non-observance of laws and regulations.

Section II: Elimination of the mental element in economic crimes in favor of the physical element

The mental element of economic crime did not maintain its fundamentalist standards. It has become weak. So as to exclude error in economic crime until it is completely dispensed with by the materialization of the crime. The mental element of national legislation and comparative legislation has also diminished. As we know, physical crime is the offence for which the perpetrator is subjected to criminal punishment. By simply doing the material act free of error if it is intentional or unintentional (Al-Msa'adah, A., 2009, p.255). Best example of offences of the type are traffic tickets.

The second requirement: Elimination of the mental element of economic crimes in favor of the physical element:

It is worth mentioning that the idea of a physical crime appeared at the beginning of the jurisprudence of the judiciary. That idea was endorsed by the jurisprudence. The idea of the exclusion of the mental element and the confinement of the physical element. Which originated due to the set of judicial decisions issued by the French Court of Cassation (Al-Msa'adah, A. 2009, p.252). Certain offences, such as infractions, are considered as physical offences. Requiring the Public Prosecutor's Office to prove that the physical act was committed by the accused. Without the obligation to prove any kind of error.

Jordan's legislation stipulates in article 2244 (a) of the Customs Act of 1983 that (Hazab, N. 2018, p. 299): "The offence is as civil liability entails in the offences of smuggling by the availability of its physical elements. It can't be argued in good faith or ignorance. However, it is exempted from liability; those who prove that they were victims of force majeure. As well as those who did not commit, cause, or lead to the commission of any of the acts that constituted the offence or the crime of smuggling." This is an indication that there is no doubt that customs crimes occur once the physical element has been established. And then an explicit acknowledgement of the idea of physical crime in customs offences (Hazab, N. 2018, p. 298).

We must mention the legislative position of many legislations regarding the offences of economic error. In the new French Penal Code in article 121/3: "There is no crime or misdemeanor without intent to commit it. However, if the law so stipulates, there is a misdemeanor if there is no precaution, negligence or unintentionally endangering a person. And the offence is not committed in case of force majeure." The attitude of the French economic legislature has been to introduce physical crime around economic crimes. Which takes place as soon as the physical element is available. Without the mental element or the existence of

criminal intent. However, French jurisprudence and the judiciary did not accept this method of punishment. This idea remained the same, but it was assumed that the burden of proof had shifted from the Public Prosecutor's Office to the accused. The criminal defendant proves that he/ she didn't have criminal intent.

The Cassation Court's decision affirms the importance of criminal intent in certain customs offences as follows: "As the accused did not contribute to the offence attributed to him or her as an accomplice, or intervening, or instigating. And since the offence of smuggling is a deliberate offence in which the criminal intent should exist. As the trial court found in its decision that the accused's complicity was not established. And that he/ she didn't know that the goods transported by his/ her car were smuggled. In its decision, it found that the accused was not liable. Since the outcome of the trial court was consistent with the provisions of the law. Its decision was subject to the grounds and duties of the accused and the grounds for discrimination don't exist. It must be dismissed." (Jordanian Court of Cassation No. 2655/2020).

Section 1: The position of Jordanian legislation and the judiciary on the presumed error affecting the economy

In the Economic Offences Act, Jordan's legislature did not address traditional types of error. Which are stipulated in the Penal Code, namely negligence, lack of caution and infringement of laws and regulations. However, he only punished one type, that is serious errors. According to article 5 (b) of this Act: "If any of the people mentioned in paragraph a of this article commits that offence as a result of a serious error. He/ she shall be liable to a term of up to two years' imprisonment." In analyzing this article, we conclude that the legislature has narrowed the penal protection of economic crimes. In a manner inconsistent with economic legislative policy.

The mental element of economic offences does not comply with the same provisions of common law. This is since economic crimes are important at the level of the State's economy. And require the utmost vigilance in their consideration. Closing the door to the reasons for violating them, otherwise the State's economic policy cannot be protected. Thus, the small or weak mental element of these crimes is characteristic. And the fact that the weak mental element and its marginalization in relation to economic crimes is justified. As the notion of general economic interest prevails over individuals' freedoms. This leads to equality of intent and error in these crimes (Hussein, A. p.10). Undoubtedly, relying on error and diminishing or eliminating the mental element and introducing the idea of physical crime in such crimes is very serious, and highly sensitive. (Al-Msa'adah, A. 2009, p.269).

The question arises here as to what is a serious mistake?

Jurisprudence distinguished between gross and minor error under the Criminal Code. Where they considered that criminal liability was based solely on grave error. This distinction doesn't follow a criterion though.

This distinction was introduced by the Economic Offences Act. Which recognized only the grave error of criminal liability for economic offences. When reference is made to the text of article 5 (b) of the Economic Crimes Act. The notion of serious error is a fundamental and a necessary cornerstone of economic crime. If there is no serious error, there is no punishment for the perpetrator. Meanwhile, Jordanian economic legislation, in accordance with general rules, establishes that offences contrary to this economic legislation are considered intentional. Unless the offences of wrongdoing are punishable. It should be noted that economic error crimes are relatively few. (Arttime, W. 2013, p.42). On 15 March 2016, the Constitutional Council of Morocco issued its resolution No. 16/992 on the determination of the constitutionality of the draft statute of the judiciary. Defining the concept of grave error as any act of intent, negligence or disregard. Indicating a gross and unpalatable violation by a judge of his professional duties in the exercise of his judicial functions.

The Court of Cassation in all its judgements on offences against public property presupposes the perpetrator's knowledge. If he is a public official, he deals with public money. Thus, his actions on this money constitute an embezzlement offence. The Jordanian Court of Cassation also issued a decision on the crime of fraud. By investing the complainants' money in speculation in the Amman Financial Market. Damaging the complainants and affecting the financial confidence of the State (Jordanian Court of Excellence No. 1567/2013).

One of its provisions is that "municipal funds, including the Amman Grand Security, are public funds. And that the Penal Code guarantees that the conduct of an employee must be in the light of the right to be sought, namely public funds. And that the evidence is sufficient to establish charges against the accused..." (Court of Cassation Decision No. 503/2021). One of which stated: "The intention of embezzlement is deemed to be available to the accused. As evidence of his supposed knowledge that the fines obtained and the official receipts withheld are public funds and belong to the public purse" (Court of Cassation Decision No. 65/1989).

Section II: Consequences of the decline in the mental element of economic crimes

The decline in the mental element of economic crimes results in unfair consequences. By punishing persons who are unaware of the crime. Such as, a

cargo carrier who transports contraband goods without his knowledge. This is a departure from the general principle. That every person accused of a punishable offence shall be considered innocent until found guilty. In addition to the fact that the diminishment of the mental element has contributed to a departure from the principle of the individualization of punishment. Which is a constitutional principle that has a significant and effective role in the achievement of justice and the protection of the rights of individuals. Namely, the application of the penalty to the perpetrator only (Mashkour, M. 2021, p.139). The decline in the mental element leads to a violation of an individual's right to a fair trial. It is the general origin that the Public Prosecutor's Office bears the burden of proof. And that the accused is innocent until the Public Prosecutor's Office gathers sufficient evidence to prove that the accused is convicted of compelling evidence. That is unthinkable and definite. Not based on analogy, interpretation or presumption, but on certainty and unquestionable belief. (Al-Msa'adah, A. 2009, p.252).

Section III: Consequences of the shrinking mental element of public policy in economic crimes

The legislator has tended to impose special rules governing economic crimes. In contravention of the general rules of the Penal Code to protect the national interest, and the State's economic policy. As a result of the derogation from the general rules. And the strictness of the legislature, this has been reflected in public policy in economic crimes. In keeping with the directives of legislative will to presume criminal intent. The judge's role is no longer limited to the strict application of the penal rule, and the pronouncement of the prescribed penalty. He has a positive role to play in adapting the substantive penal rule to the socio-economic situation of combating economic crime. Which is no longer evidenced by its occurrence. In human subjectivity insofar as it has come to control the specificity of its proof, to the nature of the breach of the rules of economic dealing with physical evidence. The criminal judge shall be competent to investigate and confirm them (Al-Rousan, A. 2012, p. 89). The decline in the mental element of economic crimes has contributed as a deterrent. So that others who have contributed to the commission of the illicit act cannot flee legal justice. Which takes caution as well as the protection of others in good faith (Mashkour, M. 2021, p.140). In addition, the diminishing mental element has weakened the jurisdiction of the judiciary. The legislature, through the laws it enacts, has assumed the role of the judiciary or the Public Prosecutor's Office by issuing convictions or acquittals. In this case, it exceeds the limits of its competence. And performs the role of the Public Prosecutor's Office in establishing and sentencing a conviction. In other

words, they disassociate the court from verifying that the elements of the crime have been carried out and doing their part as usual (Al-Msa'adah, A. 2009, p.269).

First claim: civil liability for financial compensation for error

Civil liability is available when there are three elements: fault, damage and causation. It is the basis for the possibility of seeking compensation. The Jordanian legislature did not require the bad intention or intent to harm in the performance of the obligation to compensate. But the existence of the damaging act, regardless of the existence or absence of the intent, was sufficient. Article 256 of Jordanian law stipulates that (Every injurious act shall render the person who commits it liable for damages even if he is non-discerning person). The Jordanian legislator has made the criterion of compensation and its entitlement only to the existence of the injurious act. Without regard to the perpetrator's intention. Thus, once the injurious act is available, he is bound to compensate for the damage. The perpetrator cannot argue that he is not obliged to compensate because he accidentally committed the act, and he had no intention of damage. Thus, civil liability is incurred if the damage occurs, even by mistake, with the imposition of the penalties prescribed in the Act. If the perpetrator inadvertently commits an act provided for in the Economic Crimes Act and results in a loss. He shall be liable to compensation even if he is not subject to the penalties. And financial compensation cannot be degraded if it is unintended or if it is not punishable by law. Article 256 of the Jordanian Civil Code makes the basis for liability as damage, not error (Al-Shurah, F. 2015, p. 59). If there is a manipulation of stocks, manipulation to the embezzlement of shares of major companies on the stock exchange. And this manipulation is revealed. But it turns out that the shares reached one of them unbeknownst to him. This person is bound to return the shares. If he acted in good faith, he was obliged to compensate financially for the damage. Article 3 of the Economic Offences Act considered that shares and bonds were considered to affect the State's economic status. Accidentally destroying public water extensions, it is obliged to ensure that the damage is compensated. Even if it is unintentional, and he/ she is obliged to compensate even if it is not subject to criminal punishment. He/ she repairs the malfunction, extends the construction of new water. Or pays a sum of money to cover all the damage by repairing it.

Since we're talking about the mistake here. We haven't discussed money forgery, fraud or bribery because it's not done accidentally. And finally, the Jordanian legislature authorized reconciliation in economic crimes in article 9, provided that the money is returned in full or the money settled. A settlement between the perpetrator of the economic offence and the Public Prosecutor's Office is effective only after it has been approved by a judicial committee. The conciliation

procedure entails the cessation of prosecution and the termination of public proceedings. (Al-Msa'adah, A. 2009, p.252).

Results

- 1- In view of the particular nature of economic crime. It has often been imposed on the legislator to establish special rules to govern it. One of the most controversial topics in economic crimes is the mental element. Whether it's a mistake or not. Where this type of crime is characterized by absolute liability or by a weak or erroneous mental element. It is presumed to prove the opposite.
- 2- For the purposes of determining whether an offence requires the existence of intent or is based on mere error. It is not sufficient to refer to the text of the law, but to consider the lawmaker's wish. So that it can be inferred either from the nature of the punishable act. Or from the purpose of the legislator's intention that mere error is punishable.
- 3- The decline in the mental element of economic crimes has implications. That may have a negative impact on individuals in favor of the State's economic policy. Aimed at achieving public and private deterrence.
- 4- Civil liability derives from the wrongdoer's obligation to compensate for the damage. Refunding those affected by acts affecting the economy.
- 5- The Jordanian legislature has dealt with the error by citing certain forms of negligence, lack of caution and lack of observance of laws and regulations. It is the duty of every member of society to take heed and caution in order not to jeopardize the rights protected by the law. The source of this duty is the law or experience. Jordanian legislature presupposes intent within the limits of serious error, whether for negligence or lack of caution.

Conclusion

The subject of criminal responsibility for economic crimes. And the subject of error as a form of the mental element of the crime has many specificities imposed by the special nature of economic crimes. On the topic of presuming, reversing and sometimes eliminating the mental element. Economic crimes such as physical crimes are seen as an affirmation of the importance and gravity of such crimes to the State's national economy. It indicates the seriousness of the personality of the perpetrator who carried out these acts. Whose personal interest is predominantly in the public interest of the State and its economy. The legislature neglected the most important principles. Namely, the principle of innocence and the principle of the individualization of punishment. Although these crimes threaten economic policies and public money. Public money is the property of the State which is free to dispose of it. But it is conditional on these actions being in the public interest of all

individuals and the State. There is a civil liability for the obligation to compensate the damage and refund the money to its owners for the errors affecting the economy. The implementation of the State's economic policy. And the necessity of the application of economic policy has resulted in a decline in mental element. A lack of stringency in its proof and the presumption of its establishment. This trend has been taken by most criminal legislation. Based on the foregoing and by examining the nature of criminal responsibility for wrongdoing in economic crimes. We have reached a set of recommendations as follows:

Recommendations

- The Jordanian legislature's derogation from the general rules on error must be appropriate to the circumstances, nature and data of the crime. Not as dealt with so strictly on the assumption that the criminal intent existed without verification of its existence.
- Notwithstanding the importance of economic crimes and their impact on the State's economic policy. The legislator must treat economic crime as an offence to which all legal provisions apply. As well as other offences that require the mental element.
- Jordan's legislation on economic offences must consider the general principles guaranteed by the Constitution to the person. The most important of which is the principle that the accused is innocent until proven guilty and not the presumption of criminal intent.
- The Jordanian legislature should explicitly state the civil liability of the wrongdoer influencing the economy by his actions. Whatever the type of error committed.
- The Jordanian legislature must preserve the origin. Namely that the burden of proving the charge is on the public prosecutor's office, as for all crimes. And not as dealt with by the legislator in economic crime, where the legislator presumed the offender to be a criminal. And the offender had the burden of proving innocence.
- The decline in the mental element of economic crime is a departure from the general principles governing criminal responsibility, particularly in economic crime. Since the legislator imposes penalties that may affect non-criminals on the assumption that they have criminal intent.

References

- Al-Msa'adah, A., 2009, Criminal Liability for Economic Crimes, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan.
- Al-Qahwaji, A. 2002 Penal Code, Special Section, Offences against the Public Interest, Human and Financial Interests, First Edition, Halabi Publications, Beirut, Lebanon.
- Al-Rousan, Ehab Mohammad Ahmad. (2012). Characteristics of economic crime: a study in concept and elements. *Policy and Law Books*, issue 7, p. 73-118.
- Al-Shurah, F., 2015, Medical Error in Jordanian Law, Master's thesis - Middle East University, Amman, Jordan.
- Al-Zaini, M., 2004 Crimes of Forced Pricing, Legal Principles and Jurisprudence, First Edition, New University Publishing House, Alexandria, Egypt.
- Artime, W., 2017. The extent to which the provisions of the Jordanian Economic Crimes Act No. 11 of 1993 and its amendments comply with the general provisions of the crime. *Journal of the Faculty of Shari 'a and Law, Al-Azhar University*, 19(6), 4045-4118.
- Bouzeina, M. 2018. The specificity of the elements of economic crime. *Academic Journal of Legal and Political Research*, 1(3), 142-162.
- Decision of the Jordanian Court of Cassation No. 1567/2013
- Decision of the Jordanian Court of Cassation No. 2655/2020
- Decision of the Jordanian Court of Cassation No. 503/2021
- Decision of the Jordanian Court of Cassation No. 65/1989
- Hazab, Nadia (2018), doctoral thesis of the University of Djilali, the specificity of economic crime and its impact on criminal law, Sidi Bel Abbes, Algeria.
- Hussein, A, 2020, Mental Element in Economic Crime between Presumption and Exclusion, *Researcher in Legal and Political Science*, 2(2), 139-159.
- Jordanian Customs Act No. 10 of 2019
- Jordanian Economic Offences Act No. 11 of 1993
- Jordanian Economic Offences Act No. 20 of 2004
- Jordanian Penal Code No. 16 of 1960 and amendments thereto

Mashkour, M. 2021. The specificity of criminal responsibility in economic crime.

Journal of Humanities of Oum El Bouaghi University, 8(2), 130-143.

Mustafa, M., 1979, Economic Offences in Comparative Law, Cairo University Press, Cairo, Egypt.

The Jordanian Civil Code is Act No. 43 of 1976.