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The Right of the Victim vs. the Right of the Accused to Legal Representation During the Trial Stage (Scope and Limitations): a Comparative Study

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Abstract:

This article is a comparative study of the right to legal representation for both the accused and the victim of the crime under the procedural laws of Jordan and the United Arab Emirates (UAE) during trial stage. The article tries to answer how and to what extent such right is guaranteed during this stage of criminal proceedings under both laws. By examining the current rules of law on the right to legal representation at trial stage for both the accused and the victim of the crime, the analysis shows that this right exists under both laws during this stage with various limitations in relation to the accused. Whereas, there is no general rule in both laws to guarantee the victim's right to an attorney who, if retained, can attend the trial as indicated by a few legal provisions in both laws.

Keywords: Trial, Criminal Proceedings, Right to Attorney, Victim of Crime, The Accused, Jordan, UAE.

Introduction:

This Article provides a comparative study of the victims of the crime right v. the accused's right to legal representation during trial stage under the Law of Criminal Procedures of Jordan 1961 No. 9 (LCPJ), and the Law of Criminal Procedures of UAE 1992 No 32 (LCPUAE). Under both laws, criminal case consists of two stages. The first is the primary criminal investigation stage which is conducted by public prosecution, and criminal trail being the second stage. Prior to these two stages, there is a preliminary investigation stage which is conducted by law enforcement officers or the judicial police. Criminal proceedings undertaken by law enforcement agencies, in each of these stages, affect the rights and interests of both the accused and the victim of the crime, and it is, therefore, essential that the law should provide both parties with the procedural rights and tools which are necessary for both enabling them to some form of effective participation in criminal proceedings, and ensuring proper and equal administration of justice during these proceedings.

In order to ensure such equal participation for both parties, it is essential that the mode, boundaries, and scope of such participation are properly identified by the law, and must be the object of a delicate balancing that must be carried out in the knowledge that the overarching purpose of criminal procedures is to provide fair trial and justice for those involved in criminal litigation; that is the accused and the victim, whilst providing the safeguards necessary to guarantee and protect their rights at the highest level in the course of carrying out such proceedings.

The right to fair trial is a norm of human rights designed to protect the accused involved in criminal proceedings from unlawful and arbitrary curtailments or deprivation of other basic rights and freedom, the most prominent of which are the right to life and liberty, and, at the same time, to allow a proper administration of

justice to the victims of crime. In this paper, we contend that the right to fair trial is not limited to the accused, rather it is applicable to victims of crime as it forms their legal conduit to achieving justice. This right, therefore, encapsulates a set of minimum guarantees, each of which must be respected without any infringement, and it is guaranteed under various international legal instruments including the International Covenant on Civil and Political Rights (ICCPR) which states in Article (14) that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". The standards against which a trial is to be assessed in terms of fairness are numerous. Amongst other standards, the right to legal representation or the right to a criminal defense attorney is one of the fundamental and cornerstones of fair trial guarantees. This right should be accorded to both parties of the criminal case; that is the accused and victims alike pursuant to the principle of equality before the law. This equality before the law conditions criminal proceedings from the outset, and entails providing litigants with equal procedural rights before law enforcement agencies(1).

Given this focus, this paper seeks to provide a comparative analysis of the right to an attorney which is of fundamental importance in relation to all phases of criminal proceedings for both the accused and the victim of the crime under the criminal procedural laws of Jordan and UAE. It tries to explore the extent to which such right is recognized and guaranteed under both laws during the trial stage of criminal proceedings through casting light upon its rationale, precise scope and limitations in both jurisdictions. Through highlighting the relevant law on this right, the paper intends to provide insight into how this comparative study might contribute to any potential law reform on this contentious issue under both laws. To this end, the paper is divided into the two sections. Section one highlights briefly the rationale of the right to an attorney. Section two addresses the extent to which

(1) See, The lawyers committee for human rights, What is a Fair Trial? A Basic Guide to Legal Standards and Practice, USA, New York, 2000, pp 11-22.

such right is guaranteed under both laws during trial stage. The paper concludes by comparing and contrasting the respective positions of the two jurisdictions so as to provide insight into how this comparative analysis might contribute towards any potential law reform in relation to this contentious issue.

Section One: The Rationale of the Right to Legal Representation(1)

The right to legal assistance during criminal proceedings is essential in many respects, both for the accused and the victim of the crime, in order to guarantee an efficient implantation of their other procedural rights before the law enforcement agencies, including police officers, public prosecutors, and judges. It is essential in relation to the accused in order to insure his or her right to an effective defense and for the purpose of protecting his or her physical and mental integrity especially in cases involving deprivation of liberty upon their arrest or detention as well as during their questioning by police officials or their interrogation by public prosecutor. The right of the accused to an attorney is provided as a fundamental right in international human rights instruments and in criminal procedural laws in most countries. So, according to Article (14/3/b) of the ICCPR: "Everyone charged with a criminal offense shall have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing".

Subsection one: Right to Defense and the Presumption of Innocence

On national level, Article (28) of the UAE Constitution 1971 states that: "Punishment shall be personal. An accused shall be deemed innocent until he has

(1) This is the first paper in which the right to legal defense for the accused and the victim of the crime during trial stage is explored under the laws of Jordan and UAE. The second paper tackled the same issue for both parties during pre-trial stages. And since the rationale of this right is basically the same, then some of the key concepts and ideas have been interchangeably cited in both articles.

been convicted by means of a legal and just trial. The accused shall have the right to appoint the person who shall conduct his defense during the trial. The law shall prescribe the circumstances in which the presence of a counsel for the defense shall be obligatory". Similarly, the wording of Article (7) of the Jordanian Constitution 1952 implies the existence of the right to legal defense by stating that: "Personal freedom shall be guaranteed", and assumingly, by way of deduction of the spirit of the wording of this Article, one can say that the protection of such freedom, during criminal proceedings, entails granting the accused the right to retain an attorney to defend him or her during all phases of such proceedings.

The right to defend oneself is recognized as subordinate to the presumption of innocence which underpins criminal proceedings, according to which no one is guilty unless the contrary is has been proved(1). Thus, by accepting such notion, individuals must be given the right to defend themselves against any criminal charges throughout all phases of criminal proceedings. One requirement of the right to defend oneself is that the accused must be informed of the alleged criminal charges, and allowed the right to retain a criminal defense attorney of his or her choice. Protecting the accused right to defend himself or herself is basically a defense of individuals' natural rights such as right to life, right to liberty, and their presumption of innocence.

Subsection two: Victims of the Crime and Legal Representation

On the other side of criminal equation, it is argued that victims of the crime are also entitled to legal representation before law enforcement agencies as this will entitle them to some form of participation in criminal proceedings which are deemed to be their legal conduit to the achievement of justice. The victim who

(1) See, J.H. Robert, la protection de la loi du 4janvier 1993, *xiie Journnees de I'Ass-Fr. dr. Pen*, mars 1994, PU AIX- Marseille, 105.

does not have access to an attorney is clearly at a disadvantage, and law must therefore provide for the victims' right to an attorney to remedy this vulnerable situation and ensure an equal treatment for both parties to criminal proceedings(1); that is the accused and the victim. Presence of an attorney would contribute towards informing victims of their procedural rights, helping them exercising these rights, and ensuring that the law agencies including police officials, prosecutors and judges are properly performing their duties in the administration of justice and would make the process as transparent as possible(2). There is no doubt that victims of crime may, if given the chance to participate in criminal proceedings, contribute towards establishing the truth, and consequently achieving their sought legal rights through the conviction of the accused.

The role of the victim in criminal proceedings should be viewed as a form of balancing participation, which is necessary for proper balancing of the conflicting interests relating to the rights of both victims of the crime and the accused throughout all phases of criminal proceedings. It is well known that, under the current state of law in both Jordan and UAE, victims are considered as witnesses in these proceedings, the party of which are both the accused and the state(3). These proceedings, however, should not continue to be regarded as only a battle between the accused and the state, with victims viewed as being merely witness in these proceedings. That is, with the law agencies paying increasing attention to the rights of the offenders, the victims' of the crime right had been overlooked(4).

(1) See, F. Alshatheli, around the participation in criminal proceedings: A comparative study, Dar alnahdah Press, Egypt ,1986, 90.

(2) S. Zappala, "The Rights of Victims v. The Rights of the Accused",(2010) 8 (1)*Journal of International Criminal Justice*, 137, 9.

(3) See, M. S. Alani, *The Origins of Criminal Procedure*, Univeristy Book Shop, Sharjah, 2015, 77-107. See also, M. S. Najeen, *The Law of Criminal Procedures of Jordan*, Dar Althaqafah Press, Amman, 1996, 45, 58-94; K. M. Kanam, F.M Qorarri, *The General Principles of the Law of Criminal Procedures of UAE*, Alafaq Almoshreqh Press, Amman, 2011, 42.

(4) See, G. C. Paul, J. M. Nathanael and J. E. Bradley, "Crimes Victims' Rights during Criminal

Thus, it has been, rightly, argued that "the criminal justice system has lost an essential balance …[as] the victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed"(1). Therefore, victims of the crime should have a voice in these proceedings, be informed throughout the process as they are the ones who feel the immediate damage caused by the crime. Some form of victims' participation in criminal proceedings is essential if they are to be able to assert their legal rights in the criminal case(2), and be satisfied with the outcome of the criminal justice system(3). Presence of an attorney to their side throughout all phases of criminal proceedings would, arguably, contribute towards a more effective role of the victim of crime as a party to these proceedings rather than being as witnesses.

Individuals involved in criminal cases, whether the accused or the victim, should have the right to defend themselves and their rights either in person or through a representation by an attorney of their choice, and if they are not able to afford the expenses of an attorney, then legal representation should be provided at the public expense of the state. The right to criminal defense attorney is an essential safeguard for all parties to criminal case, and whether it is being found in the constitution or statute, it must be respected, not be violated under any circumstance, or rendered meaningless by law enforcement agencies since any denial of such right, without sufficient justification, would result in rendering criminal proceedings void, and reversing the conviction of the accused.

Investigation", Vol. 104, No.1, 2014*Journal of Criminal Law and Criminology*, Northwestern University School of Law, USA, 59-104, 63

(1) President's Task Force on Victims of Crime, Final Report, cited in Paul et al, supra, 2014, 63.

(2) C, D. Robert, A. James, W. Julie and H. Susan, Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Right Clinic, National Center for Victims of Crime, U.S.A, 2009, 21

(3) R. Ruddy, "The Victim's Role in the Justice Process", *Internet Journal of Criminology*, ISSN 20456743 (online), 2014, 2.

The victims of crime and the accused should both have the right to speak during criminal proceedings either by themselves or though their lawyer contributing to such process through the presentation of evidences, information, views, requests, concerns or objection to any improper handling of criminal proceedings by law agencies. Victims' involvement in criminal proceedings through the submission of representations and opinions essentially aims at satisfying their special needs or interest in the good administration of justice, and might contribute towards ensuring the conviction of the accused. Conversely, the accused' contribution to these proceedings, either in person or through an attorney, enables him or her to maintain their innocence, and consequently to avoid the imposition of criminal liability.

Subsection Three: Interactions

The right to legal defense is, therefore, an essential right for all parties to the criminal case, and, at the same time, it is considered to be a necessary requirement for justice, and it is a natural right of great importance among all other rights(1), which should not be denied whether being articulated by law or not(2). Yet, the explicit articulation of this right by law is essential as it imposes a duty on the law enforcement agencies to respect it, and would, certainly, form a basis for establishing social and legal ground towards enhancing the exercise of such right.

The denial of the right to legal representation, and not allowing the victim or the accused to have the assistance of an attorney, would result in having both unable to properly submit their evidences, leaving them to fight a long battle of legal process full of concepts and procedures outside the scope of their legal and

(1) H. S. Almarsafawi, *the Safegaurds of fair trial in the Arabic legislations*, Moharam Bake Press, Alescandarah, 1973, 14.

(2) A. A. Alfeqi, *the Police and the Rights of the Victims of Crime*, Dar Alfajer Press, Egypt, 2003, 85-86.

personal knowledge and expertise. And this might well lead to their failure to proving their rights when not being accompanied by a competent legal defense helping and guiding them throughout the various stages of criminal proceedings(1).

The role of the attorney, during criminal proceedings, is mainly manifested in submitting the necessary requests on behalf of their clients, and remedying any lack of legal knowledge in their side, guiding them through the criminal process and saving them any unnecessary difficulties involved(2). The attorney could also point out towards relevant evidences, suggest certain procedures which might lead to uncovering the truth, and his or her presence during criminal proceedings could also help monitoring the way in which they are conducted, and this might well contribute towards more respect of both the application of laws and the rights of the parties by law enforcement agencies(3). Presence of the attorney would also build self-confidence of both the victim and the accused, and eliminate their anxiety and fear while responding to questions posed by legal authorities(4).

In other words, the role of defense attorney is of paramount importance in almost every criminal case, and although the duties of an attorney vary depending on the nature of the offence under investigation, the side he or she is representing in the criminal case, some of the key responsibilities and duties of any criminal defense attorney includes, amongst others, advising his or her client of their rights and explaining to them what to expect at the different stage of criminal process,

(1) See, M. A. Eabad, *Confidentiality of Investigation and the Right to defense*, Maktabat Alhamed Press, Amman, 2015.

(2) B. Alsrehan, *the Law of Civil Procedures*, University Press, Sharjah, 2013, 110-11.

(3) C. D. Robert, A. James, W. Julie and H. Susan, *Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Right Clinic*, National Center for Victims of Crime, U.S.A, 2009, 42.

(4) F.Niaziatabay, E. P. Fard, A. Hassni and E. P. Fard, "Examining defense rights of the accused at the stage of preliminary investigation in Iran laws with a human rights approach",(2014) 3 (1) *Journal of Natural and Social Sciences*, 164-175, 170.

helping them to effectively exercise their procedural rights before the different law enforcement agencies, ensuring that the rights of their clients are respected and not being violated through law enforcement conduct or in court proceedings, submits requests on their clients' behalf, investigating facts and evidence, cross-examining other parties and their witnesses, objecting to any improper police questioning, or public prosecutors' interrogation or any other legal procedures, and presenting legal defenses in support of his or her client's interest, and, in general, support his or her client at almost every phase of criminal proceedings.

Section Two: The Victim's v. the Accused's Right to an Attorney during Trial Stage.

This section is divided into two subsections. The first considers the accused's right to an attorney during trial stage under both laws of Jordan and UAE, and in subsection 2, this right in relation to the victim is explored.

Subsection One: The Accused's Right to an Attorney during Trial Stage

The accused's right to legal representation during trial stage is linked to his or her right to defense which is considered to be one of the criteria according to which the fairness of trial is measured and assessed. This right is guaranteed under Article (14/3/d) of the ICCPR which states that everyone shall have the right "to be tried in his or her presence, and to defend himself in person or through legal assistance of his own criminal case; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interest of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

The accused's right to have an attorney present with him or her during trial stage is also linked to the presumption of innocence according to which he or

she is presumed to be innocent until his or her guilt is being proved beyond all reasonable doubt. The accused's right to be presumed innocent, as a basic fair trial standard, is guaranteed under Article (14/2) of the ICCPR which states that: "everyone charged with criminal offense shall have the right to be presumed innocent until proved guilty according to law". The accused's presumption of innocence is also guaranteed under Article (2) of the CLPUAE which states that: "no criminal penalty may be imposed on anyone unless his or her guilt is proven according to law". The same rule exists also under Article (147) of the CLPJ. This Article states that: "the accused is presumed innocent until he or she is proven guilty according to law".

Respecting the accused's right to the presumption of innocence, and his or her right to legal defense entails granting him or her the right to retain an attorney during his or her trial. That is, the operation of the fore-mentioned Articles supposes that anyone who is charged with a criminal offense shall have the right to defend himself or herself in person or through an attorney regardless of the kind of the crime charged. The accused's right to retain an attorney during trial stage is guaranteed under both laws of Jordan and UAE, with some limitations as to the scope of this right under both laws.

To this effect, Article (4) of the CLPUAE provides that:

> "Anyone accused of a felony punished by a death penalty or life imprisonment must have a lawyer to defend him or her at the trial stage. If the accused did not appoint a lawyer of his or her choice, the court must provide him or her with a lawyer whose fees are to be paid by the state according to the law. Anyone accused of a felony punished by temporal imprisonment has the right to ask the court to assign a lawyer to defend him or her if he or she does not have sufficient means to pay for an attorney, and

the court shall do so after verifying his or her financial inability to retain a lawyer. If the assigned lawyer has any reasons or excuses that might prevent him or her from representing the accused, the lawyer must inform the court of them, if his or her excuses are accepted, the court shall assign another lawyer".

Similarly, Article (208) of the CLPJ states that:

1. After the committal of the criminal case to the court, the president (the chief justice) of the court or another delegated judge, must, if the crime charged is punishable by death penalty or life penal servitude or custody for life, ask the accused whether he or she has retained a lawyer to defend him or her during the trial, and if the accused did not hire a lawyer, then the court must appoint one to defend him or her if he or she is financially unable to pay for a lawyer.

2. The court shall pay for the assigned lawyer ten Jordanian dinar per session he or she attends provided that the amount does not exceed 500 dinars nor being less than 200 dinars".

By examining the current rules of law on the accused's right to legal representation at the trial stage under both the CLPJ and the CLPUAE, we conclude that, although the right of the accused to an attorney exists under both laws during trial stage, yet this right has its limitations, and arguably, these limitations contradict fair trial standards, and could possible impair both of the accused's ability to effectively defend himself or herself before the court as well as his or her ability to exercise his or her other procedural rights in a meaningful manner. These limitations include[1]:

(1) But the accused, if financially capable, can hire a lawyer of his or her choice to his or her defense in cases like these. But we argue that it must be the court's duty to assign a lawyer to

1. According to Article (4) of the CLPUAE, and Article (208) of the CLPJ, the accused's right to assigning a lawyer to his or her defense by the court is limited to cases where the offence charged is a felony punished by death penalty or life imprisonment, and it is not obligatory to the court to assign a lawyer to the defense of the accused if the felony is punishable by temporal imprisonment(1) under the CLPUAE as the court might decline to do so if convinced that the accused has sufficient means to hire a lawyer. Similarly, the accused has no explicit right, under the CLPJ, as to the appointment of an attorney by the court if the crime charged is a felony punished by temporal penal servitude(2) or temporal custody.

2. There is no legal obligation on the court, under both laws, neither to inform the accused of his or her right to retain lawyer in cases involving other offences; that is, misdemeanors(3) or contraventions(4), nor this

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the defense of the accused in all situations where he or she cannot afford one regardless of the type of the crime charged under both laws of Jordan and UAE. That is, it is unlikely for any rich or financially capable accused to wait for the state to assign a lawyer to his or her defense. The rules on this right, are arguably designed for poor offenders, and therefore the right should cover all types of offences rather than being limited or confined to only few.

(1) Temporal imprisonment is a punishment which involves the incarceration of the convict for a period which may not be less than three years and not more than fifteen years unless otherwise provided by law (Article 68) of UAE Penal Code 1987 No. 3 (UAEPC).

(2) Unless this law provides otherwise by a special provision, the minimum period limit for the punishment of temporal penal servitude and temporal custody is three years and the maximum limit is fifteen years (Article 20) of the Jordanian Penal Law 1960 No. 16 (JPL).

(3) Unless the law provides otherwise, a misdemeanor is a crime punishable by imprisonment for a period not less than one month and not exceeding three years (Article 69) or a fine ranging from 1000 -3000 dirhams (Article 71) of the UAEPC. Whereas, under the JPL, it is punished by imprisonment for a period not less than a week and not exceeding three years unless otherwise if provided by law (Article 21), or a fine ranging from 5 dinars to 200 dinars (Article 22).

(4) A Contravention is a crime punishable by incarceration from 24 hours to 10 days, or a fine ranging from 100-1000 dirham (Article 30 of the UAEPC. Under the JPL, it punishable by imprisonment from one day to a week (Article 23) or a fine ranging from 5-30 dinars (Article 24).

obligation exists as to the appointment of a lawyer to the defense of the accused who is unable to financially hire a lawyer.

3. The amount of money to be paid for the attorney, where the law requires the appointment of an attorney, is minimal under both laws, it does not reflect the seriousness of the crime charged, and, therefore, there is a considerable risk of rendering the representation meaningless or ineffective(1).

Subsection Two: The Victim's Right to an Attorney during Trial Stage

Victims of the crime have the right to attend, and not to be excluded from criminal trials without justifiable cause(2). They also have the right to speak and present their cases before the court as they are keen to see justice at work and being done. They want to see and hear the accused and his or her lawyer arguments and defenses and cross-examine them. All in all, victims have the right to participate in criminal proceedings during trial stage as these proceedings are vital to the determination of the criminal case's fate. Presence of an attorney would assist them to understand these proceedings, provide them with self-confidence, eliminate their anxiety and fear, and help them to exercise their procedural rights.

To put it in another words, the victims' private interests at stake during trial stage are vast, and the presence of an attorney with them contributes towards protecting these interests implicated in the proceedings of criminal trial which requires special legal knowledge and expertise, and this might only be provided by the victims' attorney. As has been pointed out:

(1) See, F. Kasasbeh and M. Al Qudah, "The effectiveness of the proposed Jordanian consumer protection law: an analytical and critical study for the proposal's scope of means of execution", (2010) 24 (43) Journal *of Shari'a and Law*, United Arab Emirates University, 141-193.

(2) See Articles (141-145) of the CLPJ and Article (163) of the CLPUAE.

> Victims of crime should have a voice at trial and sentencing…victims do not just want to make demands, but they want their voices to be heard regardless of the outcome. Victims want to express their desires and have their point taken into consideration. Even though the state is the official administrator and sanctioning body, the state is not the only one against whom the perpetrator has offended. An individual victim… need to be actively involved in the process to feel satisfied, not re-victimized, and comfortable cooperating in the future…victims are the ones who are primarily harmed by crime and that the criminal justice system should be responsive to the victim's needs(1).

Under the CLPJ and the CLPUAE public prosecutor takes the role of presenting the case before the court, representing victims of the crime and making decisions in their favor. And therefore, presence of victims' attorneys is not regarded as an important issue, and is not guaranteed as a fundamental requirement of criminal trials. Yet, and as argued above, it is important to allow the victims some form of active participation in criminal proceedings(2), and making such participation meaningful requires that victims who have secured the assistance of an attorney should be allowed to enjoy the benefits of the attorney's legal knowledge in the assertion of his or her rights during trial proceedings. However, and contrary to the legal rules governing the accused's legal right to an attorney at this stage of criminal case under the CLPJ and CLPUAE, criminal trial can be conducted without the presence of the victim's lawyer, who is if retained, will not be barred

(1) See, Ruddy, 2014, 10, 13.

(2) Victims have the right to attend in person during trial stage under both laws of Jordan and UAE, and have the right to present evidences, cross-examine witnesses: see, for example, Articles (167, 170, 172, 173) of the CLPJ, and Articles (158, 165, 166) of the CLPUAE. But we contend that their presence and participation would be more effective if accompanied by a lawyer, and therefore, it is suggested that such right should be guaranteed by law explicitly as a requirement for criminal trial, and victims shall be informed of this right before the proceedings.

from attending court sessions or hearings. In other words, it is not a requirement for criminal trial to have legal counsels for victims under both laws, but if the victim had retained a lawyer, then he or she will not be barred from attending, representing and defending his or her client's rights and interests.

By examining the legal provisions of the CLPJ and CLPUAE, we find that, although there is no explicit provision which prohibits victims of crime from retaining a lawyer during trial stage, there are few Articles which indicate that such right exists under both laws. To this effect, Article (167) of the CLPJ states that "in criminal trials before the magistrate, where presence of public prosecutor is not required, the victim or his or her lawyer may be present at the trial and play the role of the prosecutor by presenting evidences, cross-examining witnesses and defensing of the accused, and requesting the appointment of experts". Article (172), and in relation to criminal trials involving cases of misdemeanors, states that "after the file of criminal case is being read by the clerk of the court, and the public prosecutor has made his or her submissions, and the victim or his or her lawyer explained his or her compliant, the court shall ask the accused about the crime charged"[(1)]. Similarly, Articles (165, 169, 175) of the CLPUAE provide that the victim of the crime and their lawyers have the right, during criminal trial to cross-examine witnesses, and the court has the authority to prevent them from continuing to talk if their arguments or speeches are not relevant to the facts of the case or are repetitive.

Conclusion

This paper sought to provide a comparative study of the right to legal representation, for both the accused and the victim of the crime in the course of

(1) Similarly, see Article (216) which states the same rules regarding trial of cases where the crime charged is felony.

the trial stage of criminal proceedings under the CLPJ and the CLPUAE. Central to this purpose was to provide insight into whether this right is guaranteed for both parties and to what extent in both jurisdictions. By examining the current rules of law on the right to legal representation at this stage of criminal proceedings for the accused and the victim of the crime in both jurisdictions, it was shown that there is no legal provision which provides for a general rule articulating the victim's right to an attorney as an essential requirement of criminal trial. This is so, under both laws, as the public prosecutor takes the role of representing the victim before the court. Yet, although there is no rule which prohibits the victim from retaining a lawyer during this stage, and if his or her attorney is present, he will be allowed to attend representing his client, it is argued that this right must be explicitly included in both laws as a general rule and the victim must be informed of it before the commencement of the criminal trial.

Comparatively, although the right of the accused to an attorney exists under both laws during the trial stage, yet this right has various limitations which contradict fair trial standards, and could possibly impair both of the accused's ability to effectively defend himself or herself as well as his or her ability to exercise his or her other procedural rights in a meaningful manner. These limitations include confining the accused's right to a lawyer to crimes involving felonies punished only by death penalty and life imprisonment, whereas it is not obligatory for the court to assign a lawyer for the defense of accused for other types of felonies and when the crime charged is a misdemeanor the punishment of which could reach three years in jail and fines unless an aggravating circumstance exists whereby the jail period and fine amount shall be higher. Accordingly, it is suggested that a law reform is needed in this regard to remedy these legal defects in both laws.

Recommendations:

Based on the foregoing comparative analysis conducted in this paper, which helped in highlighting some of the deficiencies encountered in both laws of Jordan and UAE, the following possible recommendations could be made to address such deficiencies and shortcomings:

1. Amending the laws of both Jordan and UAE by explicitly enacting the right of the victim of the crime to retain an attorney during the trial stage, with him or her must be informed of such right before the commencement of the criminal proceedings.

2. Amending the criminal procedural laws in both jurisdictions by not confining the court's duty to assign a lawyer for the accused only in relation to crimes punishable by death penalty or life imprisonment. Rather, the scope of such right should also include other types of offences.

3. The court must be required by law in criminal cases, other than those involving death penalty or life imprisonment, to inform the accused of his or her right to retain a lawyer, and if not being financially capable of doing so, it should be the duty of the court to appoint one to defend him or her.

4. The amount of money payable to the lawyer under the current state of law in both jurisdictions needs to be revisited and raised so as to render the legal representation meaningful and effective.

Abbreviations List:

LCPJ: The Law of Criminal Procedures of Jordan 1961 No. 9.

LCPUAE: The Law of Criminal Procedures of UAE 1992 No 32.

ICCPR: International Covenant on Civil and Political Rights.

UAEPC: UAE Penal Code 1987 No. 3.

JPL: Jordanian Penal Law 1960 No. 16.

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حق الضحية مقابل حق المتهم في التمثيل القانوني خلال مرحلة المحاكمة (النطاق والحدود): دراسة مقارنة

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ملخص البحث:

يقدم هذا البحث دراسة تحليلية مقارنة موضوعها حق المجني عليه في مواجهة حق الجاني في التمثيل القانوني في ظل القانونين الإجرائيين الأردني والإماراتي خلال مرحلة المحاكمة الجزائية، وذلك في محاولة لبيان نطاق، ضوابط ومحددات تقرير هذا الحق في كلا القانونين بالنسبة لكلا الطرفين، وتسليط الضوء على مدى احترامهما ومراعاتهما لهذه الضمانة من ضمانات المحاكمة العادلة خلال هذه المرحلة المهمة من مراحل الدعوى الجزائية. وتحقيقا لهذه الغاية، فقد قسم البحث إلى قسمين، تناول الأول منهما الأساسين المنطقي والقانوني لأهمية التمثيل القانوني في المحاكمات الجزائية. وفي القسم الثاني، تمت المقارنة بين حق المجني عليه في مواجهة حق الجاني حول هذا الموضوع المهم لإبراز ما إذا كان كلا القانونين يقرر ذات الحق وضمن ذات الضوابط لكلا الطرفين أم لا تحقيقا لمبدأ الموازنة الإجرائية بين الخصوم. وقد تبين من خلال فحص واستقراء القواعد القانونية ذات العلاقة بأن حق التمثيل القانوني خلال مرحلة المحاكمة مقرر في كلا القانونين بالنسبة للجاني، ضمن حدود ضيقة، وعلى اختلاف في النطاق والضوابط بينهما، أما بالنسبة للمجني عليه، فقد تبين أن كلا القانونين لا يتضمنان قاعدة عامة تقرر حق المجني عليه في التمثيل القانوني أسوة بالجاني، رغم أنهما لا يمنعان ذلك كما يفهم ويتضح من بعض النصوص المتناثرة فيهما.

الكلمات الدالة: المحاكمة، الإجراءات الجزائية، حق التمثيل القانوني، ضحايا الجريمة، الجاني، الأردن، الإمارات.