

Penal liability of wrongful contaminated blood transfusion: a comparative study

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Abstract:

Through this study, we aim to shed light on the legal characterization of wrongful transfusions of contaminated blood in various penal legislations. The study also highlights the position of the Algerian legislator on this matter, whether the transfused blood is contaminated with a chronic disease, such as AIDS or malaria, causing harm to people's life, or with a non-chronic disease, such as expired spoiled blood or not matching the recipient's age, causing harm to his physical integrity. All this is for the sake of determining the nature of criminal liability resulting from it and to ensure that the perpetrator does not escape the criminal penalty.

Keywords: contaminated blood, penal liability, chronic disease, non-chronic disease, fault.

Introduction:

Medical sciences have significantly advanced worldwide, in various fields, where they were interested in studying all parts of the human body, and were able to reach therapeutic means that are directly related to his life. Among these

therapeutic means, we find the blood transfusion process, which went through many stages that occupied the scientists' minds, considering blood as the nerve of life, its artery and lifeline when transferred to a person in need.

Since blood transfusion is a humanitarian and therapeutic process that has many advantages in saving human life, it is not in fact free from risks that may often lead to a real tragedy in the event that the transfused blood is contaminated with a blood disease. These negatives that are not limited to health problems that leave behind innocent victims whose fault was nothing but trust in neglected souls who wrongly transmitted to them fatal diseases, but rather go beyond it. to legal problems that lie in how to hold perpetrators accountable for criminalizing the therapeutic method and determine the appropriate punishment for them.

Unintentional crime is no longer a side or exceptional phenomenon, but has become a terrible reality that affects us daily, at every moment and from every side, as it has increased very significantly and in all fields, so that the amazing numbers and the huge toll indicated by various reports every day have reached similar disasters, due to the large number of victims. The unintentional transfusion of contaminated blood is among the most important causes of these disasters, the outcome of which is often known only to the families of the victims and the judicial authorities.

Since the process of transfusion of contaminated blood erroneously takes a different color and character and far from the familiar unintentional crimes, criminal legislation has differed on the legal classification of it and raising the criminal liability of the committees and determining the appropriate penalty; there are those who resorted to issuing special legislation and there are those who only applied the general rules. Therefore, the problematics that arise themselves are as follows: What is legal classification of the wrong transfusions of contaminated blood? How do we differentiate between medical error in practice and criminal error in the field of contaminated blood transfusion?

To answer these questions, we've divided our study into legal classification of transfusions of blood contaminated with a chronic disease by mistake and legal classification of transfusions of blood contaminated with a wrong chronic disease.

I. Legal classification of wrong transfusions of blood contaminated with chronic disease

The crime of manslaughter is one of the effects of ongoing industrial and technological advancements, which have recently increased very significantly, as they have become a terrible reality that affects individuals and threatens their lives and physical safety, at every moment and from every side. It has significantly worsened, especially in health sector, where it found its roots in recklessness, lack of care and health awareness by medical staff. The most important thing that confirms the validity of our words is the painful incident that killed a young child. Her fault is that she only sought health care and therapy. She was transfused with HIV-contaminated blood, but the absence of a special legislative text enabled the doctor to escape punishment under the cover of professional error.

1. A glimpse of criminal error "manslaughter"

The crime of manslaughter does not differ in the material behavior of its component from the crime of premeditated murder; any act or omission has the causal effectiveness to cause death, but what distinguishes between them is the moral element, which takes the form of criminal intent in premeditated murder; meaning that the behavior is committed with the knowledge and will of the offender. The manslaughter lacks criminal intent, where the offender's mistake is unintentional to be replaced by the error in the conduct of the offender; meaning that the behavior occurs as a result of a mistake committed by the offender without the will to commit it nor the will to achieve its result where it is committed by violating general or special rules, the observance of which would avoid the occurrence of harmful results to the interests and rights of others that are criminally protected.

1.1. Material Element of Manslaughter

Since murder is an attack on the human right to live, the object of the crime in manslaughter is the living person, regardless of his age, social or health status.

The material element in the crime of manslaughter is the material behavior that leads to the death of the victim, whether it occurred immediately after the assault or delayed for a period of time, the legislator did not specify certain deadlines so that it is sufficient to consider the behavior as a cause of death to be the cause of its occurrence, even indirectly, which is what the legislator referred to in the text of Article 288 of the Penal Code, which provides for "Whoever kills by mistake

or causes it". Therefore, the only condition that governs the physical behavior is to be a cause of death. (Adel Boudiaf, 2013, p.107) As it's mentioned above, the crime of murder is one of the crimes of free mold, and by referring to the text of the article, we find that the legislator did not specify a specific means to commit this crime, because the acts that would cause death are numerous and cannot be counted.

Order No. 66/156 of 08/06/1966 on the Algerian Penal Code, G.R.O. 49 of 11/06/1966, amended and supplemented by Law No. 16/02 of 19/06/2016, JR 37 of 22/06/2016.

The material behavior that the offender is held accountable for in the crime of manslaughter is expressed by the wrong material behavior in which the origin is that the law is not punishable alone, unless it leads to the death of the victim, because simply there is no attempt to commit a misdemeanor of manslaughter except for a special provision that criminalizes attempted murder, in accordance with the requirements of Article 31 of the Algerian Penal Code, which provides for "Order No. 66/156 of 08/06/1966 on the Algerian Penal Code, G.R.49 of 11/06/1966, amended and supplemented by Law No. 16/02 of 19/06/2016, G.R.37 of 22/06/2016". This is what distinguishes it from criminal behavior in intentional crimes, as the law punishes it without waiting for a certain result to be achieved as an attempt to the crime is, in accordance with Article 30 of the Algerian Penal Code. (Ibid, p.107)

1.2. Images of manslaughter

Considering the legal description of error, this behavior has been defined by jurisprudence as the failure of the actor to anticipate the result of his act and was able or duty to anticipate or anticipate and thought that he could avoid it. Therefore, we find that most of legislations tended to define the error elements, including the Algerian legislator, who only mentioned the elements of error in the text of Article 288 of the Penal Code, and identified them exclusively, following the approach of the French legislator, where it came frivolity, lack of precaution, negligence, inattention and lack of attention, Since the crime of manslaughter does not include the intention of the offender to commit it, it is the fault that constitutes the moral element of this crime. Therefore, when one of the elements of the error, mentioned in the text of article 288 of the Penal Code, is available, the moral element of the crime of manslaughter is established by the offender.

It is not considered a mistake in the crime of manslaughter, unless it contains one of the following images: recklessness, lack of precaution, negligence, inattention and non-observance of regulations. This is what prompts us to stand at these images and clarify them by dividing them into three categories. The first category contains recklessness and lack of precaution, both of which require positive behavior. The second one contains negligence and inattention, both of which require negative behavior. The third one contains non-observance of regulations.

The first category includes recklessness and lack of precaution, and in each of these two forms, the offender adopts a positive attitude in doing what he should not do, thus exceeding permissible actions to what is illegal and not allowed to do. (Lahsan Bousgaia, 2013, p.83)

1.2.1. Frivolity

It means a person's poor appreciation of his abilities and efficiency in carrying out a certain work, and often this person is deficient in skill or ignorant of what he must teach in practicing a particular profession or craft, which results in an ill-considered behavior that causes harm to others. What distinguishes this image is that it results from violating the rules of technical expertise required by practicing a particular profession or craft, such as the doctor who performs surgery without taking into account the simplest professional principles and scientific rules, and the nurse who injects The patient with penicillin without an allergy test, which leads to death. So, we conclude that frivolity lies in poor judgment, lack of skill and lack of management resulting from lack of caution. (op.cit, p.36)

1.2.2. Lack of precaution

It means breaching a duty imposed by law by ignoring the rules of precaution and foresight and not managing the consequences, so the offender undertakes a dangerous activity despite being aware of that danger and the effects that result from it and continues to do it without taking precautions that would not cause the harmful result, in other words, it is the mistake that the precautionary man does not commit, such as those who persevere in high speed with knowledge of the emergency malfunction on the brakes of the car, and the mother who sleeps near her little boy and turns against him and dies, Therefore, we find that lack of precaution can include all forms of error. (Adel Boudiaf, op.cit, p.110)

The second category includes negligence and inattention, and in both of these two forms, the offender adopts a passive attitude about doing what he is obligated

to do, and refrains from taking appropriate measures to avoid the occurrence of the criminal act and the harmful result. (Lahsan Bousqaia, op.cit, p.85)

1.2.3. Lack of attention

It means lightness and lack of focus that afflicts the offender, so he loses the necessary vigilance when carrying out a specific action, which results in damage to others, and therefore inattention is related to the mental ability of the offender to withstand the focus required by some work, which requires commitment to accuracy and continuous vigilance in completing and completing it without harm, and an example of this is the doctor who performs a lengthy surgery and suddenly loses his focus when hearing his colleagues talk about something that concerns him, so he cuts off the healthy organ instead of the diseased member.

1.2.4. Negligence

It is an expression of a negative attitude of will that includes an omission to take the necessary measures and precautions to avoid damage, and this picture often goes to the case in which the error results in refraining from practicing positive behavior that the offender should have taken, according to the dictates of the law, if he had taken it, the harmful result would not have occurred, for example, who digs a deep well and does not fence this open well or close it or point to it, and therefore we find that this image can include All error images. (Sonia Ben Taiba, 2001, p.36)

1.2.5. Non-observance of regulations

Regulations mean all laws, decrees, decisions, regulations, instructions, and even the rules of professional ethics, and therefore what results after that from this work of damage as a result of violating these regulations and laws is under the framework of error and evaluates the moral pillar of the offender. What distinguishes this image is that the judge does not look at the psychology of the offender to prove his error, but that the existence of the violation itself is evidence of the existence of the error, and therefore this violation becomes an error like other images. The violation of these regulations necessarily reveals the existence of the offender's fault, for example, if the offender violates the measures imposed by public security laws, traffic regulations, health regulations or public safety instructions.

- In the field of traffic, for example, the driver of a vehicle who violates a provision of the Traffic Law.

- In the field of institutions, for example, the lack of security and health control within the institution.
- In the field of health, we find that there are three errors: error in diagnosis, error in choosing medication, error in the implementation of treatment or surgery. (Lahsan Bousqaia, op.cit, p.87)

Based on the above, we find that the result in the crime of manslaughter is an involuntary result that the offender did not want, but he did not avoid it. The fact that the offender carried out the material behavior, that is, his will went to the act without the criminal result, that is, he did not intend to achieve the murder, he wanted the act without its result, but he could have avoided what was achieved by respecting the regulations or by precaution and care. Therefore, the occurrence of the result of the death of the victim cannot be linked to this behavior, but to the will that Failed to take the necessary measures and precautions while carrying out the behavior. (Adel Boudiaf, op.cit, p.108)

The same applies to intentional murder as the necessity of material conduct. The occurrence of death and the causal relationship between the material act and death, and because it is inconceivable that manslaughter occurred without proving that the damage was attributed to the behavior of the offender that caused the result, and therefore the causal relationship between the material act and death is to say whether the offender is responsible or not. Since the issue of attribution is an objective issue, the Supreme Court ruled that the trial judges must indicate in the conviction decision for manslaughter The causal link between the wrong behavior of the offender and the damage resulting from it, which seems simple, if the wrong behavior of the offender is the only one that caused the result, but the difficulty appears when other factors contribute to his side in the events of death. Sometimes these factors overlap in a way that even overshadows the behavior of the offender, cutting off his link with the result, and other times they share with him equally. In this case, the difficulty lies in separating those behaviors and searching for which one participated directly or indirectly in causing in this case. It is judicially well established that if several persons participate in a hazardous activity is sufficient to hold them all accountable for the same fault that led to death, whenever it is proven that there is a causal link between their conduct and the damage resulting from it, and there is no need to search for the direct or indirect cause of its occurrence. (Lahsan Bousqaia, op.cit, p.89)

The second requirement is the extent to which the crime of manslaughter can be applied to the incident of wrongful transfusion of blood contaminated with a chronic disease

The issue of transfusion of blood contaminated with a chronic disease is one of the most important topics, which has recently and remarkably increased, especially in third world countries, where there is a lack of health awareness in hospitals and members of the means and the necessary preventive measures to avoid infection or exposing others to it. (Amin Mustafa Mohamed, 1999, p.123)

Comparative positive legislation has differed in adapting this behavior, as there are those who have resorted to issuing special legislation, and there are those who have only applied general rules, but the absence of a special provision in the Algerian penal legislation that criminalizes this act has become a haven for criminals to escape criminal liability.

Subchapter I Image of manslaughter in the field of wrong transfusion of blood contaminated with chronic disease

The crime of manslaughter in the field of transfusion of blood contaminated with a chronic disease mistakenly assumes that the victim is a living and healthy human being and has not previously been infected with these deadly pathological viruses.

The material element of the crime of manslaughter in the field of transfusion of blood contaminated with a chronic disease in the wrong behavior where the offender transfuses blood contaminated with a chronic disease wrong to others, and here it is worth noting that there is no lesson in the offender may be infected with these deadly pathological viruses and may be a member of the medical staff and may be any other person who is not infected and not working in the medical field. (Amin Mustafa Muhammad, op.cit, p.123) With reference to the text of Article 288 of the Algerian Penal Code, we find that the legislator did not specify a means Certain for the commission of this crime, especially since the acts that may cause death are numerous and cannot be counted, and therefore blood contaminated with chronic disease can be considered one of these means, due to the serious damage it entails leading to death.

As mentioned above, the error is the legal description of material behavior and is represented in every act or voluntary abandonment that is inconsistent with the caution required by social life from a careful man, which lead to the fact that the offender did not want, but he could have avoided them, and therefore the wrong behavior in the field of transfusion of blood contaminated with a chronic disease

takes one of the five known forms of error specified exclusively in the text of Article 288, which are recklessness, lack of precaution, negligence, inattention and lack of consideration Systems.¹

First, recklessness in the field of transfusion of blood contaminated with chronic disease

It is the perpetrator doing an act without observing the rules and technical principles required by practicing a particular profession or craft, for example, if a medical worker makes a mistake in conducting tests that detect deadly pathogenic viruses that infect blood or one of its derivatives as a result of lack of accurate knowledge of the vocabulary and methods of work for laboratory viral examination. (Lahsan Bousqaia, op.cit, p.84)

Second, lack of precaution in the field of transfusion of blood contaminated with chronic disease

It is the knowledge about the nature of the offender's act and its damage on others. Despite that, he goes on to do it, and does not care, and does not take precautions that would not achieve these effects. Jurisprudence calls it the conscious or insightful error, for example, the error of workers in the virus testing laboratory, where the offender realizes that conducting the required tests on blood units will not give accurate results, due to the lack of efficiency of the devices used in the examination of their foot or frequent use and with This uses these devices without taking any precautions to prevent harm, for example, informing the authorities at the blood transfusion center or the Ministry of Health about the inefficiency of the devices and their inability to give accurate results. (Ali Abdel Halim Mohamed Mansour, 2006, p.133)

The same applies to an injured offender who sees signs of illness appear on his body and yet donates his blood without taking the necessary measures of blood tests, as well as the injured offender who uses dialysis machines in a public hospital and does not take any preventive measures, as well as the injured offender who exchanges contaminated syringes with other people such as drug addicts. (Rami Omar Abu Rukba, 2014, p.34)

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Third, negligence in the field of transfusion of blood contaminated with chronic disease

It is intended that the error occurs in a negative way as a result of leaving the duty of caution, where the offender refrains from practicing a behavior that he should have taken. If he had taken it, the harmful result would not have occurred. In this context, there are many examples, including:

The doctor who performs the blood transfusion process without conducting the necessary analyzes that confirm its safety and freedom from deadly viruses, the nurse who refrains from sterilizing tools used in medical and laboratory workers who refrain from cleaning and sterilizing blood collection devices and equipment, bottles and utensils used in its examination, as well as the nurse who does not clean the donor's skin before drawing blood from it, which leads to contamination with germs on the surface layer of the skin, as well as those who tattoo parts of the human body using one machine on more than one person. (Ahmed Mohamed Lotfy Ahmed, 2011, pp.315-316)

Fourth, lack of attention in the field of blood transfusion contaminated with chronic disease

It means the lightness and lack of concentration that affects the offender, so he loses the accuracy and vigilance necessary when carrying out a specific action, which results in harm to others. For example, if the laboratory assistant puts the results of the tested tests incorrectly on blood models and their forms, or loses his concentration and mixes healthy blood with another contaminated due to the large number of laboratory tests. (Ahmed Hosni Ahmed Taha, , p.97)

Fifth: Non-observance of regulations in the field of transfusion of blood contaminated with chronic disease

It is an independent image of other forms of error because the mere violation of the regulations, orders and instructions decided by the Ministry of Health and the administrative authorities in blood transfusion centers entails criminal liability for the offender because these rules, whether organized by a regulation or a law developed for a specific preventive or precautionary purpose, result in non-compliance with them damages or the threat of harmful results to the interests of individuals, the most dangerous of which is the transmission of chronic diseases through blood transfusion and their spread in a way that may be difficult to control, especially since they have no treatment So far. One example of this is the violation of a rule regulated by the legislation governing blood transfusions, which stipulates that all units of blood transfused to patients, regardless of cases

of disbursement, whether scheduled or compulsory, must be subjected to serological tests to verify that they are free of chronic diseases. (Jamil Abd Al-Baqi Al-Saghir, 1995, p.65)

Referring to the text of Article 288 of the Algerian Penal Code, we find that it requires the punishment for the crime of manslaughter to achieve the result of the error issued by the offender and this result is the death of the victim. If this result does not occur, the crime does not take place, no matter how much the error is available and no matter how serious it is. (Adel Boudiaf, op.cit, p.108) Applying this to our topic, we find that the result of transfusion of blood contaminated with a chronic disease is that the patient's blood has become positive for the virus and the appearance of serious symptoms and features that refer to it. For example, the victim suffers from red shock and then death, in this case the perpetrator is asked about the crime of manslaughter. (Jamil Abd Al-Baqi Al-Saghir, op.cit, p.66)

It is not sufficient for the wrongful murder, in the field of transfusion of blood contaminated with a chronic disease, to be wrongly proven to have occurred wrongly by the offender, whether injured, a member of the medical staff or any other person, and that this results in the death of the victim, but there must be a causal link between the error and its result so that death is not imagined, if that error did not occur. (Ahmad Muhammad Lotfi Ahmed, op.cit, p.437) This link is available simply, if the wrongful behavior of the offender was performed alone. In the field of contaminated blood transfusion, the result cannot be attributed to the error, unless the cause of death is the contaminated blood transfused to the victim, and the causal link in this case is established through a legal presumption resorted to by judges to the effect that as long as the transfusion of contaminated blood was carried out on a date prior to the appearance of the injury, this is an evidence of the causal link between the transfusion of contaminated blood and the result of the victim death, but a simple presumption Can prove the opposite by proving the existence of other ways of transmission of these malicious viruses.

However, the difficulty arises in proving the causal link, if other factors overlap besides the wrong activity of the offender in bringing about the result, whether previous, contemporary or subsequently, and all of them have contributed to achieving the result, which leads to great difficulty in separating those factors and searching for which contributed directly or indirectly to the harmful result. For example, if a homosexual is a victim of a traffic accident, and he is transfused with uncontrolled blood For medical examinations. In this case, it is very difficult

to know who caused the transmission of these malicious viruses. So, the burden of proof lies on the victim to prove the existence of a causal link between the wrong behavior of medical personnel and the harmful result by proving that he was healthy and not infected with these malicious viruses before the blood transfusion and also proving that his infection was caused by blood transfusion not by anything else.

On the basis of what's mentioned above, criminal liability does not exist against the offender, unless the causal link between his erroneous conduct of transfusion of blood contaminated with a chronic disease and the result of the appearance of symptoms and the death of the victim is established. (Rami Omar Abu Rukba, op.cit, pp.38-39)

II. Position of criminal legislation on erroneous transfusions of blood contaminated with chronic disease

Criminal legislation has differed in the adaptation of this crime, as there are those who have tended to issue legislation of its own, and there are those who have considered it manslaughter.

Some Australian states have tended to enact special legislation in which the legal liability of donors and medical workers for the unintentional transfusion of blood contaminated with chronic disease is limited. For example, in the state of "Queensland", the government blood transfusion center is criminally and civilly responsible for the inadvertent transfusion of blood contaminated with a chronic disease.

As for France and Egypt, their penal legislation don't include special provisions specifying criminal liability for the unintentional transfusion of blood contaminated with a chronic disease. In order not to escape punishment and to address this serious issue, it resorted to the adoption of manslaughter as a legal description of the act of the offender who transmits blood contaminated with a chronic disease to others negligently, and we can infer this through many cases that occurred in France and Egypt, where the judiciary took this adaptation, for example:¹

Publishing and distributing houseb al-Ahmar Court convicted 29 doctors and nurses of manslaughter as a result of transfusing blood contaminated with a chronic disease to a woman while undergoing dialysis, which led to her death and

the infection of more than 20 people with the AIDS virus, all due to the failure to clean and sterilize the filtering devices. (Ali Abd Al-Halim Mohamed Mansour, op.cit, p.140)

A Toulouse court convicted a doctor of manslaughter, as a result of transfusing chronically contaminated blood to a woman admitted to hospital for prostate surgery.

A midwife was also convicted of manslaughter, because she was HIV-positive, and instead of leaving her job, she continued to give births, resulting in the infection of more than 100 women and the death of more than 15 children, all due to her recklessness, lack of precaution and continued to work without informing the hospital, where she works. (Firas Shukri Ahmad Bani Issa, 2014, p.58)

According to what's mentioned above, it can be said that the forms of error contained in the text of article 288 of the Algerian Penal Code are available to anyone who makes a mistake, because of his misconduct and results in the transfusion of blood contaminated with a chronic disease to others.

However, it cannot be added as a description in the case of technical error committed by medical workers, due to their specialization in the field of their profession, they are obligated and have the duty to take great care, vigilance, care and not recklessness in achieving the desired result for the patient. Therefore, their liability must be more severe than the liability of the rest of the people, because they are educated in the science of medicine as well as entrusted with the lives and bodies of patients. Thus, we find that the intervention of the Algerian legislator has become necessary to address this port and loophole, which has become an excuse and a haven for impunity from criminal liability, as it has found its roots and has become very widespread in the medical field.

The second topic is the legal adaptation of wrong transfusions of blood contaminated with a non-chronic disease

With the development of modern technologies and the increasing errors of individuals being exposed to the risk of death or injury, modern criminal policy has initiated the introduction of a new criminalization that includes punishment for the mere tendency of the will towards violating the duty of attention and precaution, and this means criminalizing wrong behavior alone, even if the criminal result is not achieved, thus contributing to the protection of social values and interests and strengthening the role of law in respecting human rights, especially the right to live and physical integrity, through application in health

sector where there are many forms of wrong behaviors committed by medical personnel that endangers innocent people's health and life. (Ahmed Hossam Taha Tammam, 2004, p.165)

This issue is of great importance, especially in the absence of a legal text that punishes this crime, which leads to impunity for its perpetrators, hence our interest is researching this crime and the extent to which it can be added as a description of the transfusion of blood contaminated with a non-chronic disease is wrong.

The first requirement is a glimpse of the crime of endangering others, according to French legislation

We find that the French legislator introduced them in the new Penal Code of 1992, because the general rules of the Penal Code do not punish wrongful conduct, regardless of its form and gravity, as long as it does not result in any harm.

This general criminalization introduced by the French legislator is one of the most prominent axes of renewal in contemporary criminal legislation, focusing on the idea that the role of the law is not only to intervene after the crime has occurred, but can intervene at an earlier stage whenever the individual takes a warning appearance of the danger and possibility of harm.

Section I Definition of the crime of endangering others

The Tenth International Conference on Penal Law in 1969 called on the criminal legislator in various countries of the world to criminalize behavior that endangers others, because it causes many accidents that sometimes lead to the death of many people or the injury of others, as it focused on the provision that this type of behavior does not violate the principles of criminal law as long as the principle of legality is inviolable. Many countries have responded to this recommendation and adopted this crime in their penal laws, including Switzerland, Austria, Germany, Poland and France. (MAYAUD. Y , 2003, p.18) It should be noted that the Algerian legislator has adopted the crime of endangering others in three forms, which are exclusively mentioned in articles 314 to 320 of the Algerian Penal Code, relating to endangering children , disabled people and driving while intoxicated.

The crime of endangering others is a crime of a special and independent nature decided to protect the lives and physical integrity of individuals from the dangers surrounding them, and the French legislator has dealt with it in some detail, unlike the Algerian legislator, due to the dictated by the changing and evolving nature of

life and established under Article 223-1, which is one of the new French Penal Code providing for "exposing the indirect to an immediate risk of death or injury, which would lead to a permanent cut or disability through a deliberate violation in a form. is clear to the duty of safety or caution imposed by law or order". This text is one of the most important forms of innovation introduced by the French legislator, in the field of crimes of human abuse. (Ahmed Hossam Taha Tamam, op.cit, p.167)

We want everyone to know that he can be convicted, even if there are no victims, and therefore we find that the French legislator tried through this crime to strike a balance between the disadvantages of the development taking place and the indifference of some individuals, on the one hand, and the principle of legality, on the other.

However, this criminalization raised very large jurisprudential differences, as the first trend believes that the French legislator was correct, because such criminalization allows reducing the rate of committing this type of crime, which has recently increased and constituted a source of concern. The second trend opposed the legislator, under the pretext that the expansion of punishment will only be at the expense of the personal freedom of individuals. The third side of the jurists adopted an extreme application, as they see that this article is not applicable, due to difficulties. Judges face in evidence that cannot be surpassed. (Rana Ibrahim Al-Attar, 2011, p.7)

This crime also raised doctrinal disputes about its legal nature, as part of the jurisprudence tended that this crime is considered an unintentional crime, because it is issued by a lack of precaution. Another side of jurisprudence believes that this crime is considered as an intentional crime whose pillars are completed as soon as there is an intention to violate one of the duties. Whereas, another side believes that this crime is not an intentional crime or an unintentional crime, but a special group of crimes located between intention and error. It is expressed as the middle ground between intentional and unintentional, which is less serious than the intention to harm and more serious than lack of precaution and negligence, while another side of jurisprudence believes that the legislator codified the idea of probable intent in the form of the crime of endangering others.

This jurisprudential dispute was reflected in the rulings of the trial judges, which led to their variation, so some judicial rulings tended to make this crime fall within the scope of an independent group of crimes that fall between intention and error,

as it is not just negligence or recklessness, because the law requires a kind of intent, and some other judicial rulings tended to make this crime fall within the scope of unintentional crimes. Based on all of the above, we find that the French legislator considered the misdemeanor stipulated in article 223-1, in order to devote to probable intent, the perpetrator, without wanting the harmful consequence, expects it as a possibility and yet acts in manifestation of great disregard for the life and health of others. (Rana Ibrahim Al-Attar, *op.cit*, p.10)

Section II The material element of the crime of endangering others

The misdemeanor of endangering others requires the existence of a special duty of safety or caution imposed by law or order, and this duty must be specific and special and means that duty that imposes a rule of conduct that must be followed and determines the type of position that must be taken in certain situations. Therefore, by referring to the text of Article 223-1 of the new French Penal Code, we find that it does not punish the mere non-observance of a general duty of caution. For example, the mayor who does not take measures that would prevent the occurrence of Damage to public tranquility and the safety of individuals as well as those who throw a bag of waste on the road before the passage of a vehicle, and therefore each of the previous two examples does not constitute a violation of the duty of safety and caution, because they do not carry the privacy required by the text of the crime of endangerment, on one hand. On the other hand, the owner of the two dogs, who leaves them moving on the public road without a muzzle, is considered a perpetrator of this crime, violating the rules and decisions regulating its movement on the roads, and therefore this behavior must be contrary to the obligation to safety or Caution stipulated by law or order, that is, the fault falls on a duty imposed by law or order, and therefore violating the duty of care and attention imposed by the rules of humanitarian expertise does not lead to the commission of this crime, no matter how serious it is to the life and safety of individuals.

For the crime of endangering others, The French legislator requires the availability of the elements stipulated in Article 223-1 of the new French Penal Code, which provides for "exposing the third party to an immediate risk of death or injury" and accordingly the exposure to danger must be aimed at others in a direct way so that the risk must result directly from the error, i.e. the absence of the mediator in the causal chain and thus not interrupted and this is a restriction of the discretionary power of judges in determining the causal relationship, as well as must be This danger is immediate, which means that the time between the

violation of the text and the danger is converged, so that if it is away from a certain time or other circumstances interfere in the creation of the danger, this crime does not arise. The French Court of Cassation has confirmed these two elements by saying that the misdemeanor of endangering others does not exist, unless the breach provided for in article 223-1 of the new French Penal Code is the direct cause and the situation of the danger to which others were exposed.

Section III Moral Element of the Crime of Endangering Others

The moral element in this crime is achieved towards the will of the offender to violate a duty of safety or caution in a way that endangers the health and life of others without being willing to achieve the consequences of his act, but he was aware of the possibility of its occurrence. For example, the head of the family who gives his child something dangerous in a way that led to the injury of the child with damage, and here we find that the head of the family was aware of the risks involved in his behavior and took the risk of causing harm in the hope that it would not happen, and therefore it is Ignoring the duty of safety with knowledge of the situation can only be aware of the risk of endangering others. (Rana Ibrahim Al-Attar, op.cit, p.14)

This violation must also be deliberate and clear, which is evidenced by the text of article 223-1, where the French legislator requires that this violation be manifestly intentional and clear. What raises the problem here is the issue of proving intentional or not, and proving that the offender intended to expose others to danger clearly, especially if we add the fact that this crime does not require actual harm, which leads to the impossibility of proving the fact of exposing others to danger.

Finally, we find that the French legislator, through this crime, wanted to establish a preventive criminal policy based on the criminalization of any conduct that affects the protected social interest represented in the life and physical integrity of individuals.

The second requirement is the extent to which the crime of endangering others can be applied to the incident of wrong transfusion of blood contaminated with a non-chronic disease

The crime of endangering others is an important step towards development, in the field of criminal legislation, as it contributed to reducing dangerous behaviors in various areas, as it is sufficient to impose punishment on a criminal behavior entails a danger to the right or interest subject to criminal protection without

requiring actual damage or criminal result. This crime finds a wide scope for application in the field of transfusion of blood contaminated with a non-chronic disease by mistake, due to the multiplicity of forms of wrong behavior that endangers innocent people's health and life at risk. However, the absence of provision in the Algerian penal legislation may enable perpetrators to escape punishment. (Mamdouh Khalil Al-Bahar, 2001, p.246)

Section I Image of endangering others in the field of wrong transfusion of blood contaminated with a non-chronic disease

As mentioned above, in its new penal code, the French legislator has introduced the Article 223-1, which is an important step towards development in the field of criminal legislation, through which the legislator focuses that the role of the law is not only to intervene after the crime to punish the offender and all those who contributed with him in its commission, but he can intervene at an earlier stage than the crime by criminalizing some dangerous behaviors before any damage is achieved, taking in that wisely prevention is better than cure. Therefore, through the text of Article 223-1, We find that the policy of the French legislator has tended to punish any voluntary behavior based on indifference to the criminally protected social interests represented in the life and physical integrity of individuals. (Rana Ibrahim Al-Attar, *op.cit*, p.2)

In relation to our topic, the risk of transfusion of blood contaminated with a non-chronic disease is mistaken in the violation of a duty of safety or caution imposed by law or order by medical personnel on the transfusion, examination and storage of blood.

The crime of endangering others is of great importance in the field of transfusion of blood contaminated with a non-chronic disease by mistake, and the statement of this importance requires addressing the elements of this crime:

The crime of endangering others in the field of transfusion of blood contaminated with a non-chronic disease wrongly requires a special obligation of safety or caution, which is the responsibility of medical workers and blood transfusion centers, and this obligation must be imposed by law or order. It is related to some laws and regulations that impose certain obligations related to safety and caution so that violating them constitutes exposing others to danger, for example, the laws regulating blood transfusions and preservation, which stipulate that special procedures must be followed for preservation and storage Blood banks, as well as stipulating that blood transfusion centers may not dispense or use any unit of

blood before conducting all tests for conformity and compatibility and avoiding dependence on the blood of the general donor classified as a blood group. (,Mamdouh Khalil Al-Baharop.citp.246 ,)

For the crime of endangering others, the offender must violate these obligations established by law or order, but it is not enough for him to violate these obligations, but this violation must result in exposing others' health and life to an immediate risk of death, as evidenced by the text of Article 223-1 of the French Penal Code. (ACCOMANDO. G and GUERY. C, 1994, p.68)

Regarding our topic, the violation of these obligations is represented by the offender. For example, neglecting blood banks and not taking the necessary measures and procedures to store them properly would damage them, and then transferring them to patients, or adding therapeutic solutions with serious side effects to blood units to increase their shelf life, as well as if the doctor transfuses blood whose removal period from the refrigerator exceeds 30 minutes, or that he uses and transfuses blood drawn immediately from the donor without conducting tests and conformity analyzes, as well as The laboratory that refrains from conducting compatibility tests and affixes a voucher on the blood bags with contrary information to the content of the bag. For example, if the blood is of type " B " and affixes to the bag the voucher of type " A " or " A+ " , here we find that the laboratory has violated a special duty of safety and caution imposed on it in the law subject to it by virtue of his job, and thus causes this dangerous behavior resulting from indifference and indifference and violation of the rules and guarantees of safety and caution imposed by law or order within the health field in Many accidents occur that sometimes cause the death of many people and the injury of others.

As mentioned above, the moral element in the crime of endangering others is achieved towards the will of the offender to violate a duty of safety or caution in a way that endangers others' health and life without being willing to achieve the consequences of his act, but he was aware of the possibility of its occurrence, and therefore the offender here does not seek to achieve a certain criminal result, but deliberately omits a special obligation of safety or caution imposed by laws or regulations, which results in exposing others to an immediate risk of death. (Amin Mostafa Mohamed, 1999, p.132)

Regarding our topic, the crime of exposing others to danger, in the field of transfusion of blood contaminated with a non-chronic disease, requires the

mistake of the offender deliberately not to implement a special obligation of safety or caution imposed by law or order, which results in exposing others to danger, and therefore the error attributed to the offender, in this case, is the result of the conscious will of the deliberate risky behavior. For example, the doctor who uses blood after obtaining it directly from the donor without examining it, so he was aware of the risks. However, the problematic is that the French legislator stipulates in the text of article 223-1 that the violation be manifestly intentional. (Mamdouh Khalil Al-Bahar, op.cit, p.246)

Finally, we find that the French legislator has made endangerment a stand-alone formal crime punishable when wrongful conduct is committed under its previous conditions without causing damage. (Rana Ibrahim Al-Attar, op.cit, p.10)

Section II Position of criminal legislation on transfusions of blood contaminated with a non-chronic disease

Comparative penal legislation, in all countries, don't include a special provision that punishes the transfusion of blood contaminated with a non-chronic disease by mistake, including the Algerian penal legislation. In the absence of a special text that criminalizes this issue, and based on what has already been presented, we find that the dispensing or use of any unit of blood before conducting all the required tests and ensuring that the donor's blood unit matches the patient's blood group or an expired blood transfusion is nothing more than an exposing Risk, due to the disturbances, effects and risks it causes to the victim's health and life. In this case, we must distinguish between two things:

- This behavior would be considered as exposing others to danger, if the transfusion of rotten or non-conforming blood does not result in any actual damage, as well as we can take it as a description of this behavior in the event that the transfusion of rotten or non-conforming blood resulted in occasional imbalances and minor symptoms, including yellowing of the face, increased heartbeats' rate, high temperature and fainting, that quickly disappear with time and the victim get recovered.
- If the transfusion of spoiled or non-conforming blood results in death, especially when the victim is a child, an elderly man or a person in a state of surgery. This transfusion is considered an aggravating circumstance for the crime of endangering others. (Mamdouh Khalil Al-Bahar, op.cit, p.243)

Based on the above, we find that the crime of endangering others is the appropriate legal adaptation to the act of the offender who transmits blood contaminated with

a non-chronic disease by mistake to others, which has found its roots in the medical field and has recently worsened remarkably, as there are many forms of wrong behavior that endanger the health and lives of innocent people.

On the basis of what we have previously addressed, and in accordance with the terms of article 1 of the Algerian Penal Code, which provides for "there shall be no crime, no punishment or security measures without law", we cannot adopt this qualification, because of the absence of a legal provision criminalizing the endangerment of others in Algerian penal legislation.

This text will find wide scope for application in many areas, such as health and traffic, thus contributing effectively to reducing dangerous behaviors that previously escaped punishment.

However, even in the presence of this text, we cannot take it as a description of the transfusion of blood contaminated with a non-chronic disease, wrongly, because the criminal field is controlled by a basic principle: the principle of legality, which requires the presence of analogy in the field of criminalization and punishment. On the basis of the principle of legality, I propose on the Algerian legislator to resolve the matter and address this issue, which has become among the most complex topics, especially since this crime has become committed by persons with experience and competence, by creating Special provisions and their inclusion in the Penal Code, including the introduction of a special provision under the name of endangering others by transfusion of blood contaminated with a non-chronic disease by mistake.

Conclusion

- Transfusion of blood contaminated with chronic or non-chronic disease constitutes an attack on man's right to live and his physical integrity.
- Transfusion of blood contaminated with a chronic or non-chronic disease to others has become one of the new criminal phenomena by which the offender manages to harm and eventually kill his victim without being subject to criminal accountability.
- Most criminal legislation does not intervene with special provisions to criminalize the transfusion of blood contaminated by mistake, whether with a chronic or non-chronic disease, leaving this to the general texts, and few of them provide for special criminalization, sensing the seriousness of the situation.

- The crime of manslaughter can be described as a transfusion of blood contaminated with a chronic disease by mistake, because the forms of error, included within the provisions of most penal legislations, are available to anyone who makes a mistake because of his misconduct and results in the transfusion of blood contaminated with a chronic disease to others.

- The transfusion of blood contaminated with a non-chronic disease is a mistake that has no qualification in Algerian legislation, which compels us to attempt giving it the description of the crime of endangering others provided for in French legislation, since the transfusion of blood contaminated with a non-chronic disease is a mistake that puts a person's life at risk of death.

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