

QUARANTINE REGULATIONS DURING THE CORONAVIRUS PANDEMIC: A STUDY IN LIGHT OF NATIONAL AND INTERNATIONAL LEGISLATION

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Abstract

How to cite this paper:

Barafi, J., Alqatawneh, I. S., Al-Mulla, M. S., & Kandeel, M. E. (2022). Quarantine regulations during the coronavirus pandemic: A study in light of national and international legislation [Special issue]. *Journal of Governance & Regulation*, 11(2), 277–285.

<https://doi.org/10.22495/jgrv11i2siart6>

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ISSN Print: 2220-9352

ISSN Online: 2306-6784

Received: 08.12.2021

Accepted: 16.05.2022

JEL Classification: K140, K190, K330, K420

DOI: 10.22495/jgrv11i2siart6

Since the outbreak of COVID-19, countries have instituted multiple regulations and implemented various measures to preserve public health. One of the most important measures is quarantine, which restricts the right to freedom of movement enshrined in international and national laws (UN General Assembly, 1948). The study aims to clarify the freedom of movement concept and to consider the legality of quarantine as a restriction on this right (Talbi, 2021). It also aims to tackle the national regulations and procedures implemented in response to the COVID-19 pandemic in Jordan, the United Arab Emirates (UAE), and Kuwait. The research problem is the lack of clarity regarding the national legal framework and procedures related to quarantine, and the lack of deterrent penalties related to their violation, as well as the difference and disparity among the countries under study in response to the rules of international law and the application of procedures and penalties in the face of COVID-19. The authors relied on an analytical and comparative approach of the legislative provisions in addition to a statistical database published by a trusted website. The study concluded that the legal provisions related to confronting COVID-19 are still unclear and that the penalties do not serve as deterrents.

Keywords: Regulations, Pandemic, Sanitary Isolation, Freedom of Movement, Quarantine Violation

Authors' individual contribution: Conceptualization — J.B., I.S.A., M.S.A.-M., and M.E.K.; Methodology — I.S.A. and M.S.A.-M.; Writing — Original Draft — J.B., I.S.A., and M.S.A.-M.; Writing — Review & Editing — J.B.; Supervision — M.E.K.; Project Administration — J.B., I.S.A., M.S.A.-M., and M.E.K.

Declaration of conflicting interests: The Authors declare that there is no conflict of interest.

Acknowledgements: The Authors are very thankful to all the associated personnel in any reference that contributed in/for the purpose of this research.

1. INTRODUCTION

The global spread of COVID-19 and its classification as a pandemic by the World Health Organization

(WHO) compelled countries to implement measures to address the virus and limit its damage to their societies. However, the measures taken to confront this exceptional circumstance have affected many of

the basic rights and freedoms guaranteed in international regulations and national constitutions, including the right to freedom of movement (UN General Assembly, 1948). There is no doubt that extreme circumstances allow states to deviate from the rules of ordinary law to maintain public utilities. Based on the principle of sovereignty established in international law, a State has full authority over its territory and is entitled to take all necessary measures to counter diseases and epidemics, including quarantine, home isolation (Belmeliani, 2020). The primary purpose of quarantine is to isolate from the rest of society the infected or those who have had direct contact with infected persons. The quarantine restricts the right of freedom of movement as enshrined in international declarations and various international and regional agreements (League of Arab States, 2004). Although restrictions of this right are legitimate in international law instruments, they may only be applied within specific controls. The most important of these is the establishment of an exceptional state of emergency in response to a threat to the entity and existence of the State, without discrimination on the ground of gender, race, nationality, or other reason. In response to the threat of the pandemic, countries have imposed quarantine, whether at home or in specialized institutions, relying on current laws for confronting communicable and infectious diseases. However, despite amending some legal texts to face the current exceptional circumstances, certain shortcomings are apparent. The governments of the Emirates, Jordan, and Kuwait have taken rapid decisions to limit the effects of COVID-19, but there is a question as to whether these measures have overstepped boundaries in terms of their powers and arbitrariness, especially in the absence of independent monitoring bodies.

The paper aims to clarify the concept of freedom of movement and address the legality of quarantine as a restriction on this right (Talbi, 2021). It will review the national regulations and procedures implemented in response to the COVID-19 pandemic in the Kingdom of Jordan, the Emirates, and Kuwait.

In this context, the various types of quarantine will be defined (Tourky, 2021), alongside its compatibility with international standards and instruments guaranteeing human rights. Following this, the comparative analytical method will address the respective positions of the Emirati, Jordanian, and Kuwaiti national legislatures regarding violations of quarantine procedures, and how the judiciary deals with these violations.

The importance of this paper stems from being one of the first pieces of research that focused on quarantine in the face of COVID-19, and the related legislation and judicial applications in Jordan, the Emirates, and Kuwait. Nevertheless, even though the authors have faced some limitations such as the scarcity of references and statistics on the subject, they worked to provide a valuable and useful study; comparisons, and statistics, for legislators and future researchers alike.

This paper relied on the analytical and comparative approach of the legislative provisions in addition to a statistical database published by a trusted website. The study found that the legal texts related to confronting COVID-19 are still newly established, and the penalties, in some countries under study, are still not sufficiently dissuasive.

The paper concludes with recommendations to ensure a balance between achieving the public interest of the State and preserving individual interests and freedoms in enforcing the quarantine.

The rest of the paper is structured as follows. Section 2 reviews the relevant literature related to quarantine procedures. Section 3 discusses the methodology that has been followed in conducting this research. Section 4 focuses on results and recommendations. Section 5 discusses the concept and types of quarantine, their legality in international texts, and finally its application in Arab national regulations. Section 6 concludes the paper.

2. LITERATURE REVIEW

Several recent studies have proposed to address quarantine procedures in Arab countries. This stems from the importance of quarantine and the importance of ensuring its legitimacy in international law and national legislation, and the effects of its application in the face of the coronavirus pandemic.

Al-Obaidan (2020) carried out a critical analytical examination of the Kuwaiti Health Emergency Law No. 8/1969 and regulations related to quarantine and sanitary isolation in order to clarify its gaps within the framework of the comparison between public health and personal freedom. The author applied an inductive study of the rules of the aforementioned law and their compatibility with the Constitution of Kuwait of 1962 in order to shed the light on the compatibility between legal treatment and the general constitutional principles. One of the most important findings that the author reached is that it is necessary to develop new, more balanced legal rules to tackle the problem of the balance between public health and personal freedoms.

Jaradat and Al-Ahmad (2020) identified quarantine measures and the nature of coronavirus disease, its symptoms, and how it spreads. The quarantine procedures applied to reduce the spread of infectious diseases and epidemics were also examined as well as their significance from both a medical and Islamic jurisprudence perspective. The research concluded that there is a consensus between medicine and Islamic jurisprudence in the demarcation of principles and procedures related to quarantine procedures.

Another important study was provided by Talbi (2021), where the author discussed the limits of the restriction of the right to move during a period of confinement. Both analytical and comparative approaches were used, which allowed the researcher to analyze and compare the texts of the various agreements that dealt with this right. The study found that the full confinement accompanied by the general shutdown adopted by most countries to contain the COVID-19 pandemic could be considered as an arbitrary restriction of the right of movement; hence, the author recommended subjecting this precautionary measure to the provisions of international human rights.

3. RESEARCH METHODOLOGY

The authors address the international legislation related to the right of freedom of movement and highlight the particular legislation derived from the constitutions of Jordan, Kuwait, and the United

Arab Emirates (UAE), employed to handle the quarantine situations in each country. In addition, major COVID-19 related court cases were outlined and discussed. General comparisons among these legislation, regulations, and verdicts were also examined by analytical and comparative approaches obtained from primary or secondary sources.

Recorded data about the accumulative number of COVID-19 infections and deaths in each studied country were collected from the website Worldometer (<https://www.worldometers.info/>), which is operated by international groups of developers, researchers, and volunteers. They rely on official reports, directly from government communication channels, or indirectly through local media sources when deemed reliable. Their published results are trusted by many reputed entities such as the UK Government, BBC, Financial Times, The New York Times, American Library Association (ALA), Oxford University Press, Wiley, Pearson, and others.

4. RESULTS

According to international law, secondary rights related to well-being and decent living standards may be restricted in exceptional emergencies with

the aim of protecting national security, public order, public health, morals, and preserving the rights and freedoms of others. This must be without discrimination on grounds of gender, race, nationality, or other reasons.

Governments apply common procedures to face this pandemic, using particular steps as required by individual legislation and law, and these steps are frequently reviewed with respect to many factors such as the total number of infected cases, death rates, and violations of these instructions as reported by courts.

Fines and penalties were applied for violations of these instructions, and they were sorted from highest to lowest: Kuwait, the UAE, and Jordan. Nevertheless, the largest death rate per 1 million population caused by COVID-19 was Jordan, Kuwait, and the UAE, respectively.

The paper concludes that the legal texts related to COVID-19 are newly developed and that the penalties, in some studied countries, are still not sufficiently dissuasive.

Table 1 summarizes the total infected cases, total death rates caused by COVID-19, and total population recorded by Worldometer for the UAE, Jordan, and Kuwait, respectively.

Table 1. Recorded and calculated data about COVID-19 cases in the UAE, Jordan, and Kuwait

Country	From	To	Total cases	Total death	Population	Death per total cases, %	Total per population, %	Death per 1 million population
UAE	01-05-2020	30-04-2021	507198	1476	10,082,000	0.29	5.0	14.64
Jordan	01-05-2020	30-04-2021	710914	8793	10,366,000	1.24	6.9	84.83
Kuwait	01-05-2020	30-04-2021	269534	1530	4,372,000	0.57	6.2	35.00

It shows the calculations of the percentages of the total death rate per total case, and total cases per population. Moreover, the authors relied on the calculated values of the death cases relative to 1 million population. The UAE has the lowest death rate with respect to the 1 million population, which is approximately doubled in Kuwait. The calculated value for Jordan was around 85; approximately two and a half times the recorded value for Kuwait and six times that value recorded for the UAE.

5. DISCUSSION

The current research is based on the definition of the right of freedom of movement and the legality of imposing quarantine as a restriction on the aforementioned right. It is also based on the presentation of various countries' procedures to confront the coronavirus pandemic and the disparity between them.

5.1. The concept of quarantine

Quarantine is a health system applied by countries within their borders to maintain public health and prevent the intrusion of epidemic diseases classified as dangerous according to international health regulations (Piper, 2020). This procedure seeks to prevent disease transmission via international and national travel. Quarantine is intended to separate and isolate those who have been in contact with infected or potentially infected people from other members of society. Healthy people may be asymptomatic carriers who can transmit the virus to

the surrounding community. During quarantine, a set of medical procedures is introduced to stop the spread of infection (Tourky, 2021). Quarantine can thus be defined as the "identification and limitation of the activities and movement of people who have been exposed to an infectious source during the period of infection" (Belmeliani, 2020, p. 516). It is implemented for a period not exceeding the incubation period of the disease or virus; it is not limited to humans and can include animals, goods, and means of transport (Belmeliani, 2020).

5.2. The main types of quarantine

Absolute quarantine is the complete confinement of infected or potentially infected persons to their homes or another private place to prevent mixing or closeness with persons who have not been exposed to infection (Belmeliani, 2020). This was implemented during the COVID-19 pandemic by separating groups of residents from the rest of society, such as individuals returning from international travel, or traveling outside the borders of an emirate or province.

The second type of quarantine is partial and consists of selectively restricting freedom of movement by placing the person thought to be ill under electronic surveillance or by using an electronic bracelet (Tourky, 2021). A ban or curfew, usually imposed by the government, prohibits the movement of people in a region or country under exceptional circumstances and for a certain period of time, such as a curfew from 10 pm to 8 am. There is no doubt that the concept

of a curfew, despite the possibility of linking a curfew to a quarantine violation, is broader than the concept of quarantine as it applies to all members of the community without discrimination, excluding exceptional cases.

These types of sanitary quarantine differ from sanitary isolation as the latter is applied to a specific group of infected individuals who have signs and symptoms of illness, and who receive treatment and special care in their homes, hospitals, or facilities; this not only protects these individuals, it also limits the spread of the disease (Tourky, 2021). A place where people or animals are isolated is called quarantine (Al-Muglad, Sabaa, & Juma, 2005; Tourky, 2021). In both quarantine and isolation, the person is voluntarily subjected to monitoring by a medical team specialized in treating and controlling epidemics. If a patient refuses to quarantine, the authorities can forcibly relocate them to places designated to preserve the safety of others, and penalties can be applied (Tourky, 2021). To achieve the optimal purpose of the quarantine during the coronavirus pandemic, quarantine must be accompanied by parallel measures such as curfew, the cancellation of public gatherings and celebrations, a commitment to social distancing, and mask-wearing by all individuals, even those who have recently recovered from an infectious disease.

5.3. Quarantine as a restriction on freedom of movement in international law

Freedom of movement is a basic right of an individual enshrined in the texts of international law, but it is not an absolute right and can be subject to restrictions within specific controls, as discussed in the next section.

5.3.1. The right to freedom of movement regulation in international and regional law

Freedom of movement is an essential human right encompassing the right to travel within the territory of a country, and to leave a country and return to it; this right includes not only visiting but also changing where an individual resides or works (Gilbert, 2014). The right originates in many international conventions and declarations. Article 13(1) of the Universal Declaration of Human Rights (UDHR) states, "Everyone has the right to freedom of movement and residence within the borders of each state" (UN General Assembly, 1948). In the same context, Article 12(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that, "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose [their] residence" (UN General Assembly, 1966). This provision stipulates that to enjoy the right to freedom of movement, the residence must be legal in the country; this significant addition should be included in all texts related to the said right (Talbi, 2021). Regarding disabilities, Article 18 of the Convention on the Protection of Persons with Disabilities grants such persons the right to the freedom of movement and the right to choose their place of residence. It stipulates that they may not be deprived of any facilities or documents that are necessary to exercise their right to freedom

of movement because of their disabilities. The Convention also requires states to guarantee the freedom of movement for persons with disabilities on an equal basis with other individuals without discrimination (UN General Assembly, 2006).

Freedom of movement is also stipulated in many regional conventions and charters, such as Article 2, Protocol 4, annexed to the European Convention on Human Rights (ECHR) (Council of Europe, 1963). This is considered an important addition to the ECHR and a prelude to the inclusion of this right in subsequent international instruments. The 2004 Arab Charter on Human Rights follows the approach of the ICCPR in emphasizing the protection of the right of legally present individuals to freedom of movement and choice of residence within the State (League of Arab States, 2004). It is worth noting that the constitutions of countries, including those of the UAE, Kuwait, and Jordan, have dedicated legal texts to protect the aforementioned right (Constitution of the Hashemite Kingdom of Jordan of 1952; Kuwait Constitution of 1962; United Arab Emirates's Constitution of 1971).

Accordingly, freedom of movement can be defined as an individual's civil right guaranteeing movement from one place to another within the territory in which they are legally present, regardless of gender, race, nationality, or any other consideration. This right is enjoyed by all those legally present in the country, whether they are citizens, refugees, or foreigners who have obtained a temporary entry visa (Talbi, 2021).

5.3.2. Quarantine restrictions on freedom of movement

Human rights are classified as basic rights linked to human dignity which are not subject to derogation, waiver, or division, known as "the Human Rights Nucleus" (Talbi, 2021). Other, secondary rights are related to well-being and decent living standards, and these may be restricted in exceptional emergencies, according to specific laws (Talbi, 2021). Article 4(2) of the ICCPR specifies those rights that are never subject to derogation: the right to life, prohibition of torture, slavery, servitude, imprisonment, and arbitrary trial, the right to legal personality, and freedom of thought, conscience, and religion (UN General Assembly, 1966). The right to freedom of movement is not absolute and is a relative right that can be restricted to achieve a balance between the public interest of society and the private interest of individuals; when these interests conflict, the public interest of society prevails (Tourky, 2021). Article 4(1) of the ICCPR states that, in cases of exceptional emergencies threatening the life of the nation, states may take measures in contravention of the obligations under the covenant, provided there is no discrimination on the grounds of race, colour, sex, language, religion or social origin, or any other violation of the international obligations of states. Article 4 of the ICCPR establishes two conditions for the possibility of restricting rights. One is the objective requirement of an emergency that threatens the life of the nation. The other is a formal requirement to declare the establishment of a state of emergency and inform other State parties to

the ICCPR about the provisions to which the State has not adhered and the reason for this; the State is also bound to inform these parties of the date of expiration of this non-compliance (UN General Assembly, 1966).

Article 12(3) of the ICCPR permits restrictions on freedom of movement in specific cases: protecting national security, public order, public health, and morals, and preserving the rights and freedoms of others. Article 2(3), Protocol 4 of the ECHR stipulates that such restrictions in a democratic society must be in the interests of national security and maintaining public security (Council of Europe, 1963). This commendable addition prevents rights from being restricted according to the whims and unilateral will of the State.

In the Arab Charter on Human Rights, Article 4(1) allows states to take measures incompatible with Charter obligations, provided that such measures do not involve discrimination or conflict with the other international obligations of the state. Article 26 of the Charter does not specify cases for restricting freedom of movement, while Article 27 states that it is not permissible to restrict individuals' freedom to leave a country, including their own, nor obligate them to a compulsory residence in any country, either arbitrarily or illegally (League of Arab States, 2004).

In the Siracusa Principles of 1984, a democratic society is defined as a society which recognizes and respects the human rights outlined in the United Nations Charter and the Universal Declaration of Human Rights (UN Commission on Human Rights, 1984). Article 1(B) on exceptions to the application of the provisions of the ICCPR provides guidance regarding government actions that restrict human rights for reasons of public health or national emergency, the most important of which is that they are applied in accordance with the law and to achieve the public interest; absolutely necessary in a democratic society; not arbitrary or discriminatory; and time-limited and subject to review.

With regard to quarantine, it can be argued that the global COVID-19 restrictions on freedom of movement have been exceptional (Talbi, 2021). According to the aforementioned legal texts, the application of quarantine is considered legitimate within specific controls. The first of these is that quarantine is stipulated by an effective law that is neither arbitrary nor discriminatory when applied and is based on necessary and objective considerations. The law does not constitute waste or violation of other human rights protected in accordance with the provisions of international law, or detract from these (Talbi, 2021). It is noteworthy that the application of quarantine for an indefinite period infringes freedom of movement and affects the enjoyment of many legitimate rights, such as the right to freedom, life, and the right to education. In this regard, on 20 May 2021, the European Court of Human Rights ruled on the case of *Terheş v. Romania*, 2021. The ruling clarified that the State's decision to impose a state of emergency with restrictions on freedom of movement and a ban on all movement outside the home, except in exceptional cases, was legitimate and did not amount to a deprivation of liberty within the meaning of Article 5(1) of the ECHR (Council of Europe, 1952).

5.4. Quarantine and its application mechanisms in Arab national regulations

As elsewhere, Arab nations hastened to impose quarantine and isolation measures to confront the exceptional circumstances of COVID-19, and their governments resorted to various tools to implement quarantine and impose penalties for its violation. These will be explained next with regard to Jordan, the UAE, and Kuwait.

5.4.1. Quarantine regulations and penalties in Jordan

Article 17 of the Jordanian Public Health Law of 2008, and its amendments (The Kingdom of Jordan, 2008) defines quarantine as restricting the activities of healthy persons suspected of being infected and separating them from others, as well as separating luggage, means of transport, or goods suspected of contamination, to prevent the spread of infection or pollution. Regarding isolation, the same law defines this as separating infected persons, contacts, or those who carry contamination from others. Since the intentional transmission of infection was not criminalized in the aforementioned law, no penalties were stipulated for violating quarantine, and nor were penalties tightened for recidivism. During the pandemic, the Jordanian government resorted to quarantine periods and curfew mechanisms, and established penalties for violation as follows:

1. *Institutional quarantine*: those arriving from abroad into Jordan were placed in hotels for two weeks; polymerase chain reaction (PCR) tests were completed on the fourth and twelfth days, followed by home quarantine for a week with an electronic bracelet. This was undertaken knowing that the virus may be contagious even in asymptomatic persons. Through this procedure, arriving travelers can be sure they are free of infection.

2. *Education*: distance learning was implemented for all universities, institutes, and schools, and this helped prevent an increase in infection rates; this was undertaken through Defense Law No. 7 of 2020 (Jordanian Government, 2020). This was an effective and precautionary means of combatting the number of infections.

3. *Curfew*: curfew was instituted during the day and night, and is still applicable in all regions of Jordan, under the vigorous monitoring of the police and Army, in accordance with Defense Order No. 2 of 2020, Defense Order No. 3, which increases the penalty in the event of a repeat violation; Defense Order No. 12, amends the penalties of Defense Order No. 3 of the 1992 Defense Law so that the penalties amount to a fine or imprisonment (all based on Jordanian Government, 2020). Among the judicial applications in this regard, judicial rulings were issued against violators, stipulating penalties of a fine of up to 1,000 Jordanian dinars (Jordanian Court of First Instance, 2021a; Jordanian Court of First Instance, 2021b; Jordanian Court of First Instance, 2021c). In addition, the Court of First Instance sentenced Yahya Khalil Muhammad (Criminal Court of First Instance, 2021) to a fine of 500 dinars for the offense of not adhering to the home quarantine, contrary to the provisions of Defense Order No. 8 of 2020. In another ruling, The Irbid Penal Court of

First Instance sentenced Juan Ali (Criminal Court of First Instance, 2020) for the offense of removing the electronic bracelet during the quarantine period, contrary to the provisions of Defense Order No. 8 of 2020, and fined him by 3,000 dinars. The fine was reduced to 50 dinars due to the confession of the suspect, which is one of the mitigating causes.

4. *Quarantine in field hospitals*: the person remains in the hospital until it is confirmed that they are free of infection, or are treated until they recover.

5.4.2. *Quarantine regulations and penalties in the United Arab Emirates*

The UAE legislature sought to limit epidemiological risks in Federal Law No. 14 of 2014 regarding the Control of Communicable Diseases (United Arab Emirates's Government, 2014). The legislature's goal in applying the provisions of this law is to protect society from epidemics and infectious diseases. During the pandemic, and using the authorization of the Attorney General under UAE Cabinet Resolution No. 17 of 2020, the Attorney General issued Resolutions 38-39 (UAE Cabinet Resolution, 2020). Article 1 of Federal Law No. 14 on the Control of Communicable Diseases (United Arab Emirates's Government, 2014) distinguishes between sanitary isolation and quarantine, whereby isolation is "the separation of an infected or suspected infected person from other healthy people, either voluntarily or forcibly, for the duration of the disease's contagion in appropriate health places and conditions". Quarantine is defined as "restricting the activities of healthy people or animals who have been exposed to the pathogen during the spread of the disease, for a period equivalent to the longest incubation period". Article 34 criminalizes the intentional transmission of the infection to others, and Article 39 stipulates a prison sentence of no more than five years, and a fine of no less than 50,000 dirhams and no more than 100,000 dirhams; it also doubles the prison sentence in the event of repetition of the crime. This law does not address the transmission of infection through negligence or unintentional error. In addition, the UAE has also adopted multiple mechanisms to prevent the spread of COVID-19, including:

1. *Home quarantine for UAE arrivals for two weeks, wearing an electronic watch, with an examination on the twelfth day to verify the person's health*: In Decision No. 39 of 2020, which amended Resolution No. 38 of 2020 regarding violations and penalties issued by Cabinet Resolution No. 17 of 2020 ("UAE Attorney General issues updated resolution No. 38 of 2020," 2020), the UAE Attorney General established a penalty of 50,000 dirhams for violation of home quarantine.

2. *Quarantine in a quarantine facility*: The individual is quarantined in a designated place and cannot leave the facility until it is verified that they are free of the virus. In Decision No. 39 of 2020, the Attorney General specified a penalty of 50,000 dirhams for any violation ("UAE Attorney General issues updated resolution No. 38 of 2020," 2020).

3. *Distance learning*: The implementation of distance education and the closure of educational institutions were enforced to decrease infections. Through Resolution No. 39 of 2020, the Attorney General assigned a fine of 50,000 dirhams to

the person responsible for the facility in case of a violation of the administrative closure ("UAE Attorney General issues updated resolution No. 38 of 2020," 2020).

The mechanisms of quarantine in both Jordan and the UAE seem to be similar. As for the penalties contained in the defense orders (based on Jordanian Government, 2020) issued by the Jordanian Council of Ministers, and the decisions of the UAE Attorney General ("UAE Attorney General issues updated resolution No. 38 of 2020," 2020) through the UAE Council of Ministers, researchers found that the penalties issued against violators of quarantine in the UAE are more severe than in Jordan; likewise, the fines in the UAE range between 500 and 50,000 dirhams, but in Jordan, fines are between 50 and 1,000 dinars. The more severe penalties and fines in the UAE almost certainly led to a reduction in the infection rate and subsequent deaths, and accelerated the gradual reopening of society to citizens, unlike the case of Jordan, as shown in the abovementioned Table 1.

It is also notable that both the Jordanian Public Health Law of 2008, and its amendments (The Kingdom of Jordan, 2008), and the UAE Communicable Diseases Law No. 14 of 2014 (United Arab Emirates's Government, 2014) contain no provision for penalties. Nevertheless, in both countries, the pandemic necessitated the criminalization of violations of the aforementioned provisions through defense orders issued by the Jordanian Council of Ministers, based on the Jordanian Defense Law of 1992 (Jordanian Government, 2020), and in the UAE through Decision No. 30 and 39 of 2020 of the Attorney General ("UAE Attorney General issues updated resolution No. 38 of 2020," 2020). It is noteworthy that at the time of writing the UAE is about to amend the texts of the Communicable Diseases Law No. 14 of 2014 (United Arab Emirates's Government, 2014), and this will hopefully be followed by the Jordanian legislature amending the provisions of the 2008 Public Health Law to diminish its current reliance on defense orders (The Kingdom of Jordan, 2008).

5.4.3. *Quarantine regulations and penalties in Kuwait*

The Kuwaiti legislature sought to limit risks from epidemics in Law No. 8 of 1969 regarding health precautions to prevent communicable diseases (Kuwaiti Government, 1969); its explanatory note indicates that the legislature's goal in applying the provisions of this law is to protect society from the risks of epidemics and diseases. Since then, the legislature has amended its provisions under Law No. 4 of 2020 (Kuwaiti Government, 2020a) on facing the repercussions of the outbreak of the COVID-19 pandemic. In this regard, the Kuwaiti health authorities implemented the provisions of Law No. 21 of 1979 on Civil Defense (Kuwaiti Government, 1979). Under Article 15 of Law No. 4 of 2020, the legislature authorizes the Ministry of Health and government agencies to take emergency exceptional measures that restrict public freedoms to confront the threat of epidemics and diseases, in line with international agreements and national constitutions. Government agencies imposed curfews, closed land, sea, and air terminals, and

followed up on those isolating through a digital application, which helped limit the spread of the epidemic.

In Law No. 4 of 2020, the Kuwaiti legislature does not define quarantine and consequently does not address it as a concept (Kuwaiti Government, 2020a). Undoubtedly these omissions will lead to confusion between the concepts of quarantine and sanitary isolation, which is the term adopted by the legislature when enforcing this law. Such a position contradicts those of Jordanian and Emirati legislators. It is necessary, therefore, for the Kuwaiti legislature to consider this point, as preventive health treatments and their scopes differ according to whether an individual is actually or potentially infected. It also affects where an infected person must isolate, and for how long they must do so, which differs where a potentially ill person is required to quarantine. The former must be institutionally isolated, while the latter can be institutionally isolated or domestically quarantined.

Quarantine differs from sanitary isolation in terms of the authority of government agencies to inspect the places and enforce possible timelines for these measures. There is no doubt that the Kuwaiti authorities enjoy broader powers when isolation is under the jurisdiction of public governmental institutions. However, the matter is different for the Jordanian and Emirati legislatures as they regulate these issues according to the above distinction. Based on the foregoing, amending the provisions of Law No. 4 of 2020 and defining public health measures accurately will ensure a balance between the government's desire to preserve public health, while maintaining respect for the rights and freedoms of individuals as stipulated in the law (Kuwaiti Government, 2020a).

Kuwaiti authorities may be criticized regarding their pandemic measures based on Resolution No. 20 of April 2020, issued by the Ministry of the Interior (Kuwaiti Government, 2020b). This Resolution published the names of violators of curfew and home quarantines in the media and newspapers. This decision has been confronted by the community and criticized for two reasons: one is the violation of the principle of legitimacy, as no text specifies such a punishment in Article 17 of Law No. 8 of 1969 (Kuwaiti Government, 1969); the other is the lack of competence of the Council of Ministers to issue such a decision.

The Kuwaiti legislature subjected whoever violates their quarantine decisions to the provisions of Article 17 of the Health Precautions Law (Kuwaiti Government, 1969), and it is worth noting that the amendment brought by the legislature to confront the pandemic was limited to the provision of this article only. Most of the crimes specified in this Article are actual violations of quarantine measures. They include non-compliance with the rules on sanitary isolation for infected persons or suspects (Article 4); non-compliance with health and safety rules without permission (Articles 5-6); non-compliance with health rules on home quarantine (Article 7); and, gathering in places and mixing (Article 8). In so doing, the legislator considers all these crimes to be misdemeanors punishable by imprisonment for a period not exceeding three months, and a fine of up to 10,000 dinars.

The law also criminalizes the intentional transmission of infection as a deliberate crime leading to imprisonment for a period not exceeding ten years and a fine of up to 30,000 dinars. The legislation stipulates that the specified infection must be a communicable disease or infection and that it must be transmitted by a person infected with COVID-19. However, the legislature has not criminalized unintentional wrongdoing, which is illogical as the ill person must be aware of their infection and the subsequent violation of the precautions. Moreover, this is in addition to the punishment not being heightened for repeat violations.

Among the judicial applications in this regard, The High Court in the Al-Ahmadi Governorate fined Fahd Rashid 500 dinars for violating the decisions and measures mentioned in Article 15 of Law No. 8 of 1969 regarding health precautions to prevent communicable diseases (Kuwaiti Misdemeanours Court, 2020a). The High Court in Al-Ahmadi Governorate also fined Khaled Abdulaziz Muhammad and Fadel Abdulaziz Muhammad 500 dinars for violating the provisions of Article 15 of Law No. 8 of 1969 regarding health precautions to prevent communicable diseases (Kuwaiti Misdemeanours Court, 2020b).

The Criminal Court of Cassation decided to overturn the appealed verdict of convicting Ziyad Abdel Wahab Suleiman (Kuwaiti Court of Cassation Criminal Chamber, 2021) for possession of psychotropic substances and driving a vehicle under the influence of influencing substances, and ruled his innocence, and uphold the appealed verdict on the charges of being on the public road in cases other than those authorized by law, and violating the curfew.

By examining the previously mentioned verdicts of the Kuwaiti Courts on the implementation of the provision of Law No. 8 of 1969, researchers find that it is satisfied with the imposition of a fine on all violations, including the violation of quarantine (Kuwaiti Government, 1969; Kuwaiti Misdemeanours Court, 2020a; Kuwaiti Misdemeanours Court, 2020b). We believe that the judiciary's choice of imposing the fine when it has the choice whether to impose a fine or imprisonment, is due to the will to achieve prevention from the spread of the disease, and this led to the failure to achieve deterrence from violations of quarantine procedures.

Based on the paper's findings and discussion, the authors recommend emphasizing a balance between achieving the public interest of the State and preserving individual interests and freedoms in applying quarantine. Additionally, the State should criminalize unintentional wrongdoing on interdicted and isolated persons, with penalties increasing in the event of recidivism. Quarantine, as a restriction on human rights, should be resorted to in the narrowest definition, and only for limited periods of time.

Governments apply common procedures to face this pandemic, using steps as required by individual legislation and law. These steps are frequently reviewed with respect to many factors such as the total number of infected cases, death rates, and violations of these instructions as reported by courts.

6. CONCLUSION

This paper focused on defining the right of freedom of movement concept, and the legality of quarantine as a restriction on this right. It aimed to examine the national regulations and procedures implemented in response to the COVID-19 pandemic in the Hashemite Kingdom of Jordan, the UAE, and Kuwait. The research problem was the lack of clarity of national legal frameworks and procedures related to quarantine, and the lack of deterrent penalties related to their violation, as well as in the difference and disparity among countries' responses to the pandemic in the light of international law and the application of procedures and penalties in the face of COVID-19.

This paper is one of the first pieces of research to examine quarantine due to COVID-19 and how it relates to legislation, and its judicial applications in

Jordan, the UAE, and Kuwait. It provides valuable analysis, comparisons, and statistics, for legislators and future researchers alike. While working on this paper, the authors have faced some limitations represented by the scarcity of references and statistics on the subject.

The paper concludes that the legal texts related to confronting COVID-19 are still new and that the penalties, in some countries, are not sufficient deterrents.

Finally, the paper includes recommendations; to ensure a balance between the public interest of the State and preserving individual interests and freedoms in applying the quarantine procedure, to criminalize unintentional wrongdoing of interdicted and isolated persons, to increase penalties in the event of recidivism, and to resort to quarantine, as a restriction on human rights, in the narrowest definition and for limited periods of time.

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