

Penal Methods to Protect Public Health Within the Framework of Sustainable Development A Study in Iraqi Legislation - Corona Pandemic as A Model

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Abstract: The issue of public health occupies a lofty position among the most important issues that concern the individual and societies alike, and there is no doubt that health has become the focus of global attention, especially with the accelerating health challenges that hit the whole world during the years 2020 and 2021 and is still.

Especially with regard to the Corona pandemic. Which prompted us to address this important topic from a legal point of view, specifically in this working paper that we devoted to studying the penal mechanisms for protecting public health in the framework of sustainable development - a study in Iraqi legislation, the Corona pandemic as a model - in an effort to address the most important legal provisions that took over the protection of the right in public health and the accompanying real challenges in the field of its application and the penalty for violating it with regard to the spread and spread of the Corona pandemic, through the axes that we will present successively through this research paper

Referring to the basic principles that govern this subject, it was noted that the Iraqi legal system has included many of the necessary political, social and economic principles and rights in the 2005 constitution, although there is a serious fear of not taking into account the protection of the right to public health despite it being a natural right in the first place. Therefore, it is important to address and study this right despite the difficulty of defining its meaning, due to the multiplicity of its dimensions and the fact that the rights system is currently suffering from what a person can suffer from the confusion and overlapping of concepts. Hence the difficulty of defining concepts, but this did not deter us from studying and analyzing legal texts and evaluating the effectiveness of procedures and measures that ensure the protection of public health as an individual and collective demand at the same time. Therefore, in this paper, we will address the following topics :-

The first requirement: the concept of public health.

The second requirement: the right to public health in Iraqi legislation.

The third requirement: penal method to protect public health from the effects of the Corona pandemic.

We ended the paper with a set of suggestions and recommendations that we hope will find their way to implementation in order to enhance legal and procedural effectiveness in supporting public health in Iraq as a principle and a truly supreme value.

Keywords: Penal mechanisms, public health, prevention, treatment, sustainable development, the Corona pandemic.

The first requirement: the concept of public health and sustainable development

In this requirement, we will address the concept of public health and sustainable health development in the following two sections:

Section one: the concept of public health

Health is a basic requirement for every individual and society, and preoccupation with its preservation, and the advancement of it to the fullest extent possible, has recently been given a great priority. However, a degree of uncertainty and ambiguity still clouds its meaning. This is clearly evident from the meanings of the language and terminology together. What is the meaning of health language and idiomatically?

As for health in *Lisan al-Arab* by Ibn Manzur, it means the disappearance of illness, and it is the opposite of illness, and sickness is the opposite of health (1).

All linguistic dictionaries refer to this meaning and the meaning of the approach.

Health is defined technically as a state of relative balance for the body's functions, resulting from its adaptation to the factors of the surrounding environment. It is a broad concept that combines advancement, safety, physical and mental efficiency, and its connection to the social and cultural context and relations with others. In other words, it is the compatibility between the health of the body, the soul and society within the framework of values. (2)

However, the current and most accepted definition in the legal literature on public health is what was referred to in the constitution of the World Health Organization in 1946, which is known for its acronym (WHO), one of several agencies of the United Nations concerned with health affairs, in its first article, stating that it is A state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, and the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being, without distinction as to race, religion, political belief, economic or social condition, and the health of all peoples is essential to the attainment of peace and security; It depends on the fullest cooperation of individuals and nations. What a country achieves in improving and protecting health is of importance to all. The uneven development in different countries in improving health and combating diseases, especially communicable diseases, is a danger to all. The healthy development of the child is of paramount importance; The ability to live harmoniously in a changing holistic environment is essential to this upbringing. Making the benefits of medical and psychological sciences and related knowledge available to all peoples is essential to achieving the highest levels of health. Informed public opinion and positive cooperation from the public are of paramount importance in improving human health. Governments are responsible for the health of their people, and this responsibility can only be fulfilled by taking adequate health and social measures. (3)

In order to achieve the goals and objectives of the World Health Organization, a group of favorable factors related to the human environment in which he lives must be combined. The health and professional field, setting scientific standards for medical and pharmaceutical products, and proposing international agreements and contracts, all of which represent mechanisms and work programs that serve the health of individuals and society alike.

Section two: sustainable health development

Awareness of the sustainable development goals contributes to the formation of a better world for all, and it is known that all the seventeen sustainable development goals contribute in the end to raising the level of health and societal well-being.

It is known that sustainable development covers a wide range of social and economic issues (poverty - hunger - health - education - climate change - gender equality - water - sanitation - energy - environment - social justice(4).

Returning to the third goal of the Sustainable Development Goals, which is to ensure that “everyone enjoys healthy lifestyles and prosperity at all ages” as well as achieving universal health coverage, including access to essential medicines and vaccines, and putting an end to the avoidable death of newborns and children under five years of age by 2030. and end epidemics such as AIDS, tuberculosis, malaria and water-borne diseases, for example. Concern for health and well-being also includes goals related to the prevention and treatment of substance abuse, deaths and injuries from road traffic accidents, hazardous chemicals, and air, water and soil pollution (5).

With regard to the issue of public health in Iraq, the Ministry of Health is working to provide integrated and comprehensive health care for all members of society in accordance with professional ethics and community values and at the highest level of quality and by investing available resources efficiently in accordance with ensuring sustainable health development to reduce morbidity and mortality and with the participation of stakeholders. And based on the document of the national health policy in Iraq for the years (2014-2023) prepared by the Ministry of Health and in cooperation with the Health and Environment Committee in the Iraqi Parliament, the relevant ministries and civil society institutions, as well as the technical and logistical support provided by the World Health Organization, where the document included a set of general guidelines In line with the priorities and objectives of the National Development Plan (NDP), they are briefly as follows:

- 1- Health is a guaranteed right for every human being
- 2- Justice
- 3- Sustainable, high-quality and accessible health care services
- 4- Decentralized approach
- 5- Adoption of the principle of accountability and transparency
- 6- Family health approach
- 7- Safety and rights of the patient
- 8- Safety and rights of the health care provider
- 9 - Professional conduct and ethics
- 10 - Partnership. (6)

The second requirement

The right to public health in Iraqi legislation

The right to public health has been confirmed at the global and local levels, and we have explained what has been mentioned by briefly addressing it at the level of the Constitution of the World Health Organization, the Universal Declaration and the International Bill dealing with the system of rights in general and the right to public health and its protection in particular. As for the local level, we, taking into account For the rule of legislative hierarchy, we will briefly show how to deal with this right under the Iraqi constitution, laws, regulations, instructions, and relevant health decisions.

Section one: the constitution

Constitutions are keen on the right of everyone to reach the highest possible level of health, and the duty of governments to consider this task as one of the most important social goals and to create effective policies to ensure the protection of this right at the legal and judicial level. Likewise, states and governments are often obligated to report on measures adopted and progress made in respect of this right.

It is worth noting that the effective Iraqi constitution of 2005 included a text on the right to health and considered the state responsible for maintaining the public health of the citizen. Article (30) stipulated the following: First: The state guarantees social and health security for the individual and the family, especially the child and woman. The basic requirements for living a free and dignified life, providing them with adequate income and adequate housing. Second: - The state guarantees social and health security for Iraqis in the event of old age, illness, inability to work, homelessness, orphanhood or unemployment, and works to protect them from ignorance, fear and poverty, and provides them with housing and special methods for their rehabilitation and care, and this is regulated by law. As for Article 31, it states: First: Every Iraqi has the right to health care, and the state is concerned with public health, and guarantees the means of prevention and treatment by establishing various types of hospitals and health institutions. Second: Individuals and bodies may establish private hospitals, clinics, or treatment homes, under the supervision of the state, and this shall be regulated by law.) (7)

Section two: health laws

In order to develop health care services and for the purpose of enabling the Ministry of Health to respond to the emerging changes and challenges facing the health care delivery system, there are currently approximately thirty laws covering various aspects of the health sector in addition to the regulations and instructions issued to implement those laws that cover the areas of health development and support various The functions of the Ministry of Health at the international and local levels. There are reviews of some laws in order to amend them to better adapt to epidemiological and demographic shifts through a series of procedures starting from the Ministry of Health, passing through the Council of Ministers and the State Council, and then approved by the House of Representatives.

Where the Iraqi legislator issued a package of legislation dealing with the issue of public health, the amended Public Health Law No. (89) for the year 1981 indicated that physical, mental and social fitness is a right guaranteed by society for every citizen, and the state must provide the requirements for its enjoyment to enable him to participate in building construction. The Ministry of Health is working to create a healthy citizen physically, mentally and socially free from diseases and disabilities, adopting preventive health services and combating diseases, especially transitional diseases and preventing their infiltration from outside Iraq to inside it and vice versa or from one place to another in it and limiting their spread in the lands Iraqi water and air, care for family health, care for motherhood, childhood and old age. (8)

Article (46) of the aforementioned Public Health Law stipulates that:

First – The Minister of Health or whoever he authorizes may declare, in a statement issued by any city or any part of it, an area endemic to one of the diseases subject to international health regulations.

Second - In this case, the health authorities may take all necessary measures to prevent the spread of the disease, and to this end they may:

- A - Restricting the movement of citizens within the affected area and entering or leaving it.
- b- Closing public shops such as cinemas, cafes, amusement parks, restaurants, hotels, bathrooms, and any other public place subject to health licenses and control, as well as educational institutions, laboratories, projects, state departments, and the public, mixed and private sectors.
- C- Preventing the sale of food, beverages, refreshments and ice, and transporting them from one area to another, and destroying the polluted ones.
- d- Isolate, monitor and transport animals and goods.

Similarly, the Ministry of Health Law No. 10 of 1983 also included similar provisions in preserving the physical, mental and psychological health of the Iraqi individual (9).

As for the Quarantine Procedures System No. 6 of 1992, the Quarantine Procedures System No. (12) for the year 1978 was abolished, while keeping the instructions and data issued according to it and in a manner that does not conflict with the provisions of this system in force until the issuance of what replaces or cancels it. This system aims to empower the authority The competent health authority may take appropriate preventive measures regarding any means of transport that reaches Iraq, to ensure that it and its contents are free of epidemic diseases and to prevent its entry to it. (10)

Also as far as the new Corona virus is concerned, quarantine is the isolation of people in contact with confirmed cases or cases potentially infected with the disease for a period of time determined according to the incubation period of the disease - the period between the occurrence of infection and the appearance of symptoms, and it was estimated at 14 days in the case of Covid-19, while isolation is known It is the separation of patients who already have symptoms from healthy people. He described social distancing as maintaining a distance of at least one meter between healthy individuals.

Quarantine or “quarantine” has played a major role in addressing many diseases that have claimed millions of lives throughout history, and in the absence of a confirmed treatment or vaccine for the Covid-19 pandemic, the governments of some countries have tended to impose restrictive measures, such as isolation, social distancing and quarantine. Health, to maintain public health, in addition to other preventive measures, such as closing schools,

commercial centers and places of worship, placing travel restrictions, and suspending many normal life activities. (11)

On November 16, 2020, the Iraqi legislator issued Nursing Syndicate Law No. (8) for the year 2020 and was published in the Iraqi Gazette in the number (4604), where it stated the reasons for its issuance, given the changes that have occurred in the nursing and midwifery professions since 1959 and in line with the law Practicing the Nursing and Midwifery Professions No. (96) for the year 2012. With the aim of preserving the traditions of the nursing profession, as a profession concerned with the care of the individual, family and society in cases of health and disease, promoting health, preventing diseases and injuries, alleviating the suffering of patients through the nursing process, and improving the level of nursing staff economically. socially and defending their rights and developing their knowledge and skill potentials, this law was legislated.

Finally, the Health Insurance Law No. 22 of 2020, was issued, aiming, as Article (5) of it indicated, to first: Providing comprehensive health coverage for the insured person. Second: Achieving the principle of social justice and social solidarity. Third: Reducing the financial burden on the citizen and reducing poverty. Fourth: Multiple sources of funding for the health sector. Fifth: Creating a good environment for competition and developing the performance of health workers and institutions in the public and private sectors. Sixth: Improving the quality of medical services provided by regulating work in the public and private sectors and competition in medical services. Seventh: Encouraging the private sector and investing in health services. Article (17) of it states: First: The Ministry of Health, in cooperation with the health insurance organization established under this law, shall establish a monitoring system to monitor the performance of health service providers and the extent of their commitment to the following: First: The time allotted to each patient. Second: The use of scientific means in diagnosis and treatment. Third: The use of guidelines in prescribing medicines and laboratory and radiological examinations. Fourth: The accuracy and validity of the information provided by health service providers. In the reasons for issuing this law, it was stated that it was initiated to ensure the quality of health services and access to them in every place of the country and at any time, and to reduce the financial burdens on citizens, reduce poverty and achieve the principle of social solidarity and health justice stipulated in Article (30) (First). And secondly) from the Iraqi constitution to promote the proper application of the health insurance law. (12)

Section Three: Health regulations and instructions

The field of providing health services to patients is witnessing a continuous development that is based on the foundations of human and ethical dealing with service seekers, which is something that must be worked on diligently and through the role of the regulations and instructions in force in supporting the patient's right and clarifying his responsibilities. In a manner that enhances patients' confidence in health facilities and consolidates the bonds of joint health and humanitarian work between service providers and recipients. Accordingly, health regulations and instructions in Iraq in general have indicated the need for the patient to enjoy the health protection umbrella, such as, health control system, health

fitness system, health ban procedures and instructions regarding health conditions that must be met in food supply laboratories No. 10 of 1993 and the conditions It must be available in the appetizer shops No. 11 of 1993, sweets factories No. 12 of 1993, Al Rashi production factories No. 13 of 1993, dairy factories No. 15 of 1993, ice factories No. 16 of 1993, juice and jams No. 17 of 1993, mineral water and soft drinks No. 18 of 1993 and laboratories Gypsum No. 19 for the year 1993 and the conditions that must be met in bathrooms No. 1 for the year 1996..etc.

And what those regulations and instructions included in terms of non-financial administrative penalties and health measures such as withdrawal or cancellation of the license, closing the shop and deprivation from practicing the profession, as well as a statement of conditions for health bans, health risks, quarantine and others, and as far as the topic of research is concerned, in the event of suspected infection with the emerging corona virus (covid- 19) It is possible to refer to some of the rights and duties of Covid-19 patients, whereby all those infected or suspected of being infected have the right to obtain health care in terms of diagnosis and treatment free of charge in hospitals and health centers spread throughout Iraq. Whether they are citizens or residents, and according to the approved protocols to deal with this case, and to ensure that the service provider follows the safety instructions for the procedure or medical examination, and to obtain health care in a safe, clean and sterile environment suitable for the situation of patients infected with the emerging corona virus (covid-19) and to provide The auditor and the patient shall have the appropriate environment that achieves the psychological and physical comfort of patients and promotes recovery during the treatment period in the health facility and protection from psychological harm, reprimand and reprimand by the team supervising the case and ensuring that the patient or anyone related to him is informed of all information related to the case and the patient's health status in an adequate, clear and language manner understood, with the infected or those in contact with receiving the necessary health information to deal with the risk of infection and directing to take appropriate health measures to ensure the safety of everyone according to the approved protocols for dealing with infected or suspected cases and providing health care in a manner that ensures the preservation of human dignity without compromising religious beliefs Doctrinal, cultural, and social backgrounds, providing complete privacy and confidentiality of information, whether information related to diagnosis, analysis or treatment, and preventing its access to bodies or persons without the consent of the patient or his legal concern, except for what is formally requested by the competent authorities. Not to conduct medical or scientific experiments or give medicines that did not depend on any patient previously without his full consent and full awareness of the complications that may result from them, enabling patients in isolation departments to communicate with their families, providing effective communication channels for patients in intensive care, and enabling patients in different departments Isolation is one of the means of effective communication with the medical team and the right to raise suggestions or complaints to health care stations and the existence of an appropriate mechanism for education and health advice for the patient and his family about the treatment plan and enabling patients or companions to obtain the necessary medical reports or sick leaves in accordance with the applicable controls and following the regulations and instructions Provided by the

medical team, adhere to it, provide complete and accurate information, assume responsibility, treat all employees, caregivers and patients with courtesy, respect and adhere to general rules, and follow security and safety regulations and instructions in health facilities. Acknowledging the responsibility of the patient or his family for the correctness of the information provided for all new developments about the condition or its symptoms, as well as disclosing any violation of the instructions included in the treatment plan, and commitment to societal responsibilities and the laws and regulations approved by the state, whose violation entails the application of prescribed penalties. Therefore, we believe that the document of the rights and duties of patients and those infected with the emerging corona virus should be organized and published in hospitals, health and treatment centers and quarantine places in compliance with health standards and internationally recognized protocols in accordance with the following:

First: The rights of the sick and injured:

- 1- Receiving adequate health care on the basis of need, with no discrimination in the provision of health service.
- 2- Knowing the identity of the treating physician, nurses, and those who care for him by their job titles.
- 3- Informing the patient or injured when his illness is diagnosed, and his treatment plan, using clear and understandable terms and vocabulary and answering all his questions in this regard, while providing translation services when needed.
- 4- Preserve his privacy and confidentiality of his medical and social information and data, and that he is cared for in a safe atmosphere free from any form of abuse, and he has the right to refuse to speak or meet with anyone who has no connection with the health institution.
- 5- Seeking the assistance of a person of the same sex when needed, if it is necessary to reveal private parts of his body, whether for examination or treatment.
- 6- Disclosing any patient information with his written consent, except in the case of imminent danger to his life, or his disqualification for any reason, or in the case of reported infectious diseases.
- 7- Notify him if his health condition requires referring him to any other treatment institutions according to the regulations and instructions in force in the Ministry of Health.
- 8- Inform him of the regulations and instructions in force in the centers concerned with his treatment and his duties towards their employees, and identify the parties to which he can resort, whether for inquiries or complaints.
- 9- Approval or refusal to participate in medical research or experiments that affect his health.

Second: Duties of the sick and injured:

- 1- Provide all information related to the patient's or injured person's health condition, including medications or any substances he takes, previously treated diseases, infectious diseases, allergic conditions, previous hospitalization and others.
- 2- Inform the doctor if he does not intend to continue the prescribed treatment.
- 3- Follow all instructions and regulations of treatment centers, including punctuality and adherence to any material obligations related to patient care.
- 4- Cooperating in following the treatment instructions provided to him by the health staff.
- 5- Respecting health workers and not verbally or physically assaulting them, as well as respecting the rights of other patients, and not disclosing secrets he learns from them or compromising their dignity.

The third requirement

Penal mechanisms to protect public health from the effects of the Corona pandemic

Individual health and public health are at the fore in the interests of states and governments, and despite the efforts made that give rise to hope in improving health conditions, there are reasons for concern as a result of progress and development in the industrial, agricultural and environmental fields that have health consequences that are difficult to control. Either resulting from the actions and behaviors of individuals themselves or the environmental and technological environment in which they live, which makes this right vulnerable to penetration, so that legal texts must be referred to as penalties that impose themselves through administrative measures of a penal nature imposed by health departments or judicial rulings issued by the competent criminal courts. Accordingly, in the following sections, we will present the most important legal texts in the matter, as well as administrative procedures and measures, and shed light on the measures taken by the Iraqi judiciary to contain the pandemic.

Section one: Punitive texts

Perhaps the most important threats faced by the right to public health are epidemics and diseases as a natural system that interacts with the climate and the environment surrounding humans through the development of infectious and microbial diseases and the limited means of treatment, which necessitate a return to new preventive methods in order to avoid uncontrollable health complications. And since the concern for public health is a legal obligation that imposes a penalty on those who violate it or violate its requirements, and since the goal of protecting public health is to prevent diseases, prolong life, and strengthen community efforts aimed at providing conditions that enable people to maintain their health, or Preventing its deterioration, supporting and developing ways to get rid of certain diseases, in addition to taking care of all aspects of health and well-being. Public health also includes the provision of health services to individuals, such as vaccinations, behavioral advice, or health advice. From here comes the role of criminal texts in legislation to draw legal boundaries to ensure the enjoyment of this right, preserve

it and protect it from any positive or negative behavioral actions or behaviors that represent an attack on the limits of this right.

The amended Iraqi Public Health Law No. 89 of 1981 and in Article 1 thereof defines public health as “full health, physical, mental, and social fitness, a right guaranteed by society for every citizen, and the state must provide the requirements for its enjoyment to enable him to participate in building and developing society.” As for the criminal legislator, it included a chapter in Chapter Seven of the amended Penal Code No. 111 of 1969 under the title (Crimes Harmful to Public Health), which included criminal protection for public health, as it stipulated in Article (368) the following: Punishment with imprisonment for a period not exceeding For three years, whoever deliberately commits an act that would spread a serious disease that is harmful to the lives of individuals. If the act results in the death of a person or his permanent disability, the perpetrator shall be punished with the penalty prescribed for the crime of beating that leads to death or the crime of permanent disability, according to the circumstances. And in Article (369) of it stipulates the punishment of imprisonment for a period not exceeding one year or a fine of not more than one hundred dinars for anyone who, by mistake, causes the spread of a serious disease that harms the lives of individuals. If the act results in the death of a person or his permanent disability, the perpetrator shall be punished with the penalty prescribed for the crime of murder by mistake or the crime of harm by mistake, as the case may be. A serious illness that harms the lives of individuals, with three conditions: First: the occurrence of the prohibited act, and the act is every act that the law criminalizes, whether it is positive or negative, such as abandonment or refusal, unless there is a text to the contrary based on the text of Article (19/4) of the aforementioned Penal Code. Second: That the act was committed intentionally, that is, the perpetrator directed his will to commit the act constituting the crime, aiming at the result of the crime that took place or any other criminal result in accordance with Article 33 of the aforementioned Penal Code. Third: This intentional act led to the spread of a dangerous disease that harms the lives of individuals, and the disease, disease or illness in general is an abnormal condition that affects the human body and leads to weakness in bodily functions.

The term disease is sometimes used to denote any bodily harm, and the disease may be referred to as (ill health or disease), and the Public Health Law provided a definition of the transmissible disease in Article (44) of it by saying that it is (the disease resulting from infection with an infectious agent or the toxins generated by it, which results from The transfer of that worker from the source to the host directly or indirectly) If this act results in the death of a human being, the perpetrator shall be punished with the penalty prescribed for the penalty of manslaughter according to Article 411 of the Penal Code, in which the penalty reaches imprisonment and a fine or one of these two penalties. The prescribed penalty will be the prescribed penalty for the crime of wrongful harm, in which the penalty is imprisonment for a period not exceeding two years, according to Article (416) of the Penal Code. A non-intentional crime is the result of the crime that occurs due to the fault of the perpetrator, whether this mistake was negligence, recklessness, lack of attention, lack of precaution, or failure to observe laws, regulations and orders, according to Article (35) of the Iraqi Penal Code. The upper limit of the penalty will be a period not exceeding a year or a fine, or if the error results in the death of a person or his permanent

disability, the prescribed penalty will be the penalty for the crime of wrongful killing or the crime of wrongful harm, according to the circumstances for each crime. In the current circumstances in which the world is facing a serious epidemiological challenge such as the Corona pandemic, which kills humans without specifying a specific geographical area, which revealed the weakness of the health sectors even in developed countries despite the amazing scientific and medical development, which the World Health Organization considered a (pandemic) and took multiple measures to prevent and limit its spread until we found ourselves in front of activating outdated laws. Rather, it was believed that they were not applicable or forgotten, the most important of which is (Quarantine Procedures System No. 6 of 1992). This system aims to enable the competent health authority to take appropriate preventive measures regarding any mode of transport that reaches Iraq. To ensure that they and their contents are free from epidemic diseases and to prevent their entry into it. A number of health, medical and legal terms were mentioned in Article (2) of it, such as the first infection, incoming infection, epidemic diseases, focus, infected and suspected, isolation, medical examination, health investigations, health inspection, the contaminated local area, and the incubation period for epidemics and diseases Transitional, endemic, international vaccination certificate and others. Article (61/first and second) of the A system that penalizes anyone who violates the provisions of this system with the penalties stipulated in Public Health Law No. 89 of 1981.

The captain of a floating unit, an aircraft, or any other means of transport shall be considered responsible for the original perpetrator for every violation of the provisions of this system and the instructions and statements issued pursuant thereto that fall on its board, unless it is proven that it was impossible for him to learn of the violation.

As far as the Corona pandemic is concerned, the quarantine procedures system No. 6 of 1992 is currently in force, which stipulates in Article (61) that the violator of the provisions of this system shall be punished with the penalties contained in the Public Health Law No. (89 of 1981) as amended, where articles included (96-100) of the aforementioned law enumerates a number of penalties for those who violate its provisions. Article 96 of the Public Health Law 89 of 1981, as amended, stipulates: First: The owner of the shop subject to a license or health control shall be punished when he violates the provisions of this law or regulations Or the instructions or statements issued pursuant to an immediate fine of no more than (250) thousand dinars, or the closure of the shop for a period not exceeding (90) days, or both, by a decision of the Minister or his authorized representative. Noting that the amounts of fines in Iraqi laws were amended according to Law No. 6 of 2008, as stipulated in Article 99 first of the aforementioned law as follows (without prejudice to any severer penalty stipulated by law, anyone who violates the provisions of this law, regulations, instructions or data shall be punished Issued pursuant to it, he shall be imprisoned for a period of no less than one month and not exceeding two years, and in the event of a repeat violation, he shall be punished by imprisonment and his health license shall be revoked permanently.

We would like to point out to the uninjured who break the ban, they shall be punished by imprisonment for a period not exceeding six months or by a fine not exceeding (one hundred dinars). dinar as a misdemeanour,

We point out that if he is injured, the penalty will be in accordance with Articles 368. If it was with willful intent, which stipulates a penalty of imprisonment for a period not exceeding 3 years shall be imposed on anyone who willfully commits an act that would spread a serious disease that is harmful to the lives of individuals, and if the act results in the death of a person or his disability. The perpetrator shall be punished with the penalty prescribed for the crime of beating that leads to death or the crime of permanent disability, as the case may be, but if it was unintentionally, he shall be punished according to Article 369, which is punishable by imprisonment for a period not exceeding one year or a fine not exceeding (one hundred dinars) with the offer that this fine As we mentioned, it has been modified to an amount ranging from (201 thousand dinars to 1,000,000 million dinars) for anyone who by mistake causes the spread of a serious disease harmful to the lives of individuals. If the act results in the death of a person or his permanent disability; The perpetrator was punished with the penalty prescribed for the crime of wrongful killing or the crime of wrongful harm, according to the circumstances.

Although there are more preventive and health measures and measures taken by the administrative authorities, the punitive texts related to the protection of public health still need real legislative treatments to confront the emerging epidemics, diseases and sudden pandemics whose spread may lead to the death of many, as happened with the Corona pandemic on the one hand and to ensure that Individuals enjoying health security and achieving public deterrence on the other hand. (13)

Section Two: Administrative Procedures and Measures

In view of the outbreak of the Corona epidemic in most countries of the world and the danger it poses to human health and life, Iraq, in order to preserve the health and safety of its citizens, has taken many necessary measures in order to control the non-transmission of the disease after the first laboratory diagnosed infection with the new Corona virus was recorded in the governorate. Najaf Al-Ashraf, and accordingly, the Iraqi government took the initiative to issue the Diwani Order 55 of 2020 in the number M.R.O / D/6/59/1932 on 3/2/2020 to form a committee headed by the Minister of Health and the membership of representatives of the aforementioned authorities This is for the purpose of strengthening government measures in the areas of prevention, health control and awareness, which have taken a number of measures based on Public Health Law No. 89 of 1981 and the World Health Regulations in order to ward off the risks of this epidemic and prevent the transmission of infection. Although these procedures infringe on rights and interests protected by the Penal Code in criminal texts, they are considered legitimate and permissible because they involve in the performance of duty as a reason for legalization in accordance with the provisions of Article 39 of the Penal Code, which states (There is no crime if the act takes place in fulfillment of a duty imposed by law). Accordingly, the curfews and quarantine procedures carried out by government agencies, including health authorities, do not apply to the text of Article 322 of the Iraqi Penal Code related to the detention of persons and the assault on their freedoms, based on Article 46 of the Public Health Law, which authorized the Minister of Health or his authorized representative when declaring an infected area One of the diseases subject to international health regulations restricting the movement of citizens and closing public shops and government institutions,

including educational ones. Article 52 of the aforementioned law also gave health authorities the right to isolate or detain any person suspected to be carrying a pathogen or to be in nurseries for one of the communicable diseases, including diseases subject to regulations. In addition, a doctor is not considered to have committed a crime of disclosing a secret according to Article 437 of the Penal Code if he knows, by virtue of his position or profession, that a person has a sick condition and informs the competent authorities of that because he is obligated to do so according to Article 50 of the Public Health Law. (326) of the Penal Code in the event that health authorities perform their duties in accordance with Article 51 of the Public Health Law, which granted them the right to enter Houses of residence and public shops or any other place for the purpose of health inspection in the event that it is aware of the presence of any transmissible or endemic disease or is suspected of its presence. The issue does not stop at the legalization of measures that are considered infringing on the freedoms of persons, but rather that punitive texts criminalize behaviors that may be considered exploitation of their circumstances or occur in violation of them. Among these texts is Article 9 of the Trade Organization Law No. 20 of 1970, which criminalizes every refrain from selling or selling a commodity at its specified prices. At a price that exceeds the specified price, and whoever violates the curfew is subject to accountability according to Article 240 of the Penal Code, which stipulates the responsibility of anyone who violates orders issued by an employer or a person charged with a public service, municipal councils, an official or semi-official body. Also, Article 368 of the Penal Code criminalizes every intentional act that would spread a serious disease that harms the lives of individuals. Therefore, this crime is a dangerous crime, as it does not require the occurrence of harm, but rather, if the harm occurred and resulted from that act without intending the death of a person or his permanent disability, the perpetrator shall be punished with the penalty prescribed for the crime of beating that leads to death or the crime of permanent disability, according to the circumstances and all of that. It is conditional that the act did not intentionally cause death or harm, because in this case the provisions of premeditated murder or premeditated harm are applied according to the circumstances. As for the crime of wrongfully causing the spread of a dangerous disease, it is stipulated in Article 369 of the Penal Code. Here the legislator requires the occurrence of the result of the spread of the disease. If the spread of the disease results in the death of a person or his permanent disability, the perpetrator shall be punished with the penalty prescribed for the crime of wrongful killing or wrongful harm, according to the circumstances. These are the texts that we referred to in a hurry without detail, and which we believe are related to the measures taken to confront the Corona pandemic in terms of legitimizing or legalizing these measures that may be considered a prejudice to interests protected in the penal law, or in terms of deciding the punishment for behaviors in violation of these procedures.

It is worth noting that the Council of Ministers, pursuant to its decision (74) for the year 2020, adopted in its twelfth regular session held on 3/26/2020, obligated ministries and agencies not associated with a ministry and all governorates to harness their efforts and resources to the aforementioned committee and health departments in the governorates with what they need and what they It helps in combating and containing the spread of the Corona virus.

Among the most important decisions of the aforementioned committee, which it emphasized in more than one decision, is (preventing gatherings in all their forms, including funerals, weddings and social events).

The Committee for Diwani Order No. 55 of 2020 has issued a number of decisions to prevent the spread of the Corona virus and is still exercising its functions and powers in accordance with the laws and regulations in force. (14)

And in order to support the work of the aforementioned Diwaniah Order Committee, the Council of Ministers took a decision in its twelfth regular session held on 3/26/2020 to amend its decision No. (64) for the year 2020

According to the following:-

1- Forming a Supreme Committee for National Health and Safety with the aim of combating the novel coronavirus (COVID-19) pandemic 1- It takes charge of setting general policies and plans, supervising their implementation, taking major decisions, enhancing integration among all executive bodies, and coordinating with legislative and judicial authorities and international bodies related to combating the spread of the virus. The aforementioned committee shall be empowered with the powers of the Council of Ministers, and shall be the supreme authority concerned with combating the spread of the virus, and all relevant cells, committees and formations are linked to it.

2- The aforementioned Supreme Committee shall be headed by the Prime Minister and the membership of the Ministers (Oil, Finance, Planning, Foreign Affairs, Interior, Higher Education, Scientific Research, Trade, Health, Agriculture, Labor, Social Affairs, Transport and Communications), the Secretary General of the Council of Ministers, the Director of the Prime Minister's Office, the Governor of the Central Bank of Iraq and the National Security Adviser Advisers to the Prime Minister whom he determines, the Chairman of the Council of Advisors, the Deputy Commander of Joint Operations, the Personal Secretary to the Commander in Chief of the Armed Forces, the Head of the Secretariat of the Supreme Commission for Coordination between the Provinces, the Head of the Border Ports Authority, a representative of the Kurdistan Region, the Chairman of the Advisory Committee in the Ministry of Health, the Head of the Civil Aviation Authority, and Head of the Executive Body of the Media and Communications Authority And the head of the Iraqi Media Network, the head of the legal department in the General Secretariat of the Council of Ministers, and the director of the media office of the prime minister

3- The General Secretariat of the Council of Ministers / Cabinet Affairs and Committees Department performs the duties of the rapporteur, and the Prime Minister may add or remove members of the committee according to the requirements of the public interest.

4- The bodies represented in the Supreme Committee for Health and National Safety composed above, each according to his specialization, shall study all the effects of the

spread of the epidemic or on the remedial and preventive measures to combat it, and submit recommendations to the Supreme Committee for a decision.

5- For the aforementioned Supreme Committee for Health and National Safety, the formation of cells or sub-committees charged with specific tasks and linked to the Supreme Committee

6- The Committee on Diwani Order No. (55) of 2020 is responsible for the direct therapeutic and preventive aspects and the provision of health services to citizens, and the committee submits its recommendations to the Prime Minister for approval.

7- The Minister of Health grants the authority to make transfers from one exchange unit to another exchange unit with the approval of the Minister of Finance in line with the provisions of Article (25) first of the Federal Financial Management Law No. (6) of 2019 and contracting for the purpose of confronting the virus, as an exception to the instructions for implementing government contracts No. (2) of 2014, provided that contracts are audited by the Federal Financial Supervision Bureau within a maximum period of five days from the date of sending the contract. (15)

For the purpose of clarifying the extent of the responsibility borne by the citizen who violates the obligations and instructions of the crisis cell, as well as what is included in Articles (44-58) of the Public Health Law No. 89 of 1981 and its amendments, which came under the title of combating communicable diseases, especially that the citizen today is aware of the epidemic and the risks of spread from During human gatherings that are decided to be prevented by the competent health and administrative authorities, and what they may lead to fatal injuries, he will inevitably be criminally responsible for the effects and consequences that affect public health, individually or collectively, resulting from his action in contravention of legal texts, administrative instructions, procedures and measures taken by the Crisis Cell. In addition to the authority that the administrative authorities have to take a number of measures and procedures under Diwani Order No. 55 of 2020, they have the right to initiate a criminal case when it comes to committing acts affecting health and safety as a result of non-compliance with the decisions imposed and imposed by the crisis cell to avoid infection with the emerging corona virus and its accompanying dangers that may lead to death, or the exploitation of the pandemic conditions as an excuse to monopolize, hoard and raise the prices of raw materials Food, medicine, and health supplies by the owners of stores and pharmacies, especially since there are quite a few people who do not care and do not feel responsible and even underestimate the risks that result from infection with the virus, which requires strict application of procedures and activation of texts that require the establishment of criminal responsibility.

Section Three: Judicial procedures and measures to confront the Corona pandemic

When the judiciary intervenes to implement laws in order to protect individual or public health, this means that health has been affected by what has befallen it and requires

intervention here to repair the damage, compensate for it, or punish. The judge undoubtedly contributes to establishing the effectiveness of the law, at least through its respect and application. According to democratic systems, it is represented in recognizing the privileged intervention of the judge as a guardian of rights and freedoms, whatever the scope of his work in the civil, administrative or penal fields, meaning that the right to health must be present in all cases related to the subject of the right in question, health security and health and medical care And the environment is nothing but concepts that provide it with the legitimacy of taking decisions, measures and precautionary and preventive measures against health risks in line with the necessities and developments of legislation that protects public health. Since it is the duty of the public authorities in general to regulate the rights and conditions for their enjoyment, especially the right to public health, the judiciary in particular has a duty of vigilant emotional care to protect public health, by taking decisions, procedures and preventive measures and ensuring that the health authorities responsible for providing health services adhere to the approved standards based on the laws The regulations and instructions in force.

Proceeding from his national and humanitarian duty, and as one of the basic joints and pillars of the Iraqi state, and with the start of the Corona pandemic and its spread in the whole world and its entry into Iraq, the Supreme Judicial Council in Iraq initiated early to issue a package of decisions and measures aimed at limiting the spread of the pandemic, bearing the responsibility to protect society. With the Iraqi government announcing its plans to confront the epidemic through a curfew, the Supreme Judicial Council issued a statement calling on the security authorities with all their addresses to implement the circular of the Supreme Judicial Council dated 8 March 2020, which stipulated that legal measures be taken against anyone who violates the instructions of the Crisis Cell to arrest everyone who In a statement, the Supreme Judicial Council directed the investigative judges to arrest the violators of the law and refer them to the competent court to conduct their trial in accordance with the law. Out of its concern for the safety of citizens and in compliance with the aforementioned decision, several courts in the governorates of Iraq have initiated the arrest of a number of violators of the curfew. In light of the current challenges that the world is experiencing from the crisis of the Corona epidemic, the Supreme Judicial Council discussed, in its seventh session of 2020, which was held in person and electronically on the morning of March 15, 2020, headed by the President of the Federal Court of Cassation, Judge Faiq Zaidan, the exceptional measures to be taken to reduce the risks of the Corona virus. The heads of the appellate courts have been directed to take the appropriate measures, each according to the circumstances of the governorate in which the appeals court is located, and the general directors of the public department affiliated with it have also been authorized to take appropriate exceptional measures to ensure that the interests of citizens are not disrupted and at the same time eliminate the risks of spreading the virus and reducing working hours. according to working conditions. It was also circulated to all courts to take legal measures against those who violate the recommendations of the Crisis Cell Committee regarding the measures taken to limit the spread of the Corona virus, as the head of the Supreme Judicial Council instructed the investigation courts and public prosecution offices to take legal measures in accordance with the provisions of Article 368 of the Penal Code against Anyone who causes the spread

of this virus by spreading false rumors about infections, mocking its danger, or encouraging citizens to gather in any way, which was prohibited by the Diwani Order Committee No. (55) for the year 2020 and stressing the competent security authorities to implement the curfew completely and arrest all Whoever violates this in cooperation with the sentinel courts, which will follow up the implementation of the curfew and take legal measures against those infected with the virus and those who refrain from providing information to the competent medical authorities to treat them and take the necessary procedures for quarantine. The Chief of Public Prosecution also directed the security authorities to take legal measures against the owners of pharmacies and stores that raised the prices of medical materials after the spread of the Corona virus in Iraq.

Conclusion

The right to health protection is, in principle, non-negotiable; Because it benefits everyone, and it is not like other rights, if not the most important and foremost, until two unknown blessings (health and safety) were mentioned in the effect. In accordance with this importance, governments usually intervene and impose restrictions and limits of a collective nature for purely health reasons, limiting the effectiveness of this right for reasons of Administrative control in order to preserve public order with its well-known traditional elements, including public health, and since man is required to preserve his health, and society is required to protect himself from diseases because of the humanitarian necessity and basic need required by the succession of man in the land and its architecture. Building correct and sustainable development and where we hope to improve the quality of public health and health performance in general, especially since the legal value of the texts is measured by the extent of their actual application, we see the need to present a set of useful proposals and recommendations that fall into the heart and concerns of the executive authorities in protecting the right to public health . They are as follows:-

- 1- The need to work on drawing up an integrated framework for the preventive, environmental and curative health policy in Iraq.
- 2- Discussing financial support plans for the programs of the Ministry of Health, including the annual budget draft, approving them, following up on their implementation after approval, and expressing what he sees as observations and recommendations in this regard to overcome difficulties and solve problems that arise during implementation.
- 3- Studying and approving draft laws and regulations proposed by the Ministry.
- 4- Developing health services and raising the technical, scientific and practical level for health workers, supporting them and protecting them from any aggression that may occur against them while performing their work.
- 5- Collecting, tabulating, evaluating and analyzing health and life statistical data and information to benefit from them in the areas of planning, control and decision-making.

6- Organizing conferences, symposia and health meetings inside Iraq, which leads to the strengthening and development of citizens' confidence in the Iraqi medical and health cadres, equipment and frameworks, and taking care of health media affairs.

7- Preparing basic and applied research and studies aimed at developing and supporting preventive, environmental and curative health services and following up the implementation of scientific research plans in the scientific research centers of the Ministries of Health, Higher Education and Scientific Research, evaluating research results and taking the necessary measures to supervise their experimental applications and improve the requirements of the health process to achieve health security For the citizen in cooperation with the Iraqi, Arab and international scientific research centers.

8- Urging the security services to abide by the instructions issued by the Supreme Committee for Health and National Safety and the decisions issued by the Council of Ministers, with regard to preventive measures for Covid-19 disease, and not to tolerate their implementation in order to preserve the health of citizens.

9- Urging the media to broadcast messages of awareness and education about the dangers of human gatherings, unifying the media discourse, the need to adhere to health instructions, and the importance of taking vaccinations.

10- The need to distinguish between quarantine provisions and procedures in normal circumstances and at the time of an epidemic or pandemic, and not to be limited to regulating individual quarantine provisions only and without referring to dealing with collective quarantine provisions. Therefore, we call on the Iraqi legislator to reconsider the provisions of Public Health Law No. 89 of 1981 or the legislation of a new public health law, in which quarantine provisions are organized in a detailed organization based on a balance between the requirements of protecting public health and the requirements of human dignity.

11- The necessity of publishing a document of the rights and duties of Covid 19 patients and a statement of the responsibility of the medical, health and nursing teams in this regard. Which must be designed in accordance with the health regulations, laws and procedures approved locally and globally to achieve harmonization between the interests of patients and society on the one hand and between them and medical and health personnel on the other hand.

12- The importance of spreading legal and health awareness among members of society because of its great importance in encouraging the individual to interact and with great responsibility to carry out his duties towards his community.

margins

(1) See: Allama Abi Al-Fadl, Jamal Al-Din Muhammad bin Makram Ibn Manzur the African Egyptian, Lisan Al-Arab, Part One, House of Reviving the Arab Heritage, Foundation for Arab History, a new edition cared for and corrected by Amin Muhammad Abd al-Wahhab and Muhammad al-Sadiq al-Ubaidi, Beirut, Lebanon, 1999 , p. 507.

(2) See: Dr. Ihsan Ali Mahasneh, Environment and Public Health, Dar Al-Shorouk, without a year of reprint, p. 71. See also, Dr. Abdel Fattah Murad: Encyclopedia of Human Rights, without a year of publication and without a publishing house, Egypt, p. 790.

(3) See: The Constitution of the World Health Organization approved by the International Health Conference held in New York for the period from June 19 to July 22, 1946 and was signed by representatives of 61 countries and entered into force on April 7, 1948 and consists of 82 legal articles, and it was conducted on Several amendments in the years 1977, 1984, 1994 and 2005, publications of the World Health Organization, the official website

<https://www.who.int/ar/about> Date of entry 9/24/2021

(4) [UN General Assembly's Open Working Group proposes sustainable development goals"](#) (PDF). Sustainable development.un.org 2016.p26

(5) <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-3-good-health-and-well-being.html>

Date of entry to the site 29/9/2021.

(6) See: National Health Policy (2014-2023), a document issued by the Ministry of Health in Iraq, January 2014, Baghdad, pp. 15-17.

(7) See: The Constitution of the Republic of Iraq for the year 2005 published in the Official Gazette, Al-Waqa'a Al-Iraqiya, No. 4012 dated December 28, 2005.

(8) See: Public Health Law No. 89 of 1981 published in the Official Gazette, Al-Waqa'a Al-Iraqiya, No. 2845 dated August 17, 1981.

(9) See: Ministry of Health Law No. 10 of 1983 published in the Official Gazette, Al-Waqa'a Al-Iraqi, No. 2926 on February 21, 1983, as well as the repealed Communicable Diseases Law No. 121 of 1963 and its amendments published in Al-Waqa'a Al-Iraqiya, No. 866 on 3/1/1963 .

(10) See: System of Quarantine Procedures No. (6) of 1992 published in the Official Gazette, Al-Waqa'i Al-Iraqiya, No. 3396 on 9/3/1992.

(11) See more website <https://www.scientificamerican.com/arabic/articles/news/how-effective-is-quarantine-and-preventive-measures-in-face-of-coronavirus-pandemic>. Entry date 9/25/2021

(12) See: Health Insurance Law No. 22 of 2020 published in the Official Gazette, Al-Waqa'i Al-Iraqiya, No. 4614 on 1/2/2021.

(13) The official updates regarding the emerging corona virus in the world and Iraq refer as follows: - Statistics of the spread of the corona virus in the world: the last update on 9/27/2021 as follows:

232,610,593 injured

4,762,143 deaths

209,246,776 healthy

As for Iraq, the epidemiological situation on 9/27/2021 was as follows: The infected (1,993,767), the deceased (22,110), and the recovered (1,896,071). See the website entitled (Statistics - Corona Virus - in the world <https://www.sis.gov.eg/Story/> .

Entry date 9/27/2021).

(14) See: The official website of the Republic of Iraq / General Secretariat of the Council of Ministers <http://www.cabinet.iq/articlesBrowse.aspx> Date of entry to the site 28/9/2021

(15): See the same source (the official website of the Republic of Iraq / General Secretariat of the Council of Ministers <http://www.cabinet.iq/articlesBrowse.aspx> Date of entry to the site 28/9/2021

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4- The National Health Policy (2014-2023), a document issued by the Ministry of Health in Iraq, January 2014, Baghdad, pp. 15-17.

NS. laws

1- The Iraqi constitution for the year 2005.

2- Penal Code No. 111 of 1969 as amended

3- Public Health Law No. 89 of 1981 as amended

4- Ministry of Health Law No. 10 of 1983

5- Nursing Syndicate Law No. 8 of 2020

6- Quarantine Procedures Regulations No. 6 of 1992

7- Health Insurance Law No. 22 of 2020

Second: foreign sources

(1) See UN General Assembly's Open Working Group proposes sustainable development goals". [Sustainabledevelopment.un.org](https://sustainabledevelopment.un.org)2016.p26.

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(1) <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-3-good-health-and-well-being.html>

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(2) <https://www.who.int.who:we-are> Date of entry 9/24/2021

(3) <https://www.scientificamerican.com/arabic/articles/news/how>

Entry date 9/25/2021

(4) www.sis.gov.eg/Story/ Entry date 27/9/2021

(5) <http://www.cabinet.iq/articlesBrowse.aspx>

Date of entering the site 9/28/2021