

THE ROLE OF THE CORPSE IN CRIMINAL INVESTIGATION: A COMPARATIVE STUDY

Hasan Awad Al-Tarawneh,* Mawya Alaqarbeh**

Abstract: *In murder cases, the body of the deceased has practical importance in the criminal investigation of a death. This comparative study considers the position held in legislation concerning the protection of the corpse as an investigation tool. Such protection may relate to the objective protection of the corpse, or to procedural protection aimed at regulating the procedures that must be followed during the examination of the body. The protection must also take into account the body's right to privacy, including the value it carries for the deceased's family and loved ones.*

Keywords: *Corpse, criminal investigation, criminal evidence, crime scene, hiding a corpse*

I. INTRODUCTION

In any criminal investigation involving a murder, the corpse of the deceased must be carefully handled not only because it plays a crucial role as evidence of murder, but also because of its importance to the family of the deceased. International conventions provide many guarantees to ensure the preservation of the sanctity of the body as much as possible. Since the Geneva Convention stated that a medical examination must be conducted in the event of the death of a prisoner of war, national legislations also began to require post mortems in certain cases. In penal legislation, texts were further developed to ensure the provision of a comprehensive legislative plan for dealing with a corpse regarding how to attain information beneficial to an investigation, how this information can act as criminal evidence, and what penal protection of the corpse is required to preserve its integrity as a tool of evidence. Procedural frameworks were also established to ensure the preservation of the corpse and the right of the accused to a defence.

To address how the body may be used to acquire evidence, it is important to study the role that it plays regarding criminal proof according to forensic science, the crime scene, and other criminal investigation sciences, as well as how Jordanian legislation has been influenced by these sciences. The next section of the paper focuses on the objective and procedural aspects of Jordanian penal protection of the body as a tool of evidence, the role of the corpse in evidence, and the penal protection provided for it.

1. THE ROLE OF THE CORPSE AS EVIDENCE

The body of the deceased plays a key role in proving the crime of murder. Many of the crime's circumstances can be proven from evidence gathered from the body, such as the method of the commission of the crime and when it was committed, as well as other cir-

* Hasan Awad Al-Tarawneh, Associate Professor of Criminal Law, The University of Jordan, Amman, Jordan, (corresponding author). ORCID: 0000-0002-3712-9591.

** Mawya Alaqarbeh, MA in Criminal Law, The University of Jordan, Amman, Jordan. ORCID: 0009-0004-9995-9955.

cumstances of the crime's commission; all constitute substantial objective arguments that may be raised during the trial and thus affect the course of a case. To show the importance of the role of the body in evidence, this aspect will be covered in two parts: the evidence and signs that can be extracted from the body, and the effect of the corpse in forming the emotional conviction of the judge.

1.1. Evidence Extracted from the Corpse

Forensic science has many reliable techniques for examining and discovering the circumstances of a crime, either by relying on signs and traces on the body or changes to it, or by relying on the crime scene to examine the physical traces found there. Forensic science has also developed other means of extracting information from a body, such as forensic entomology. These means and the type of information that is extracted by them will now be addressed.

1.1.1. Methods of examining the body

The first method for examining the body concerns searching for signs and traces. The Convention on the Treatment of Prisoners of War requires a medical examination of the corpse and the marks appearing on it, with a view to establishing the state of death and the identity of the deceased. Here, Jordanian and international legislation align, as Art. 40 of the Jordanian Code of Criminal Procedure (JCCP) stipulates that a medical examination of the body must be conducted in cases of homicide and suspicious causes. A third case is mentioned in Art. 29 of the Reform and Rehabilitation Centres Law concerning the death of an inmate. In all cases, the public prosecutor orders the transfer of the body to a forensic doctor, who indicates the cause of death and the condition of the body. Although a post mortem can be conducted without an order from the public prosecutor, the judicial officer may request one to find the cause of death or reveal a crime, as stated in Arts. 40 and 46 of the JCCP and Art. 4 of the Law of Usufruct of Human Body Organs. In this regard, the Jordanian legislator does not determine that the dead body should be examined by a doctor of the same sex; in contrast, the Qatari legislator requires that female bodies must be examined by specialised female doctors, unless the post mortem is for educational purposes, or the case requires it, or when no female doctor is available (Art. 7 of Law No. 2 of 2021 regarding the Autopsy of Corpses). Thus, the position of the Qatari legislator is better than that of the Jordanian because it is more observant of the sanctity of the dead and the privacy of the woman's body; this is in line with international conventions and legislation, which tend to enshrine the necessary rules to preserve the privacy of a woman's body.

The initial examination by a forensic doctor involves four key steps: a visual examination of the corpse; a report confirming the death and the approximate time which has elapsed since the death; the observation of external signs of violence and injury types, such as bruises, abrasions, burns, or traces of pressure from a rope; and, observation of the site of the injuries, determined by fixed anatomical points on the body.¹ The gathering

¹ AL-MAAYTAH, M. O. *Forensic Medicine in the Service of Security and the Judiciary*. Riyadh: Naif Arab Academy for Security Sciences, 2007, pp. 58 ff.

of such information is useful in establishing a connection between offender and victim, linking the cause of death and injury, and determining the dimensions of the injury as well as whether it occurred before or after death.² If the examination of the body has produced criminal suspicions about the cause of death, a post mortem is performed under certain regulations; in cases where death has resulted from a criminal act, the post mortem also determines whether the act was intentional.³

1.2. Evidence Extracted from the Crime Scene

The crime scene is the spatial area over which the criminal incident occurred, and from which the evidence supporting the accusation emerged; this area can also be reconstructed as a crime scene.⁴ The importance of the crime scene lies in the fact that it links the offender, victim, and scene of the incident, according to the theory of the exchange of traces (Locard's theory). This states that when any two objects are in contact, there is always a transfer of matter between them, and as such every substance leaves its trace in the other.⁵ In applying this principle, the Jordanian Court of Cassation established that the presence at the crime scene of the fingerprints, blood traces, or epithelial cells of the accused is sufficient evidence of their perpetration of, or participation in, a crime, unless there is sufficient evidence to prove the legality of the suspect's presence, such as to rule out any commission or participation.⁶

1.2.1. Stages of crime scene examination

The first stage concerns the inspection of the crime scene. Art. 29(1) of the Jordanian Penal Procedure Law obliges the public prosecutor to move immediately to the crime scene if the perpetrator is caught in flagrante delicto. Otherwise, moving to the crime scene is not obligatory, but rather permissible according to what the public prosecutor deems necessary. However, Art. 42 of the JCCP gives the public prosecutor the right to initiate an investigation in the same manner as an in flagrante delicto crime, if a crime or misdemeanour occurred inside the home and its owner requested that the public prosecutor conduct an investigation. This scenario holds even if the crime was not in flagrante delicto. Arts. 21 and 41 also require the judicial police to notify the Public Prosecution Office of crimes and to follow the instructions of the public prosecutor. Art. 33 of the Penal Procedure Law permits the public prosecutor to move to the residence of the defendant to inspect it, if it becomes clear that items in the defendant's possession may be evidence of their perpetration of the crime.

The importance of moving to the crime scene lies in providing the investigator with a starting point in uncovering the circumstances of the crime and attributing it to its perpetrator, as well as revealing important information that benefits specialists in the inves-

² AL-JUNDI, S. *Forensic Medicine in Criminal Investigations*. Riyadh: Naif Arab Academy for Security Sciences, 2000, p. 32.

³ LALEQ, I. *Criminal evidence from the forensic medicine perspective*. Master's Thesis. Mostaganem: Abdelhamid Bin Badis University, 2020, pp. 10, 27.

⁴ QITAF, N. *The crime scene and its role in detecting the criminal*. Master's thesis. Saida: Tahar Moulay University, 2015, pp. 12, 25, 27.

⁵ AL-MAAYTAH, M. *Forensic Medicine in the Service of Security and the Judiciary*. pp. 58–60.

⁶ Penal Cassation [1135/2021].

tigation.⁷ To find the truth, the public prosecutor can conduct the inspection and investigation anywhere in which items may be discovered or people questioned. Here, the term ‘inspection’ concerns the sensory detection of evidence to prove the state of the location in which the crime occurred.⁸ While inspecting the crime scene, the investigator must maintain it without error, because mistakes committed at the scene cannot be remedied and may result in evidence being obscured.⁹

The second stage concerns documenting the crime scene in several potential ways, starting with creating reports on the crime and its time and place, and taking statements from those involved. Crime scenes are also photographed or video recorded so that the investigator or judge has a true picture of the crime at the time of its discovery and during its occurrence, as well as of the stages of its commission and the individuals involved.¹⁰ Art. 30 of the JCCP obligates the public prosecutor to report on the incident immediately upon moving to the scene of the crime, by recording the manner, place and time of the crime, witness statements, or other useful information. Art. 31 gives the public prosecutor the power to prevent the departure of any person present at the crime scene until the report has been drawn up, under penalty of punishment, as well as the right to bring any person to the scene if it appears that information can be obtained from so doing.

The third stage is searching for evidence and extracting it for safekeeping, storage, and transfer to the competent authority for examination. Arts. 32 and 35 of the JCCP state that the public prosecutor must seize everything that appears to have been used in the commission of the crime and all other pertinent items and evidence; the seized items must be maintained in the condition in which they were found at the scene by being packed and placed in a container, if necessary, which is then stamped with an official seal.

1.3. Evidence from Forensic Entomology

With the development of criminal investigation sciences, other advanced methods of investigating and extracting signs and evidence from a body have appeared. With criminal entomology, the time lapse since death occurred can be estimated by the type of insects found on the corpse.¹¹ This time is estimated based on two methods: the type of insect found on the body, and the lifecycle of an insect on a corpse.¹² The first method depends on the type of insects that appear during the body’s decomposition stages, while the second depends on the lifecycle of the insect. One of the most important types of insects that flock to a corpse, and on which the insect experience depends, is of the *Calphora* species. Given the importance of forensic entomology in criminal investigation, we hope the Jordanian legislator will provide for its use in evidence by adding a second paragraph to Art. 40 of the JCCP.

⁷ AL MANDHARI, S. H. *Encyclopedia of Criminal Sciences*. Sharjah: Police Research Centre, 2007, p. 102.

⁸ NAMMOUR, M. S. *The Origins of Criminal Procedures*. Amman: House of Culture for Publishing and Distribution, 2016, pp. 375, 267.

⁹ AL MANDHARI, S. H. *Encyclopedia of Criminal Sciences*.

¹⁰ QITAE, N. *The crime scene and its role in detecting the criminal*. Master’s thesis.

¹¹ AL RAWI, R. F. F. The role of entomology in criminal proof. *Dar Al Manthama*. 2017, Vol. 6, No. 21, p. 154.

¹² ABDELLATIF, G. The role of insects in criminal investigation. *Journal of Humanities Sciences*. 2015, Vol. 4, pp. 299, 310.

2. HOW THE CORPSE PROVIDES EVIDENCE?

The examination of the body of a murdered person by a pathologist, and the subsequent reporting on the examination, is extremely important because of the defence that may be made regarding the corpse's condition. Several aspects of the report are key here, and will be examined in turn.

The first aspects considered by the pathologist are the cause and nature of the death, such as whether it was natural or resulted from a suspected murder.¹³ If the latter, the pathologist considers how the crime was committed, ie, proving that the behaviour was criminal. In this regard, the following evidence is considered: signs of violence or resistance, injuries, evidence related to the weapon or means of death, and evidence related to both the corpse and what surrounds it, such as traces of blood, or skin from the offender under the victim's fingernails.¹⁴ The victim's clothes are also examined, as torn clothes indicate a fight between the offender and victim. Regarding the means of murder, the Egyptian legislation,¹⁵ may consider murder by poison to be an aggravating circumstance in the murder, and thus the offender can be sentenced to death. It is therefore essential for the means of murder to be verified in the post mortem. In Jordanian legislation, there is no focus on the means of murder or whether this calls for aggravating the penalty or not, despite the fact that the Jordanian legislator does consider the means of killing if it occurs with poison in connection with the crime of intentionally killing animals, as in Art. 452(1d) of the Penal Code.

Another important issue with the cause of death is determining the extent of the offender's responsibility for achieving the criminal result if other factors combine with the offender's act. This is key to determining the effect on the penalty, or indeed the lack of penal responsibility if the act did not cause the result.¹⁶ In its application of this, the Jordanian Court of Cassation stated that a new medical examination should be conducted to determine the main cause of death if multiple causes were determined to indicate the extent of each cause. In this case, a quarrel occurred between A and B, and B was inside the a slowly moving car; the quarrel developed, so the brothers of A entered B's car and beat him so that the car veered. The brothers of A jumped out of the car while it was still moving, and the car continued to swerve; because of the lack of visibility, the absence of warning signs for roadside sewage works, and the victim's illness, the car fell into a cesspit, resulting in B's death. A and his brothers were referred to the Major Criminal Court on charges of murder but the High Criminal Court (HCC) amended the criminal description to the felony of a beating that leads to death coupled with other causes (the theory of equivalence of causes). Later, the Court of Cassation annulled the decision because the HCC had to conduct a new technical examination to explain whether the blows suffered by B from the siblings of A contributed to the victim's illness, leading to his loss of consciousness and lack of control over the vehicle, and the subsequent accident and death of B. The HCC, after the new examination had been conducted, found that the blows of

¹³ MUHAMMAD, S. Z. The role of the forensic physician in the criminal investigation. *Dar Al Manzma*. 2015, Vol. 4, No. 14, pp. 240–242.

¹⁴ LALEQ, I. *Criminal evidence from the forensic medicine perspective*. Master's Thesis. pp. 10, 27.

¹⁵ SHAHROUR, H. A. *Forensic Medicine: Principles and Facts*. Cairo: Narges Library, 1999, pp. 21, 42.

¹⁶ HOSNI, M. N. *Explanation of the Lebanese Penal Code*. Beirut: Dar Al Naqari, 1975 pp. 290, 278, 598.

the accused had not caused the accident; rather, B's pathological condition —a complete blockage in the left artery —was sufficient to cause the criminal result. The accused were therefore guilty of abuse rather than murder.¹⁷

We believe that the position of the Court of Cassation in this matter was correct, as the theory of equivalence of causes is based on two main points. First, if other factors had contributed to B's death, then a causal link remains between the offender's act and the criminal result. Second, if the combined factors are independent and sufficient in themselves to cause the criminal result, then the accused is not responsible, and their responsibility is limited to the limits of the act committed. However, the legislator has neglected to enshrine this point within Art. 345 of the Jordanian Penal Code. The origin of Art. 345 is Art. 203 of the Syrian Penal Code, which enshrines the principle of sufficient reason in stating that,

- a) The causal link between action and non-action is on the one hand, and the criminal outcome on the other hand. It is not negated by the combination of other previous, comparative or subsequent causes, whether the perpetrator was ignorant of them or were independent of his action.
- b) The matter differs if the subsequent cause is independent and sufficient in itself to produce the criminal result.
- c) In this case, the offender is only liable to the penalty for the act he committed.

This is what the Court of Cassation established in its ruling, and therefore we hope that the Jordanian legislator pays attention to the principle of sufficient reason and enshrines it within Art. 345 of the Penal Code.

2.1. Determining the Specifications of the Corpse

The victim's identity is established by examining scars, eye and hair colour, teeth, and body shape.¹⁸ The posture in which the body was found is also observed and its external appearance and clothes are described, or, if it is naked, the condition of the skin. Further highlighted are all distinctive skin changes useful to determining the identity of the deceased, as well as wounds, bruises and injuries.¹⁹ The deceased's blood and blood group are also examined, in addition to determining whether there are traces of blood from others. This is all important evidence that the court must verify through expert testimony, which shows the extent to which the seized samples match the blood group of the accused. The court must include in its judgment the descriptions of the body mentioned in the forensic report, otherwise the court's ruling is defective because of the impact on determining the victim's identity.

2.2. Determining the Time and Place of the Crime

The time and place of the crime may not be essential elements in themselves when they are not included in the formation of the elements of a crime; however, they still con-

¹⁷ Cassation Penal [1094/2021].

¹⁸ MUHAMMAD, S. Z. *The role of the forensic physician in the criminal investigation*.

¹⁹ RIACHY, A. K. The role of forensic medicine in the criminal field. *Journal of Rights*. 2016, No. 30, p. 99.

stitute elements which assist the compilation of criminal evidence.²⁰ Moreover, time and place are also part of the accused's defence. In this regard, the Egyptian Court of Cassation stated in another ruling, 'the omission of the ruling, along with the defence's appeal that the victim was not killed, as [their] body was found, in addition to what was proven that there were no traces of blood in its place'; as such, this is a fundamental defence that the court had to address it in its ruling.²¹

It is possible to determine factors such as the location of the crime, whether the body was transferred after the crime was committed for the purpose of obscuring its features and concealing evidence by focusing on several aspects: 1) evidence of dragging and pulling in the location of the body; 2) the presence of large pools of blood, which often indicates that the body has remained in place after death; 3) the shape of the blood spots: if the spots are pear-shaped, this indicates the movement and transfer of the victim after the crime was committed; 4) evidence of violence and resistance at the body's location, which is often one of the indications of the events that occurred before a crime is committed.²²

3. THE EFFECT OF THE CORPSE ON THE EMOTIONAL CONVICTIONS OF THE JUDGE

The principle of emotional conviction holds stable in jurisprudence, the judiciary and Jordanian legislation. The JCCP states that 'evidence shall be established in felonies, misdemeanours and infractions by all means of proof, and the judge shall judge according to [their] personal conviction'. This principle, however, is restricted by the evidence presented in the lawsuit, in that there must be no violation of a legal text, and the evidence presented is legitimate, not obtained by an illegal act or considered a crime, and is coherent with other evidence. In other words, the evidence must be supportive.²³ It is in this supportiveness that we see the importance of the body. By examining the body, it is possible to verify the validity of other evidence and the consequent waste of the value of this evidence or its support in the proof. At this point, it is appropriate to discuss the role of the corpse in matching the validity of the evidence, and the evidentiary value of the corpse examination report.

3.1. Confession

Although a confession is considered one of the most important and strongest types of evidence on which the court can rely in a guilty verdict, it is no longer the master of evidence it once was, having become subject to the discretion of the judge's emotional conviction. For the confession to be accepted, it must be: 1) issued by a free will that is neither defective nor coerced; 2) clear and unambiguous; 3) consistent with the truth and reality,

²⁰ RAZAK, R. Forensic Medicine practices in detecting crime. *Studies in the Humanities and Social Sciences Journal*. 2015, Vol. 3, No. 3, p. 502.

²¹ Appeal No. 1031 of Judicial Year 36, Judgments Collection of the Egyptian Court of Cassation.

²² AL-MAAYTAH, M. O. *Forensic Medicine in the Service of Security and the Judiciary*.

²³ SHAMMA, I. A. *Lectures on Evidence in Criminal Matters*. Amman: Jordan Judicial Institute, 2017, pp. 10–14.

and with other statements in the case, especially the material evidence from it and extracted from the body and the crime scene. In this regard, the Jordan Court of Cassation stated that, the jurisprudence and the judiciary are unanimous in that confession is like evidence in criminal matters. The fact that the accused confessed to hitting the victim with a hammer on his head and the fact that the victim wore a two-piece pyjama is belied by the reality of the situation and does not agree with the truth and the evidence of the case and what was mentioned in the record of the public prosecutor's transfer to the scene of the incident and the examination of the body of the victim at the time, and what was proven in the photo album that was taken of the body of the victim immediately after the discovery of the body. Since the High Criminal Court was not satisfied with the defendant's confession and excluded him for these reasons, the findings of the High Criminal Court have what supports it in the evidence of the case and agrees with reason and logic.

3.2. Testimony

Testimony is a report issued by a person regarding an incident that they witnessed through one of their senses and aims to indicate the occurrence of a crime and attribute it to the accused.²⁴ Like other evidence, testimony is subject to the conviction of the court in assessing its value, validity and lack of contradictions, achieved by considering:

- 1) contradictions in the witness statements at the stages of investigation and trial in terms of the essential facts. The Jordan Court of Cassation has established essential rules for considering the testimony to be contradictory, which are that:
 - a) the witness mentions a specific incident at one stage, then returns to this at a later stage but contradicts themselves;
 - b) the witness mentions a fact which is later denied;
 - c) the witness denies an incident at one stage and then proves its occurrence or proves it at another stage.
- 2) The testimony contradicts the technical evidence related to the examination of the body and the scene of the corpse. In this, the Jordan Court of Cassation asserted that, the main evidence presented by the Public Prosecution to link the defendant against them with what was attributed to them is represented by the testimony of the victim, Fadi, which contradicted what was stated in the crime scene report and the expert report related to downloading the contents of the CD. In its contested decision, the High Criminal Court reviewed this contradiction, which requires the exclusion of his testimony and the testimony given by him.²⁵

The Jordanian Court of Cassation did not use the testimony of this witness which contradicted the technical evidence as evidence to convict him of perjury. The court held that perjury is established only when the testimony took place before a judicial body and contradicts with another testimony.²⁶ Nevertheless, the view proposed in this paper does not agree with the court, since Art. 214 of the Penal Code does not specify a method for proving perjury, and thus it would be better for the court to permit the trial court to as-

²⁴ HOSNI, M. N. *Explanation of the Code of Criminal Procedure*. Cairo: Dar Al-Nahda Al-Arabiya, 2011, p. 881.

²⁵ Cassation Penal [3479/2018].

²⁶ Cassation Penal [470/2021].

certain if the reason for the contradiction in the witness' statement was perjurious or merely a factual matter dependent on the senses, while the technical evidence focused on precise technical matters.

4. LEGAL PROTECTION FOR THE CORPSE

Given the importance of the corpse for the deceased's family, the penal legislator must impose many incriminating texts to provide comprehensive protection. The criteria for differentiating between these texts lies in the legislator's goal. In some crimes, the legislator's goal is to respect the memory of the deceased and the sanctity of their body, as stipulated in Art. 277 of the Jordanian Penal Code:

Anyone who assaults a place used for burial of the dead or designated for holding funeral ceremonies or preserving the remains of the dead or monuments or who desecrates, demolishes, or violates the sanctity of the dead shall be punished by imprisonment for a period of no less than three months and not exceeding two years.

In the same context, Art. 61 of the Public Health Law states that 'No grave may be opened to remove any corpse or remains from it except with the permission of the director and based on the request from the public prosecutor if this is for the purposes of conducting any investigation'. The legislator's aim in criminalising an assault on a corpse is to prevent and obstruct the work of the official authorities in the event of a suspected death or murder by concealing a murdered corpse. This crime will be discussed next, first regarding the elements, subject and characteristics of the crime, and then by reviewing Arab legislation.

4.1. The Legal Structure of the Crime of Concealing the Body

The crime of concealing the body usually occurs after the murder without informing the relevant parties. The body may be hidden by burial, being thrown in a river, burned, or by any other means, to obliterate the features of the crime, mislead justice and prevent investigators from locating it.²⁷ The crime of concealing the corpse can thus be defined as any activity by which the offender removes the corpse from the public authorities' view so that they cannot inspect it. This crime is like any other crime that requires a crime scene. In this regard, there are several key factors. The first factor is the subject of the crime, which is the right that the law shows of being worthy of penal protection. The second is the material element, consisting of: a) criminal behaviour, which is the external material activity by the offender to achieve the criminal result;²⁸ b) the criminal outcome, which is the aggression that obtains an interest or a right that the legislator estimates is worthy of penal protection;²⁹ and, c) the causal relationship, which is the legal link to the criminal behaviour, whether positive or negative, and the criminal outcome decided by the law.

²⁷ AL HADI, H. A. The crime of concealing a dead body: a comparative study. *Najaf Studies Journal*. 2004, Vol. 1, No. 2, pp. 146–151.

²⁸ AL MAJALI, T. *Explanation of the Penal Code*. Amman: House of Culture for Publishing and Distribution, 2005, pp. 212, 55, 61, 301.

²⁹ HOSNI, M. N. *Explanation of the Lebanese Penal Code*.

The third factor is the moral element. This is the relationship between the materiality of the crime and the personality of the offender, subject to the censure of the law and represented in the offender's control over the act, its effects, and the essence of will. Therefore, this element is of a psychological nature.³⁰ Next, we review the elements of the crime of concealing the body.

4.2 Provisions and Elements in the Crime of Concealing the Body

The crime of concealing a corpse differs from other crimes affecting a person and the safety of their body in that it occurs in connection with a deceased person. Therefore, the first aspect that the judge must verify in order to rule on this crime is to verify that death has occurred, without which no crime has occurred, even if other crimes, such as kidnapping or confiscation of freedom, are realised from other facts in the case. However, if the offender believes that the victim is dead, and then it becomes apparent that they were in a state of brain death, the offender shall not be punished for actions committed except to the extent that is certain against him due to a material error in the crime. This is stipulated in the Jordanian Penal Code, as follows: '[They] shall not be punished as an actor, instigator or interfering whoever commits an act in an intentional crime by means of a material error committed on one of the constituent elements of the crime'.

From Art. 239 of the Egyptian Penal Code and corresponding texts in other Arab legislation noted later, it becomes clear that the material element of this crime has several properties. First, the crime of concealing the corpse is considered a crime of harm, such that this crime does not occur unless its result is achieved; that is, the concealment of the corpse without any consideration of the criminal behaviour results in the criminal outcome, whether by burial, cremation, or other means. Second, this crime is considered a continuous one, as it continues in all its elements after its completion, and consists of a behaviour that, by its nature, is likely to last indefinitely. This is because the act of concealment is based on possession, which usually requires a long time to be realised. According to Art. 5 of the JCCP, every place in which the body continues to be hidden is considered a place for the crime, and therefore the courts of these places are competent to look into this crime. Thirdly, this crime is a dependent one in that it can only occur following a murder.³¹ What distinguishes it, however, from other dependent crimes such as money laundering is that its penalty is not gradual or affected by the murder that precedes it, i.e., regardless of whether the killing was intentional or by mistake, the penalty does not change.

The second main aspect which the judge must consider is the crime of concealing the body by any act or behaviour which achieves the criminal result, with the accompanying negative activity of failing to inform the relevant authorities. These are specified in Arts. 26 and 44 of the Jordanian Penal Procedure law as the Public Prosecution Office, represented by the public prosecutor, and the judicial police in centres where there is no public prosecutor. The law does not require that the offender's activity permanently removes the

³⁰ HOSNI, M. N. *The General Theory of Criminal Intent*. Cairo: Dar Al Nahda Al Arabiya, 2006, p. 9.

³¹ AL HADI, H. A. *The crime of concealing a dead body: a comparative study*.

body from the public authorities' view. Rather, the material element is achieved if this removal is temporary and accidental, so as to prevent the authorities from taking the necessary measures to reveal the truth in a timely manner.³²

The third aspect for the judge is the criminal consequences of the crime of concealing the body, achieved by the fact that the body is hidden from the competent authorities before being found. The place where the body is hidden is not included in the criminal composition of the crime, and so the result is achieved regardless. However, the criminal conviction is not achieved if the place where the body is hidden is open to the public (ie, a populated place) such as if the body is placed next to a café or market.³³

The final aspect is the causal relationship between the criminal consequence and the criminal behaviour in the crime of concealing the body, which is represented by explaining what the perpetrator's action contributed to in causing the criminal outcome. This is the relationship that exists between the act of concealing the body and the criminal result, which is the withholding of the body from its family and the competent authorities to prevent them from discovering the circumstances of the murder.³⁴

Thus, we have reviewed the material element of the crime of concealing the corpse, but a question arises concerning the effect of coupling the prior act of murder to the crime of concealing the corpse, on the grounds of the reasons for its justification. According to the Jordanian legislator's plan to consider the crime of concealing the body a form of interference in the crime of murder, the justification is based on the material circumstances that arise at the time of the crime's commission. These may remove the criminal character of the act and make it justifiable. With reference to Art. 79 of the Jordanian Penal Code, the effects of the material reasons that aggravate, reduce or exempt the penalty apply to all accomplices in the crime. As a result, the act of concealing the body is not considered punishable as this is regarded a legislative defect. As for the plan of the Egyptian legislator and other things mentioned in the legislation that made it a crime that has its own organisation, even if this crime is related to the crime of murder, it has independent legal pillars. As a result, it is not included because of its permissibility.³⁵

4.3. The Moral Element of the Crime of Concealing the Body

The crime of concealing the corpse requires the existence of general criminal intent regarding knowledge and will, in addition to special criminal intent. General criminal intent is represented in the crime of concealing the body with knowledge and will, such that the will of the offender has comprehensive control over the criminal behaviour leading to the concealment of the body from the competent authorities. For specific criminal intent in concealing the body, the law requires a specific purpose, the absence of which results in the collapse of the legal structure of the crime. This purpose is that the perpetrator's goal of concealment is to hide the body from the competent authorities to obliterate the features of the crime and disrupt the work of the public authorities.

³² Judgments Collection of the Egyptian Court of Cassation. Appeal No. 61363 of 1973.

³³ *Ibid.*, Appeal No. 13157 of 1971.

³⁴ AREZKI, K. *Criminal protection of the sanctity of the dead in Algerian legislation*. Master's Thesis. Abdul Rahman Mira University, 2015, p. 21.

³⁵ AL HADI, H. A. *The crime of concealing a dead body: a comparative study*.

4.4. Comparative Arab Legislation on the Crime of Concealing the Body

Having reviewed the elements and objective provisions of the crime of concealing the body, we now consider the position of some Arab legislation on the regulation of this crime.

4.4.1. Jordanian legislation

Jordanian legislation, unlike other Arab legislation, has no special text for the crime of concealing the body. Rather, it considers it a form of criminal interference in the crime of murder based on the provision of Art. 80 of the Jordanian Penal Code, which stipulates that,

They are considered to be involved in a felony or misdemeanour: whoever agreed with the perpetrator or those involved before committing the crime and participated in concealing its features, concealing or disposing of the things that occurred by committing all or some of it, or concealing one or more of those who participated in it from justice.

Therefore, this crime does not occur except within the framework of the criminality of another person who commits the crime of murder; that is, it assumes the presence of another original participant in the murder.³⁶ It is also required that a previous agreement be made between the person involved in the concealment of the body and the perpetrator in the murder.³⁷ Therefore, this form of interference in the murder cannot take place in the form of concord (telepathy). The legislator explicitly stipulates that the intervention is by way of a previous agreement, and this was confirmed by the Jordan Court of Cassation in a recent decision:

As for the accused [...] hiding the body of the victim with the accused [...] by throwing it into a well and hiding the features of the crime by cleaning the house and throwing the chain and locks and not reporting the crime. It was not proven that there was a previous agreement between them before the accused committed the crime of murder on the victim [...] on her hiding the body and the signs of the crime. Since paragraph (e) of Art. 80(2) of the Penal Code stipulates the existence of a previous agreement between the perpetrator and the intervening in this form of intervention [938/2018].

However, we do agree with the Jordanian legislator's regulation of this crime for two reasons. One is that the acts of interference are legitimate by their nature, as they do not enter into the executive actions of the criminal behaviour but are considered mere preparatory acts. The exception to this is that they acquired the criminal character from the criminal goal that they sought, and the relationship between it and the criminal act committed by the perpetrator of the crime. Then, there is a causal link between the activity of the perpetrator intervening and the criminal result. This contrasts with the criminal activity and behaviour in the crime of concealing the body, which derives its danger from itself, and requires the legislator to set a separate text for this crime. The other reason is that the intervener in a crime may not have committed the crime, but has hidden the body of the victim, leading to their impunity because the intervener borrows their criminality from the perpetrator. Accordingly, we hope the Jordanian legislator will provide a special text for this crime.

³⁶ AL MAJALI, T. *Explanation of the Penal Code*.

³⁷ HOSNI, M. N. *Explanation of the Lebanese Penal Code*.

4.4.2. Egyptian legislation

Art. 239 of the Egyptian Penal Code stipulates that ‘whoever hides the body of a dead person or buries it without informing the appropriate authorities and before examining it and investigating the state of death and its causes shall be punished by imprisonment for a period not exceeding one year’. However, a discrepancy arises when comparing the position of the Egyptian legislator with that of the Jordanian regarding the level of accountability for concealing the body following a murder. According to the former, the crime of concealing the body is considered independently to the crime of murder, based on two cases. First, if the person accused of murder is convicted, they are not punished for the crime of hiding the body because Egyptian law considers this part of the murder and obvious behaviour on the part of the murderer. Therefore, for the crime of concealing the body, it is assumed that the perpetrator was someone other than the murderer.³⁸ Secondly, if the accused is acquitted of murder, this does not prevent them from being convicted of concealing the body.³⁹

We support the view of the Egyptian Court of Cassation because, when the murderer hides the corpse, all the criminal acts they committed result from one criminal plan, and the crime of concealing the corpse is part of the murder itself. However, Egyptian legislation stipulates that this crime is among the felonies and misdemeanours that occur to individual people, although the criminal basis in this crime is to prevent obstruction of the work of the authorities. Thus, it is more appropriate to stipulate it as a crime that violates the course of justice.

4.4.3. Syrian legislation

Under Syrian legislation, a different position is taken from the Egyptian as hiding the body is included in the moral element (special intent) of another crime, that of stealing the body. The Syrian legislator does not differentiate between a death resulting from a murder or a natural one, as the Syrian Penal Code stipulates, ‘whoever stole or destroyed a corpse, all or part of it, [they] shall be punished by imprisonment from one month to one year, and if the theft occurred with the intention of concealing death or birth, the punishment shall be from two months to two years’. However, the Syrian legislator refers to the crime as theft of the corpse, which we believe is inaccurate because the object of a theft is anything suited to be the subject of a right in rem, specifically the right of ownership. Therefore, anything not accepted by its nature to be the subject of a right in rem may not be the object of theft, including a human corpse, except in special cases such as keeping it in a museum.

4.4.4. Algerian legislation

Extrapolating from the Algerian Penal Code, we find that the Algerian legislator is more accurate and comprehensive in the legislative organisation than other Arab penal legislation. It stipulates that,

³⁸ Judgments Collection of the Egyptian Court of Cassation. Appeal No. 22878 of 1973.

³⁹ OBAID, R. *Crimes of Assault on Persons and Money*. Cairo: Dar Al Fikr Al Arabi, 1985, p. 221.

- 1) Anyone who hid or concealed a corpse shall be punished by imprisonment from six months to three years and a fine of 500 to 1,000 dinars;
- 2) If the concealed person knows that the body of a person was killed or died as a result of beatings, the penalty shall be imprisonment from two to five years and a fine of 500 to 5,000 dinars.

According to Algerian legislation, the crime of concealing the body is not considered to be related to murder as it occurs even if the death occurred naturally; instead, the concealment of the dead body is considered an aggravating circumstance in this crime. As such, we believe this position is the best in Arab legislation, as it is the most accurate and organised, and we hope the Jordanian legislator will introduce a text similar to that of Art. 154 of the Algerian Penal Code, as one of the crimes against the course of justice.

5. PROCEDURAL ORGANISATION OF THE EXAMINATION OF THE CORPSE

Having dealt with the objective aspect of protecting the body as an important tool in criminal investigations, we have seen that the investigator is able to obtain important evidence on the crime. The Jordanian legislator, dissatisfied with the available protection, has organised legal procedures for examining the body to balance preserving the sanctity of the body and examining it for its importance in discovering the circumstances of a murder.

5.1. Corpse Examination Procedures

The provisions related to the procedures for examining the body were scattered across various laws, raising the need for some clarification of these provisions.

The first issue concerns whether the law requires the presence of the body to prove the murder. Legislation, jurisprudence, and the penal judiciary have established that the absence of a body does not prove the crime of murder. This provision can be deduced from the first retrial cases, which state that, ‘if a person is convicted of the crime of murder and then there is sufficient evidence to prove that the murdered is still alive’, clearly no murder has occurred. If the legislator wanted to stipulate the availability of the body to prove the crime of murder, it would be impossible to achieve this from the retrial cases, and the purpose of this text would be negated. Likewise, the Egyptian Court of Cassation held that the lack of a body is not proof that no murder has occurred.⁴⁰ The jurisprudence also considered the fact that nothing prevents the filing of a public right lawsuit against a person accused of murder, or their trial and judgment, in the event that the body of the victim is not found.⁴¹

However, if the body is found, the JCCP stipulates that, ‘if a person dies of murder or for unknown reasons that give rise to suspicion, the public prosecutor shall seek the assistance of one or more doctors to organise a report on the causes of death and the condition of the dead body’. It further stipulates that, ‘if the distinction of the nature of the

⁴⁰ Judgments Collection of the Egyptian Court of Cassation. Appeal No. 13665 of 1970.

⁴¹ AL SAEED, K. *Explanation of the Penal Code Crimes against Humans*. Amman: Al Dustour Press, 1988, p. 30.

offense and its conditions depends on knowledge of some arts and crafts, the public prosecutor must accompany one of the masters of art and craftsmanship'. Another provision in the Law of the Correction and Rehabilitation Centres states that, 'if the inmate dies, the manager of the Centre shall take the following measures: a) The public prosecutor shall order the transfer of the body of the deceased to the forensic physician to indicate the causes of death and the condition of the body.'

Another issue which arises is whether there are different procedures for examining the body before and after burial. Procedures for pre-burial examination raise no issues. The public prosecutor must seek the assistance of a pathologist to examine the body, as mentioned before. Concerning the procedures for detecting and investigating crimes, the medical constitution prohibits the doctor from reporting on a deceased person without having experience of the condition prior to the occurrence of the death. The medical constitution states,

A doctor may not give a report about a deceased person if [they have] not witnessed the death or have not seen the illness of [their] death prior to [this] death, except after [they are] convinced of the cause of death according to their medical experience. In cases suspected of being criminal, [they] must inform the judicial authorities, who then have the right to the burial leave after the examination by the forensic doctor, ostensibly or anatomically. The attending physician in criminal cases that end in death shall refrain from giving a death certificate and inform the authorities who have the right to dispose of the incident.

The same applies in the Jordan Penal Code: 'Anyone who, while practising a health profession, provides aid to a person who appears to have been subjected to a felony or misdemeanour and does not notify the competent authority, shall be punished with the penalty stipulated in the second paragraph'.

When the body has been buried without examination, this problem is addressed by international conventions and Jordanian national legislation. Art. 93 of the Rome Statute obligates State parties to provide for cooperation in their national laws by conducting investigations or prosecutions via certain procedures, including examination of graves and exhumation of bodies. Jordan Public Health Law permits exhumation after certain procedures have been followed: 'It is not permissible to open any grave to remove any body or remains from it except with the permission of the director at the request of the public prosecutor if that is the case for the purposes of conducting any investigation'. Exhumation requires the fulfilment of three conditions: 1) the submission of a request from the public prosecutor to the directorate of health of the governorate or district in which the body is buried; 2) the approval of the governorate health director or the district in which the body is buried; and, 3) that the purpose of submitting the request is solely for the purposes of the investigation.

Permission to delegate a member of the judicial police to conduct this investigative procedure is referred to in Art. 48 of the JCCP, which permits the public prosecutor to delegate such a member for a portion of the work that falls within their duties, and nothing is exempted from this except interrogation. Nevertheless, we believe that the public prosecutor may not delegate such a member due to the seriousness of this exceptional investigative procedure, which prejudices the sanctity of the dead and the feelings and dignity of the relatives. Consequently, the legislator has aimed to establish their own rules which may not be violated.

The Jordanian legislator's regulation of the procedures for opening the grave are also limited to granting the authority to submit this request to the public prosecutor, without the court. This is despite the fact that some essential defences may arise during the trial period, compelling the court to request that such a procedure be reconducted. Even if Art. 162 of the JCCP authorises the court to order, even on its own accord, the submission of any evidence it deems necessary to reveal the truth, we suggest that, due to the specificity of this procedure, the Jordanian legislator must first stipulate the court's authority to request such action. Therefore, we suggest amending Art. 61 of the Public Health Law so that it becomes, 'No grave may be opened to remove any body or remains except with the permission of the director upon a request from the competent judicial authority'. Likewise, the Jordanian legislator only regulates the procedure prior to opening the grave. Thus, we suggest adding another paragraph stipulating not only the presence of the representative of the competent judicial authority which submitted the request to open the grave, but also specifying that the family of the victim can attend the exhumation, in addition to the doctor specialised in examining the body, so that there is greater protection for the sanctity of the deceased.

Finally, we also note that the Jordan legislator has not addressed whether the means of killing was the transmission of a deadly virus (such as Covid-19), or if the victim was originally infected with a contagious disease before the murder occurred. However, the legislator has paid attention to this issue in the rules of cemeteries, burial of the dead, transfer of bodies and exhumation of graves, as Art. 14 of this regulation stipulates that,

[...] authorisation is given to exhumation if the death occurred from non-epidemic causes and that a year has passed since the death. But if the death resulted from an epidemic disease like cholera, plague or yellow fever, the permit is not given until five years have passed since the death B. If the death was caused by an epidemic disease, the person who dug the grave would be quarantined according to the instructions of the director.

The legislator should have been attentive to this problem in the Public Health Law, and so we suggest the addition of a new paragraph stating that:

If it is found that the murder took place through the transmission of an infectious epidemic disease, or if the victim was infected with a contagious epidemic disease prior to the occurrence of the murder, an autopsy is not permissible. It suffices by outward examination after taking public safety measures. Those who participated in the process of opening the grave and examining the body are quarantined.

Finally, it is worth noting that the act of opening the grave without following the aforementioned procedures constitutes a crime according to the Public Health Law, as Art. 62 stipulates that, '[...they] shall be punished by imprisonment for a period of not less than three months and not exceeding a year or a fine of not less than one thousand dinars and not more than three thousand dinars or with both of these penalties: 3. Whoever opens any grave or removes or transports any corpse or remains in contravention of the provisions of Art. 61 of this Law'.

6. CONCLUSION

This study dealt with the importance and role of the corpse in criminal proof and investigation by showing the methods and forensic sciences employed in dealing with the

corpse and the information extracted from it, and showing how some international agreements and national legislations are affected by these sciences. Jordanian legislation was compared with certain other Arab legislations dealing with the corpse as a tool of evidence in the crime of murder. The key findings are:

1. The Jordanian legislator does not require the presence of the body to prove the crime of murder, but obligates the public prosecutor in the JCCP to hire a doctor to examine the body if it was present;
2. The Jordanian legislator has not kept pace with developments in criminal investigation sciences, as it has not regulated any of the modern methods used in criminal investigation;
3. Jordanian jurisprudence is influenced by Locard's theory, based on the idea that, when two bodies come into contact, each transmits an effect to the other;
4. The genetic fingerprint, including those extracted from the corpse, is characterized by its resistance to factors of decomposition, putrefaction, and other climatic factors such as heat, humidity, cold, and dryness, even in cases of rotting and decomposition of the corpse, or even if the bones are archaic;
5. It is possible to identify the perpetrator or the instrument of the crime in criminal cases when the hand of the corpse is found firmly gripping any object or person belonging to the perpetrator such as a piece of clothing, hair, or the instrument of the crime while resisting the perpetrator and getting into a tangle with him.

The key recommendations are:

1. Adding a text to the JCCP requiring that a woman's body be examined by a female doctor, except in cases of necessity or the absence of a female doctor;
2. Adding a new text within the crimes against the course of justice stipulating the criminalisation of concealing the body, provided that the penalty is tightened if the victim's death was the result of a murder or the circumstances of the death were unknown;
3. Amending Art. 40 of the JCCP by adding a second paragraph stipulating that insects on the body must be examined because of their role in facilitating investigations;
4. Introducing a special text regulating the process of opening the grave as an investigative procedure, regulating all the problems that may arise during the conduct of this investigative procedure. We suggest the following text: '1. No grave may be opened to remove any body or remains except with the permission of the director at the request of the authority competent judicial authority; 2. The grave is opened for the examination of a body by a specialised doctor in the presence of both those who can attend from among the victims' relatives and a representative of the judicial authority which requested this procedure'; 3. If it is found that the crime of murder occurred through the transmission of an infectious epidemiological disease, or if the victim was infected with an infectious epidemiological disease prior to the occurrence of the murder, an autopsy may not be carried out. The apparent examination is sufficient after taking public safety measures, and there must be a quarantine of those who participated in the process of opening the grave and examining the body.

5. Amending the text of Art.161 of the Code of Criminal Procedure so that the report on discovering a corpse has the same evidential weight as the report issued by laboratories and criminal evidence, and without the need for a certificate from the pathologist, except in cases where the court needs clarification from him to discuss the expert report.