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The criminal responsibility conceptual framework

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Abstract :

This research is about the conceptual framework of criminal responsibility. Criminal responsibility means that a person is responsible for the results of his actions, and the Penal Code is used to figure out the right punishment for him after he has had complete freedom of choice in the actions he has done. There is no punishment for people who didn't have the ability to choose and make their own decisions when they did the crime. Because it affects the offender's personality and will, but not the legal part of the crime. Instead, it stops the offender from being punished, so he doesn't have to take responsibility for his actions. However, the act is still dangerous, and Articles 47, 48, and 49 of the Penal Code allow precautionary measures to be taken in situations like when a person is insane or a child.

Impediments to responsibility are things that happen to the person who did the wrongdoing so that his will is broken by coercion, canceled out by insanity, or weakened by being a minor. These things affect the person's ability to choose and judge, making him ineligible for criminal responsibility.

Keywords: Criminal Responsibility ; Liability Barriers ; Natural Person ; Legal Person ; Coercion.

Résumé :

Cette recherche porte sur le cadre conceptuel de la responsabilité pénale. La responsabilité pénale signifie qu'une personne est responsable des résultats de ses actes, et le Code pénal est utilisé pour déterminer la peine qui lui convient après qu'il a eu une totale liberté de choix dans les actions qu'il a commises. Il n'y a pas de punition pour les personnes qui n'ont pas eu la capacité de choisir et de prendre leurs propres décisions lorsqu'elles ont commis le crime. Parce que cela affecte la personnalité et la volonté du délinquant, mais pas la partie légale du crime. Au lieu de cela, cela empêche le délinquant d'être puni, de sorte qu'il n'a pas à assumer la responsabilité de ses actes. Cependant, l'acte est toujours dangereux et les articles 47, 48 et 49 du Code pénal permettent de prendre des mesures de précaution dans des situations comme lorsqu'une personne est aliénée ou un enfant.

Les empêchements à la responsabilité sont des choses qui arrivent à la personne qui a commis le méfait, de sorte que sa volonté est brisée par la contrainte, annulée par la folie ou affaiblie par le fait qu'elle est mineure. Ces choses affectent la capacité de la personne à choisir et à juger, la rendant inéligible à la responsabilité pénale.

Mots clés : Responsabilité pénale ; Obstacles à la responsabilité ; Personne naturelle ; Personne morale ; Coercition.

INTRODUCTION

In the legal context, a natural person is considered responsible for any committed criminal acts, especially if s/he has no impediments to punishment, whereas, legal persons are criminally responsible for the crimes committed by their representatives, managers or agents. Furthermore, they are sentenced to a fine, confiscation in addition to the measures prescribed for the crime. This does not prevent the court from punishing the perpetrator with the penalty prescribed for the crime in the law.

To avoid the exploitation of the exemption from responsibility or reduce the punishment referred to above, the legislator stipulates that the loss of awareness or will whenever the cause of drugs, narcotics or intoxicants that the offender took was choice and knowledge, and then the crime committed as if it had taken place without anesthesia or drunkenness, Even if it requires special criminal intent. Instead, the legislator stated that the offender, when it is established that he intentionally used drugs, narcotic or intoxicating substances in order to commit the offence, the case would be considered as an aggravating circumstance.

On the same line of thought, another obstacle to criminal liability is the loss of discrimination, and it applies to a child who has not completed the age of seven, so the criminal case cannot be filed against those who did not complete the age of seven at the time of the crime; however, this does not prevent the investigation authorities and juvenile courts from taking educational or therapeutic measures appropriate to the status of the event whenever it deems it necessary.

At the end of this process, the legislator weighs the problems of necessity and coercion as the obstacles to responsibility, indicating that the accuser is not criminally responsible for committing the crime which has happened due to the necessity of self-protection, whether self-protection or material properties like money from a grave danger that is about to occur. Whoever resorts to committing a crime because of physical or moral coercion, provided that the perpetrator is unable in both cases to prevent the danger by other means, and that the crime is to the extent necessary to ward off the risks and its appropriateness.

After defining criminal responsibility, the persons and the position of the Algerian legislator. Secondly, we have shed light on the impediments to responsibility such as insanity and being a minor, in addition to coercion and its types, attempting to answer the research question which is: what is criminal responsibility and its contraindications?

THE FIRST RESEARCH PROBLEM: WHAT IS CRIMINAL RESPONSIBILITY?

Criminal responsibility is generally known as the person who is held responsible for a crime he had no involvement in. The general and major condition is that he did not participate in it and this idea is one of the basic pillars in criminal decrees. On this basis, the judiciary decides the accuser's responsibility for the crime, and in this context we must differentiate between the term criminal responsibility and other concepts and terms that may be similar to it, such as criminal attribution, and the difference between the idea of crime and the idea of criminal responsibility.

The crime is legally based and requires the availability of its three pillars, “material, moral and legal”, criminal responsibility is the capacity of attribution that is achieved if the perpetrator of the crime at the moment of committing the crime has the capacity, awareness and ability to choose, that is, freedom of choice. In the case of the absence of one or both of them, this responsibility will be voided, and the result will be that the offender will not be punished.

The first condition: the definition of criminal responsibility

The definition of criminal responsibility consists of two main parts, responsibility and criminality, each term will be defined separately.

1. The definition of responsibility

1.1. linguistically:

foreign language dictionaries explain the concept of responsibility as “the case in which the guilty person bears the consequences of his actions, and in order for the responsibility connected to him to be characterized, two requirements are looked for: ability and logicity. The process must adhere to the conditions and pillars known to the person responsible, and this confirms his endowment with the conditions of awareness and consciousness” which are found in “the person who is credible, has a good reputation and is able to fulfill his obligations.”¹

1.2. Metaphorically:

responsibility is generally defined as “the culpability of every person who committed something that requires accountability. If this matter did not cause harm either to the individual or to society despite its violation of legal rules, in this case, the person does not bear the complete responsibility. The responsible person is the person who accepts consequences of his/ her actions”² Responsibility

is also defined as "the principle by which everyone accepts the consequences of their actions."³

2. Definition of criminality

2.1. Linguistically

Definition of the term crime: From a linguistic viewpoint: a concept that means a felony, which is a person's guilt, and dissent. A person who commits a felony or a crime against himself and his society, or guilt against himself and society. A criminal is a person who perpetrated a felony.⁴

2.2. Metaphorically:

crime is that act that causes harm to oneself and others, and it is every forbidden act whose inviolability has been established because of the offense that it inflicts.⁵

THE SECOND RESEARCH PROBLEM: CONDITIONS FOR ESTABLISHING CRIMINAL RESPONSIBILITY

By extrapolating to the texts of Articles 49, 48, and 17 of the Algerian Penal Code, we conclude that the two elements of eligibility and freedom of choice must be met, in order to attribute criminal responsibility to anyone who committed a crime bearing the consequences of his actions.

1. Criminal ability:

Criminal ability is the state in which the accused has motive and is an adult at the time of committing the criminal act. These two are considered the foundations of free will and awareness, as stated in the text of Article 31 of the Rome Statute, which mentioned the two cases of incapacity and summarized them in insanity and young age.⁶ They are all the personal qualities or psychological factors necessary for the accused in the criminal incident that he committed voluntarily and consciously.

The definitions of criminal ability ranged among jurists, some of whom defined it as "those personal qualities and psychological factors necessary for the person involved in the criminal incident that he committed out of will and full awareness, while it was defined as a person's ability to understand the nature of his actions and assess their consequences, and it was defined as the nature of the doer With all of his mental capacity at the time of the offence."⁷ Based on the previous definitions, it becomes clear to us that criminal ability is the core of

responsibility; thus, it is not possible to hold a person who is not qualified to be held accountable.

Supporters of the traditional doctrine view freedom of choice as one of the most important foundations of criminal responsibility. A normal person, given the various reasons that conflict with his behavior, may answer some of these conditions, but not others, and thus s/he may direct will towards the path of crime or towards the path of respect for the law and this requires that he has a state of awareness and differentiation and then freedom of choice, if he is aware that the act is an element of the crime, and he has the freedom to commit this act.⁸

The philosopher "Cesari Bakaria" is considered as one of the pioneers of this school of thought. He was passionate about the philosophy of freedom advocated by "Montesico and Rousseau" and others for that. He attacked the rules that govern brutal, cruel and immoral behavior, and is concerned with the role of moral rules instead of criminalization and punishment and believes that the state should shorten Criminal responsibility on any person who contradicts the rules of morality and the interests of society at the same time, and limiting it to the morally responsible offender, i.e. the offender who has his conscience and freedom of choice, provided that there is a ratio between the seriousness of the crime in terms of morals, and the punishment such as what happens between punishment and crime , thus it lists the penalties according to the offender's distance from morality, then decides to initiate a lesser penalty by a perfect act, and to participate in a lesser penalty than the original act.⁹

The second condition: the holders of criminal responsibility and the stand of the Algerian legislator in this regard.

First subsection: holders of Criminal Responsibility

There is still a difference in the issue of criminally questioned people according to criminal law jurists. Most of them focus on the fact that criminal matters are applied to a real person, due to his/her possession of will and awareness, while others do not stipulate the truth of the person in accountability.

1- The natural person

The concept of the natural person nowadays is different from what was prevalent in ancient times, because the nature of the natural person is respected by all modern laws. Thus, the legal personality, as a social being, and the basis of the law which is the existence of the natural person and the solution of his problems in regulating his affairs. The former is the person who is distinguished

from all inanimate beings and things by his conscious mind and free will, so that everyone who is considered a physical person according to the law has the ability to acquire rights and bear obligations.¹⁰

2- The legal person

Legal legislation has left defining the legal person to the jurists, who, gave several definitions of the legal person, including what was presented by Professor Tawfiq Hassan Farag, who said: “The legal person is that group of funds or persons that aim to achieve a specific purpose, and have the legal personality that was admitted and governed by the law, and have its independent entity, whether the constituents or those who allocate funds.”¹¹

Dr. Ammar Boudiaf also defined it as follows: “It is that group of money and people that come together to achieve a specific goal, bearing the legal personality, and is an entity that has special devices that perform a specific function and this idea produces effects. From the point of view of the law, this person has the capacity of concluding contracts.”.

In addition to that, they have a private financial bond, gaining litigation capacity, this idea was discovered to grant legal personality to groups of people and money either in private or public law.¹² So that it is divided into private moral persons that belong to individuals such as associations and companies, and public moral persons, some of which are regional, such as governorates, the state, districts, and administrative units, and others are attached to the interests of public companies, institutions and universities.¹³

Second subsection: The stand of the Algerian legislator on criminal responsibility

Examining the provisions of Articles 49, 48, and 47 of the Algerian Penal Code, we find that the Algerian legislator has denied responsibility, when freedom of choice and criminal responsibility were not given by denial, and did not give a definition of it, but rather kept the definition to jurisprudence and law experts.¹⁴

This is what most of the legislations have adopted, leaving the definitions to jurisprudence and law commentators. Among these definitions are the following: Dr. Abdel-Qader Odeh defined it as “every human being who is aware of the meanings of the forbidden actions that he performs by his own choice, and he must bear their consequences.”¹⁵ And he also defined it as “the legal characteristic that the taxpayer takes to become accountable for what he has done of violating the authorized person who is attributed to him.”¹⁶

In addition to that, It is also defined as “everyone who is aware of the meanings of the consequences of their actions that they committed by their own volition, which are criminally prohibited, and involve them personally, and that recording the penalty is in the first definition or prohibited acts as in the second definition.”¹⁷

All in all, we find that the Algerian legislator was correct in that he did not put a definition of criminal responsibility in the Penal Code like most legislation, but left it to the jurists and legal commentators, and only mentioned cases of lifting criminal responsibility for those who lack awareness and will, such as the insane, the minor, the unaware and the compelled, but we ask that the explanations of the law which were converged in their views on a definition of criminal responsibility, which they summarized in the fact that an adult, sane, aware, who has a behavior criminalized by the law, asks for a full penal accountability and inflicts on him an appropriate penalty determined by the law.

THE THIRD RESEARCH PROBLEM: BARRIERS TO CRIMINAL RESPONSIBILITY

The impediments to criminal responsibility are the cases that relate to the offender and his will, and then strip him of the ability to differentiate between right and wrong and freedom of choice, while the act in itself is illegal from a legal point of view. Such as coercion, drunkenness, etc., and others are related to legal capacity such as insanity, so that criminal responsibility at the domestic and international levels cannot be borne by the one who committed the criminal act, unless at the time of its perpetration he had criminal capacity, and by that capacity we mean that the person who committed the act at the time it was done has his mental powers, which are the mainstay on which consciousness, awareness, and will rest.

The first condition: insanity and young age

This is called abstention from responsibility due to lack of capacity, which is absent in cases of insanity and young age.

Subsection one: insanity and its effects

1- Insanity

When extrapolating the text of Article 47 of the Algerian Penal Code, which states that “there is no penalty for a person who was insane at the time of the commission of the crime, without prejudice to the last paragraph of the text of Article 21, we find that the legislator did not define insanity, but left to jurisprudence and legal commentators the definition of insanity.”

While insanity was defined as “a scourge that may be with a person from birth in which he has neither reason nor discrimination,” and insanity was also defined in the criminal law. It catches up with the mind and leads it to do what contradicts the mind and nature.”¹⁸ Insanity is also defined as “the disappearance, disorder, or weakness of the mind, a definition that includes insanity, dementia, and other pathological and psychological conditions that cause or lead to lack of awareness.”¹⁹

2- The Effects Of Insanity

According to Article 47 of the Algerian Penal Code, “there is no penalty for who was insane at the time of the commission of the crime,” it is clear from the text of the aforementioned article, that the Algerian legislator did not explicitly distinguish between the impediments to responsibility and the impediments to punishment, where we find in all criminal legislation that insanity is considered insanity liability impediments.²⁰

While some articles are limited to insanity in its own sense, such as the Algerian, Lebanese and Syrian laws, and therefore they are the narrowest laws in the field of mental illness and their role in responsibility, and most of them have taken that insanity is related to impairments that weaken or destroy cognition.²¹

Subsection two: young age

This legislation is concerned with children going about in dividing the different stages of childhood, so that it separated them and distinguished them from others, of which it was divided into four stages and some of them divided it into three and some of them divided it into two stages. The legislator must link this responsibility to awareness, so the responsibility will be non-existent at the

beginning of life due to the lack of discrimination and awareness, to start incomplete in its second stage, until the completion of the eligibility to group with it the criminal capacity.²² While we find that the Algerian legislator determined the gradation of responsibility and age in three stages, namely:

The first stage: the stage of absence

He set it explicitly in the text of Article 56 of Law 15-12 related to the protection of the child, "A child who has not completed ten (10) years shall not be subject to criminal prosecution".²³

The second stage: the stage of protection and discipline measures

For a child between the age of ten years and thirteen to commit a crime, he shall be subject to measures of discipline and protection according to Law 15-12 in Article 57.²⁴ Article 58 F1 of Law 15-12 stipulates the following: "It is forbidden to place a child from 10 to 13 years old in a penal institution, even temporarily."²⁵

The Algerian legislator followed what most of the legislations took, considering the young deviant a victim who needs treatment and care, and did not consider him a criminal deserving of punishment, regardless of whether he was a source of the criminal act or was exposed to deviation. If any of the conditions are missing, the indistinguishable minor, whether in jurisprudence or Algerian law, negates the responsibility, while the discerning minor has some responsibility.²⁶ Article 70 of Law 15-12 states: "A juvenile judge or an investigative judge in charge of juveniles may take one or more of the following temporary measures:²⁷

- the legal guardians or any person from the family who is trustworthy receives the child,
- Taking care of the child through the institutions responsible for helping children.
- When necessary, place the child according to the system of supervised freedom, or place him/her in centers designated for the protection of delinquent children, and temporary measures are subject to review and change.

Likewise, Article 87 stipulates, "The Juvenile Department may, if the violation is proven, order the reprimand of the child or sentence him to a fine in accordance with the provisions of Article 51 of the Penal Code. This is excluded and for children from ten years of age until thirteen years of age, it is only a matter

of reprimand when necessary, otherwise the case belongs to the system of freedom of control in accordance with this law.”²⁸

The third stage: the mitigating liability stage

Article 58 F 2 of Law 15-12 states that: “It is prohibited to place a child between the ages of thirteen to 18 years in a penal institution, even temporarily, unless this measure is necessary and it is impossible to take any other measure, in which case the child is placed in a center for re-education and reintegration in Juveniles or penal institutions, when necessary.”²⁹

Article 49 states that "only protection or education measures shall be imposed on a minor who has not completed thirteen. Violations are only reprimanded, while mitigating penalties, protection measures or education are for minors from thirteen to eighteen years of age.”³⁰

Considering that the legislator determines the age of eighteen for his complete mental maturity, Article 2 of Law 15-12 “The penal age of majority shall be full eighteen years,” and the same article stipulated that determining the age of criminal majority should be the age of the delinquent child on the day the crime was committed.³¹

If a minor reaches the age of thirteen and commits a crime before he reaches the age of criminal responsibility, the law has the right to subject him to lenient penalties or measures of upbringing and protection as it deems appropriate for him.

The application of protection or education measures does not deem a new matter, so these measures are applied even to those who have not reached the age of thirteen, but what is new is the possibility of applying reduced penalties, which means that the legislator is concerned only by the free choice of the minor and entails a criminal penalty for him, even if within the limits indicated by Article 50, is as follows:

If it is decided that a minor who has reached the age of 13 to 18 be subject to a criminal sentence, the penalty to be imposed on him shall be as follows:

- The sentence of ten years instead of twenty years in the event that an aggravating penalty was imposed on him, whether life or death.
- If the penalty is imprisonment or temporary detention, he shall be sentenced to imprisonment for a period equal to half the period for which he should have been sentenced if he was an adult.

Article 51 BC was added with the provision for violations, allowing the minor to be sentenced to either a reprimand or a fine. Thus, we see that the law requires mitigating the penalty for the minor in the text of Article 50 qq. We also see that the text did not restrict the judge and did not require him to reduce the fine.

And the situation with regard to the responsibility of groups between fifteen and eighteen, where the legislator decided that their mental faculties, though directed towards maturity, have not yet reached full maturity, so he decided to subject them to the principle of imposing regular penalties, even if reducing them is obligatory in a manner commensurate with the deficiency that is still in their faculties, as it permitted the application of some Measures instead of punishment.³²

The second requirement: coercion and its types

We will deal with this requirement with coercion as a deterrent to criminal responsibility and its types.

Section one: coercion

Referring to the text of Article 48 of Qatar's qq. "There is no penalty for the one who was forced to commit the crime by force that he has no authority to pay."³³ It is clear to us that the Algerian legislator did not put a special definition of coercion, but rather referred to it to make it one of the reasons for the impediments to criminal responsibility. Whereas, coercion is defined as "forcing a person unjustly, with overwhelming and irresistible power, to commit an act punishable by law."³⁴ .

Section two: Types of coercion

Algerian law commentators divided coercion into two types, physical and moral.

1- Physical coercion:

The jurists differed in setting a comprehensive and comprehensive definition of physical coercion, as some defined it as "every physical force directed at a person who cannot resist it that leads him to the execution of his will and his choice and leads him to commit a crime, as others see that "the coercion is material, when it hinders the person's will to expose it." For direct physical force or an act that the person cannot resist or avoid, for example, if the offender holds the victim with both hands and ties him with a rope, presses his neck tightly, or shows him a gun, dagger or knife..."³⁵

Physical coercion is expressed as direct violence against the body of a person subject to coercion that leads to a complete lack of will, or these physical restrictions in which a person deliberately engages against another person who physically deprives him of his will, and in absolute terms in the following positive and negative actions.³⁶

2- Moral coercion:

Unlike the compulsion caused by a material factor, moral coercion cannot be resisted, because it results from the pressure applied to the will of the actor, that is, the moral coercion is represented by the moral force, which weakens the will of the compelled in such a way that he loses the freedom of choice, and thus the forced actor absolutely loses his will, as in Material coercion, and restricts the perpetrator's freedom, and therefore, it can be said that the effect of moral coercion is reflected on the moral pillar of the crime without extending to its material pillar, and is subject to the same conditions of material coercion with the difference in meaning. In moral coercion, it is also necessary that there is no coercive force or there is no way to pay it, in other words, if the impeller chooses the crime, he cannot avoid it or choose anything else.³⁷

CONCLUSION:

From the foregoing, we conclude that everyone who is not worthy of criminal accountability is neither questioned nor punished for the consequences of his criminal acts, for eligibility is a condition for a person to bear the consequences of his actions, and it is required to raise this criminal responsibility that each crime attributed to the perpetrator materially or morally, and the penalty must be imposed after the trial. It is based on freedom of choice and complete awareness, and for its establishment of criminal capacity, it requires both awareness and freedom of choice. This criminal responsibility may be dropped from the person for reasons called "impediments to criminal responsibility." The perpetrator's awareness of the act he does without his choice or absolute will, such as compulsion or if he was young or insane and was. The act is legally prohibited, and that criminal responsibility is absent for him, while the lack of awareness and discrimination decreases and does not negate criminal responsibility. Based on all mentioned above, we find that the Algerian legislator did not set a comprehensive concept of criminal responsibility and did not remove the confusion that exists in the impediments to responsibility, so we put these recommendations in the hope that you will find a valid condemnation.

Recommendations:

- The Algerian legislator should put in place legal texts that protect people under duress.
- Codify and set appropriate penalties for users of coercion.
- The Algerian legislator urged that juveniles be specified by a special law, and this is what is in place in some Arab countries, such as Egypt and the Emirates.
- The legislator must remove the confusion that occurs at the minimum age in signing security measures on the undistinguished minor and identifying him.
- Enact laws through which everyone who holds a legal capacity can be prosecuted for crimes committed by them or their representatives.

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