

# THE EFFICIENT ROLE PLAYED BY CRIMINAL PRECAUTIONARY MEASURES IN CONTAINING COVID-19 PANDEMIC

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## ABSTRACT

*It is a time alike no other, with the outbreak of COVID-19 in December 2019 in Wuhan, China, the world has been in a state of constant adjusts. To accommodate the high spread rate that COVID-19 possesses, it is of great importance to employ the globalization and advancement in technology in the fight against the virus, as well as in order to keep up to its advancements. Law, especially criminal law, has an effective role in collaboration with the sector of public health in such combat. This collaboration is based on the principles of public health necessity, sensible and proportionality, as well as national and international transparency in criminal legislation's. Such employment will depend on the means and rate by which the disease is spread, and how serious it is. This paper will discuss the distinctive role played by the criminal law in containing and controlling the COVID-19 virus through precautionary measures accompanying the spread of the disease*

**Keywords:** COVID-19, Criminal, Law, Precautionary Measures, Pandemic, Controlling, WHO, IHR.

## INTRODUCTION

Infectious diseases are transferred between humans, which put everyone at risk seeing as they may be transmitted through direct and indirect contact. Particular types of bacteria, fungi, viruses, and parasites may cause infectious disease. Coronaviruses, a family of viruses infectious to both humans and animals, cause various illnesses such as the common cold as well as the Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS), both often leading to pneumonia (Wenjie et al., 2020; Berkelman et al., 1994).

On 31 December 2019, a new strain of the Coronavirus (COVID-19), initially classified as pneumonia, was reported by Chinese authorities to the World Health Organization (WHO) following its outbreak in Wuhan. Being that it is a new virus, rapid and wide spread is viable due to the lack of immunity in the population, and the lack of an effective vaccine to date. According to present data, risk of infection is to all brackets of the population, and not all infected individuals exhibit symptoms. Majority of those infected experience mild-to-moderate yet self-limiting illness, alike the seasonal flu (Yanping, 2020; Wang et al., 2020; Chan et al., 2020).

The human being life has been change in deferent shapes after the spread of COVID-19. Law, especially the criminal law played an effective role during this pandemic. The outbreak of COVID-19 has made new open doors for criminals. This makes it necessary to confront this matter with criminal precautionary measures as an initial step to try to control and contain the spread of this epidemic from the spread. This paper will discuss the role of criminal law in containing the spread of the epidemic in the most of the Middle East countries especially Saudi Arabia as a successful example.

## General Background about Covid-19

On 31 December 2019, the health commission of Hubei province, china, initially announced a number of pneumonia cases. 27 cases were initially reported, but upon revision on 11 January 2020, amounted to 41 cases, seven of which severe and one death. Reportedly, sum of patients had radiographic ground-glass lung changes; normal-to-lower than average white blood cell lymphocyte, and platelet counts; hypoxemia; and deranged liver and renal function. The Huanan seafood wholesale market, reported by journalists to be vending freshly slaughtered game animals, was a geographical link between most patients. Said patients, upon being tested by the Chinese health authority, tested negative for common respiratory bacteria or viruses, later testing positive for a new coronavirus (Jasper, 2020; World Health Organization, 2020).

On 7 January 2020, the virus was identified as a new coronavirus, with genomic classification and test method development developed. All suspected cases found via active testing and retrospective review was tested. With the ruling out of other respiratory pathogens, such as Severe Acute Respiratory Syndrome coronavirus (SARS-COV) and Middle East Respiratory Syndrome coronavirus (MERS-COV), the novel COVID-19 being distinct from both SARS-COV and MERS-COV, is more contagious then both as proven by current transmission rates and cases (Tan et al., 2020).

COVID-19 maybe not harsher than MERS and SARS as early cases suggested. Whilst, the quick spread of the virus and the increasing number of infections between humans from the starting of the illness, based on this evidences COVID-19 is strongly more contagious. On 20 January 2020, an amendment to the Chinese “*National Infectious Diseases Law*” was made for COVID-19 to be characterized as a Class B notifiable disease. The “*Frontier Health and Quarantine Law*” has also been amended to support the COVID-19 outbreak response efforts. Limitations as to the movements of people from and to Wuhan were imposed by the Chinese government on 23 January, two days later, announced were the highest-level of commitments, all sectors were mobilized to cater to the epidemic and in the prevention of the further spread of COVID-19. Characterization of the epidemiological characters of COVID-19 is vital for the development and employment of effective control policies.

## RESULT AND DISCUSSION

During the history of its growth, public health and criminal law are closely linked by issues such as mental health (Rogers & Shuman, 2005), AIDS (Weait, 2007; Rogers, 2005), alcoholism, intoxication (Nemerson, 1988), euthanasia (Banović & Turanjanin, 2014; Dimovski et al., 2020; Banović et al., 2017; Turanjanin et al., 2018), and finally, dangerous infectious disease. We must recognize that infectious diseases have long marked the creation of communities on a global scale. This is the reason why nations intervened to establish the World Health Organization, in which international law played an undeniably prominent role. International law has historically played a major role in the global surveillance of infectious diseases, and during the nineteenth century, international law played a dominant role in coordinating nationally consistent quarantine regulations for European countries; Facilitating the exchange of epidemiological information on infectious diseases; establishing international health organizations; the standardization of observation (David & Fidler, 1996). Today, infectious diseases have continued to reshape the boundaries of global health governance through legally binding systems and a “*non-binding law*” negotiated and adopted within the mandate of the multilateral institutions-WHO, the globalization of public health has used international law as an

indispensable tool in global health governance aimed at the reduction of human exposure to the burden of mortality and suffering caused by infectious diseases (Klein, 2020).

The United Nations are continuing to emphasize the importance of the WHO, and its role in giving instructions in regard outbreaks and responding to them, as well as emphasizing the continued importance of the International Health Regulations as a global instrument to protect against the spread of infectious disease at an international level (World Health Organization, 2005).

The International Health Regulations, or World Health Organization (2005), reflects a 196-country agreement that includes the entire member states working together in order to achieve the sought standards of public health. Countries have decided through IHR to develop their capacity to track, assess, and monitor public health incidents. WHO continues to play a supporting role in IHR, and along with its partners, helps countries to develop said capabilities.

Despite the prominent role played by the International Health Regulations in reducing the spread of infectious diseases, including COVID19 inevitably, it once again highlights the role played by the national laws in reducing the spread of the virus. This role is very clear in Article 31 that emphasizes the role of the national legislations in controlling the spread of the disease, stating:

*“If a traveller for whom a State Party may require a medical examination, vaccination or other prophylaxis under paragraph 1 of this Article fails to consent to any such measure, or refuses to provide the information or the documents referred to in paragraph 1(a) of Article 23, the State Party concerned may, subject to Articles 32, 42 and 45, deny entry to that traveller. If there is evidence of an imminent public health risk, the State Party may, in accordance with its national law and to the extent necessary to control such a risk, compel the traveller to undergo or advise the traveller, pursuant to paragraph 3 of Article 23, to undergo (World Health Organization, 2005)”*

Thus, emphasis should be placed on the role national laws played in reducing the spread of COVID-19. Nations around the world should introduce whatever was set out in the international health regulations and build their internal laws in line with all that the World Health Organization had already issued. This is not based on what was mentioned in the international agreements. Rather, it is necessary to work on issuing internal legislations in which the international health regulations do as previously confirmed by the World Health Organization on many occasions.

However, most countries, especially the Middle East, have yet to enact legislation which limits the spread of infectious diseases independently. This has made the situation more so complicated since the outbreak of COVID-19. It has raised this concern in regards to the law that must be applied if any novel legal situation arises on the scene due to the outbreak of the disease. Are existing laws still valid? Or is it necessary to issue new laws specific to each case. This is in contrast to what most other countries, especially those European countries, have done by issuing much legislation in an attempt to limit the spread of the disease.

Criminal law played a fundamental role during this crisis in reducing the ramifications of COVID-19. Whereas, Criminal Law urges individuals to refrain from doing what is in violation of the law for fear of the prescribed penalty in the event of a violation. Where, through criminal sanctions, individuals bear their actions that have been declared unlawful. The focus is on individual responsibility for his actions. Countries have stipulated and linked criminal penalties to the violations of any laws issued during this crisis that is in order to ensure that individuals will abide by the regulations, and to force citizens to follow the laws set out to control the spread of COVID-19 to overcome this sensitive period of crisis (Hanne, 2016).

The appropriate role of criminal law in national efforts to prevent transmission of COVID-19 and other infectious diseases is often controversial. Public health laws often contain penalties for failing to comply with public health orders issued by the authorities, or for the participation in behaviours that endanger public health. However, policymakers should not ignore the possibility of unintended consequences which may arise from these criminal laws.

As previously mentioned, the role of the criminal law in light of this pandemic, we find that many countries in the Middle East have done and made sure to link their criminal laws with most procedures and precautionary measures that took place during the crisis, in an attempt to compel individuals to follow these measures without prejudice to them. You can find, for example, Algeria has in most cases referred to the provisions of its current criminal law and amended its provisions to contain the crisis in relation to breaching any measures related to the epidemic. In addition, the articles of the new Penal Code stipulated that anyone who deliberately publishes or promotes false news by any means that violates public security and order shall be punished with imprisonment from one to three years, *"provided that the penalty is doubled in the event of recurrence."*

Violation of the quarantine has also become a crime that has been severely punished and considered life-threatening. The law stipulates that anyone who endangers "the life or physical integrity of others at risk is punished with imprisonment from 6 months to two years" and the punishment is raised from 3 to 5 years *"if committed during periods of quarantine or during a natural, biological, technological or other disaster"*.

Tunisia issued a decree of the Prime Minister No. 9 of 2020 dated 17 April 2020 relating to the enactment of a violation of the curfew and its restriction, comprehensive health quarantine and special measures for persons who are infected or suspected to have COVID-19. Where anyone who violates the rules of curfew or the overall quarantine related to preventing the spread of infection from COVID-19 is penalized with a fine. It was set to be fifty dinars. The fine shall be doubled in case of recurrence. As stipulated in Chapter 5, whoever does not comply with the measures mentioned in Chapter 3 of this decree shall be penalized with a fine of between 1,000 and 5,000 dinars. And doubled in case of recurrence. The implementation of the punishment stipulated in this chapter does not preclude the implementation of the penalties mentioned in articles 217, 225 and 312 of the Penal Code and in the second paragraph of Chapter 18 of Law No. 71 of 1992 of July 27, 1992, referred to above, if non-compliance is associated with suspicion of transmitting the infection to others.

In Morocco, a state of health emergency was declared in mid-March, the authorities arrested 28701 persons across the country, of these, and 15545 were referred to the judiciary after their detention. According to a statement issued by the General Directorate of Security, the penalties for violating the state of health emergency reach three months' imprisonment and fines of up to 1300 dirhams. On Sunday March 22, 2020, the government ratified the legal texts related to the state of health emergency, both those related to the age of the case and the announcement procedures. It is related to the emergency that was applied in the country due to the spread of COVID19.

With regard to a draft decree of Law No. 2.20.292, related to enacting provisions related to the state of health emergency and the procedures for announcing it, the government considered that this text is part of the urgent precautionary measures taken by the public authorities to reduce the spread of the pandemic of the "COVID 19" virus. It is lawful for public authorities to take all appropriate measures, as well as to declare a state of health emergency in any entity, labour, region, group, or more, or as a whole throughout the national territory when

necessary. When the lives and safety of persons are threatened by the spread of an infectious disease, urgent measures are required to be employed in order to limit the threat and whatever consequences may arise in light of the pandemic. According to this project, anyone who violates orders and decisions issued by public authorities in this regard shall be punished with imprisonment from one to three months and a fine It ranges between 300 and 1300 dirhams, or one of these two penalties, without prejudice to the most severe criminal punishment.

As for Egypt, the Public Prosecution issued a lengthy statement through which it touched upon a set of penalties, indicating that whoever exploits the crisis, the country will face everyone who violates preventive measures with severe penalties, stressing that it will apply the law without compromise on crimes of commercial fraud, stores and vendors in violation of the set curfew. Initially, the Public Prosecution issued a statement in regards to the violation of curfew or moving without necessity related to the emergency needs and student gatherings, private transportation, and the opening of specific or traded shops or craftsmanship Cafes, amusement parks, restaurants, clubs, youth centres, or gyms out of legal dates. Where the violator is punished by imprisonment and a fine of four thousand pounds, according to the law of the state of emergency and a presidential decree the Cabinet in this regard). Prime Minister Decision No. 1069 of 2020 (The decision stipulates, in its article 14, that without prejudice to any more severe punishment stipulated by the laws in force, whoever violates the provisions of Article 11 of this decision shall be punished with a fine not exceeding four thousand pounds, and anyone who violates the rest of the provisions of this decision shall be imprisoned and with made to pay a fine not exceeding four thousand pounds, or one of these two penalties). Prime Minister Decision No. 1069 of 2020.

In conclusion, we cite example of the best country in adopting various precautionary measures appropriate for each individual case, other than the transparency enjoyed by them, which attracts the attention of the world. As the Kingdom of Saudi Arabia activated the role of criminal law in combating the consequences of the COVID-19, in a very strikingly way and has achieved clear success in its attempt to control the epidemic of COVID-19. It stipulated multiple and different penalties, in terms of its severity, against violators of the preventive measures and procedures taken to confront the pandemic of COVID-19. The punishment is set to prescribe to the violation that took place, and this has been easier to navigate in light of the no-tolerance for violation way adopted by KSA, making law implementation more stringent. The punishments not only include individuals, but some penalties were imposed on institutions as well. Where a financial penalty of no less than 1,000 riyals, no more than 100,000 riyals, or imprisonment for one month to a year or both, was imposed. With the closure of institutions for a period not exceeding 6 months, an offence is constituted by the breach of any of the preventive measures set to confront COVID 19.

It also stipulated penalties for anyone who violates the quarantine instructions with a fine of no more than 200,000 riyals, or imprisonment for a period not exceeding two years, or both, and a doubling the amount of the penalty in case of recurrence. Whatever institutions, those whose nature of work or circumstances do not require obtaining a permit or permission to move around at the time of the curfew, is penalized with a fine of no less than 10,000 riyals and no more than 100,000 riyals, or imprisonment for one month to a year, or by imprisonment and the fine together, in addition to that, anyone who broadcasts rumours about the new “COVID-19” pandemic through social media platforms and its applications or their circulation, or publishing false information that could cause panic, or incite the violation of the relevant procedures and measures, shall be punished with a fine of no less than 100 thousand riyals, and no more than one

million riyals, or imprisonment for a period of no less than one year and no more than five years, or both imprisonment and a fine.

Within the same vein, WHO has lauded the strong steps taken by Saudi Arabia to protect its people and the experience and knowledge that the country has gained at being at the forefront of fighting this new infection can benefit the rest of the world. In a press statement related to this novel Coronavirus, WHO announced: *"The emergence of this new coronavirus is globally recognized as an important and major challenge for all of the countries which have been affected as well as the rest of the world. The Ministry of Health of the Kingdom of Saudi Arabia has recognized this and invited WHO to help them assess the situation and to provide guidance and recommendations. WHO is pleased to be here to work together with the Kingdom of Saudi Arabia (Saudi Health Ministry)"?*

### RECOMMENDATIONS

To resolve and develop the current situation, we believe that there is a need to activate the role of the criminal law more in combating generally the infectious diseases, by encouraging those in charge of developing public policies and legislations, especially criminal ones, and all stakeholders in the countries concerned, especially Middle Eastern countries, there is a need to issue special criminal laws or to amend its current criminal laws to include combating infectious diseases that are not stipulated in the current laws. And how to confront the spread of the infectious diseases, and the precautionary measures adjuncts to in cooperation with the health sector. This is due to the necessity of controlling this matter after imposing itself on the legal scene, as infectious diseases have become apparent periodically and not as an exception or rare. Therefore, they must be combated and addressed by appropriate and consistent laws that are periodically modified to suit the place and the time applied.

### CONCLUSION

Criminal law played a distinctive role in controlling the pandemic of COVID-19. All countries previously mentioned employ their criminal laws to achieve their goals. These goals being the preservation and promotion of public health, as well as the protection of human life from infectious disease and the peril caused by it. Improving living and work conditions in a manner that guarantees human physical and moral well-being and this constitutes an essential factor in the country's development, which is accomplished by developing preventative measures, and providing protection which falls in line with the needs of the population. It is noticeable that respect for these laws effectively contributes to limiting the widespread of this deadly epidemic, this is made clear when seeing the human and financial losses suffered by countries that did not address the disease by activating legal procedures, and employing preventive measures.

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