CRIMINAL RESPONSIBILITY FOR PREMEDITATED MURDER IN JORDAN'S CRIMINAL CODE NO. 16 OF 1960

INTRODUCTION

Article 328 of the Penal Law stipulates the crime of intentional murder by saying: The death penalty is punishment for intentional killing, if it is committed premeditatedly, and it is called premeditated murder. It is clear from the above that premeditated murder is an intentional murder, but it is associated with an aggravating circumstance, which is premeditation, which is referred to as the personal aspect of the crime, especially with respect to the perpetrator, so murder is a crime with its elements as any other crime, which is represented by the material element that includes the criminal activity (criminal act or omission), the criminal consequence and the causal relationship between them, and the mental element on which to determine the availability of the element of intent, which in turn affects the punishment imposed on the perpetrators; This means that it is similar to a murder with simple intent, and the difference between them is the aggravating circumstance of premeditation. This will be the focus of the researcher in the article.

Premeditated as defined in article 329 of the same Act is (the intent of which before the murderer is determined to commit a misdemeanor or felony, the purpose of which is to harm a particular person or any non-specific person who he has found or encountered). Although this definition is specific to misdemeanors and offences of injury, it does, by reason of logic, refer to premeditation of intentional murder, since it is provided for in article 329 of the Penal Code, which follows article 328 of which contains premeditated murder.

Some scholars define premeditation as: mindfulness and contemplation before committing the act and thinking about the crime in a calm and unperturbed manner (NAMUR, 2015, P. 63). The legislative definition is rather inadequate, and the element of the perpetrator's calmness is not evident in his thinking and his removal from strong emotions, which can reduce his control over himself. The calm of the perpetrator is an essential element without which there is no premeditation. Before we go into the elements of a premeditated circumstance, we have to point out the difficulty of punishing the criminal with the maximum punishment, namely the death penalty by hanging.

DIFFICULTY OF PUNISHING THE CRIMINAL WITH THE MAXIMUM PUNISHMENT

The Jordanian legislator considered that anyone who commits murder while he is calm in his soul, bearing in mind all the possibilities and fully assessed and aware of the harm that results from them and the punishment that they inflict is more dangerous than the one who commits his act while he is under the influence of strong emotions and anger, and who has not been able to appreciate the different possibilities of doing so. In addition to that, whoever commits a crime and is the owner of the reins of himself reveals a dangerous criminal personality, unlike the one who kills while he is in a state of anger and emotion that takes him out of his nature. It is clear from the definition of premeditation that there are two elements of it:

The first element: the temporal element, which separates the thinking of the crime from the determination of the crime and its execution. A period of time is required to allow the perpetrator to think quietly about the crime (OMAR, 2019, P. 93).

This is confirmed by one of the judgments of the Palestinian courts, which held that the accused committed his crime in calm mind. He thought, planned and managed to kill the victim. He was fully aware of what he was going to do. After the victim agreed, went along with the accused, walked on foot for about half an hour and walked side by side. The accused made sure that the victim was not suspicious and insured the accused removed the knife which he had concealed under the belt and stabbed the victim with several stabs resulting in his death (AL-HADITHI and AL-ZOUBI, 2009).
The second element: the psychological element, which is the most important element, which the legislator neglected to clearly show or mention in his definition of premeditation, because premeditation requires the psychological element also in addition to the temporal one, meaning that without the slightest doubt that the lack of the psychological element makes it difficult to determine the availability of premeditation (AHMED, 2016, P. 139).

But some experts interpreted that the Jordanian legislation implicitly referred to it in the text of Article 329, saying: (It's the intent on which it's designed), and according to this element, the perpetrator must have thought about what his intention was and contemplated its consequences, and arranged the necessary means to achieve the result, then proceeded to commit his criminal act. Premeditation is related to the criminal intent, the desire to commit the act and the result with knowledge of the elements that make them up, but it is not the criminal intent itself, as it is related to the degree of gravity and degree of the criminal intent.

The criminal intent ranges from the intent of emotion to the ordinary intent characterized by rapid thinking, and then to premeditation, which requires a greater amount of thought and contemplation in the implementation of the criminal enterprise, meaning that thinking is extended in terms of time. This element is, in fact, self-determined. When the perpetrator is committed in a calm manner, and after an insensitive vision, it means that he is determined to commit murder, making a premeditated circumstance available to him, and the perpetrator is thus more dangerous than he who commits the crime without thinking or contemplating the consequences of his actions, which makes him deserving of a heavier punishment (NAMUR, 2015, P. 64).

In summary, premeditated murder, as the Jordanian legislator calls it, Some believe that the presence of the psychological element presupposes the presence of the temporal component, so if the perpetrator proceeded to carry out the crime after quiet, deliberate and careful thinking, then premeditation is present, no matter how short the time between the determination to commit the crime and its execution, but the opposite is not true, then the passage of a period of time and if it is prolonged between the determination to commit the crime and its execution, this does not necessarily mean the availability of calm, reassuring thinking that is the psychological component.

It should be noted that there is no evidence of motive or motive for murder, since the motive for murder is not an element of murder because it is not provided for in homicide, and it is also held that if the Court relies in proving murder on the motive for murder, for example, to take revenge, the motive is considered to be an element of criminalization only in the circumstances specified by law, and the law does not specify revenge as an motivation.

It should be noted that the motive is not cited, because the motive to kill is not an element of the crime of murder, as it is not stipulated in the murders, and it has also been decided that if the court relies on proving premeditated murder on the motive to kill, which is the introduction of revenge, for example, The motive is not considered an element of criminalization except in the cases specified by the law, and the law did not specify that taking revenge is one of the motives that constitute one of the elements of criminalization, but if the court considers that the introduction of revenge is a presumption of proving an element of premeditation, the presumption is not It is promoted to the rank of evidence unless supported by other evidence where such evidence do not exist.

PREMEDITATED MURDER
Premeditation can be defined by assaulting a particular person, or not by the same person, but by attacking unspecified persons. For example, someone intends to kill whoever was objecting to him in his work, whoever this objector was (JAFAR, 2006, P. 153). It also does not affect the occurrence of premeditation if the perpetrator made a mistake in the identity of the victim or erred in directing the act, so whoever is determined to kill a certain person and a mistake in the identity of the victim or a mistake in the execution of the crime - has injured another person other than he whom he intended then the perpetrator is held accountable for premeditated murder, because premeditation is a state of mind existing in the same perpetrator and associated with him.
It should be noted that if the perpetrator - in the event of a person’s fault - had no intention to kill except for at the time of his crime, then there is no premeditated circumstance for him, for if a person decides to kill another person and when he goes to this place where he intends to kill, but he encounters his wife, and he has the idea of killing her and he kills her, in this case what is directed at the perpetrator is the charge of intentional murder and not premeditated murder, because the idea of killing the wife was not generated in the perpetrator’s soul except for at the time of his crime, so there is no pre-determined circumstance for him.

Premeditation is available even if its completion is dependent on the occurrence of an order or suspended on a condition, as stated in Article 329 of the Penal Code, as long as the intention to kill was settled after quiet thinking, the circumstance of premeditation does not affect the measure that this intent has suspended the execution of the crime on the occurrence of a particular command or facing a certain condition. For example of this is a woman who intends to kill her lover if he marries another, or someone who intends to kill his daughter’s lover if he continues his relationship with her (NAJM, 1999, P.41).

Premeditation is a circumstance that has a personal character and not material, and therefore does not apply to the contributors of the crime, except for those who have been proven to have involvement that is, if several persons committed a criminal act in implementation of a common criminal intent between them, each one of them is responsible for the murder to the same degree as if the act was committed by each one of them separately, and in this context the Jordanian Court of Cassation ruled that if it is proven before the court that the accused had found his son killing the victim, so he participated with him in killing her, in this case if the son had committed his offense premeditatedly, it is not necessary that the father agreed with him to kill. It is not necessary for them to unite their wills to determine to commit this crime previously, rather it is sufficient for him to participate in the crime in the moment, and there is no value in determining the injuries that each of them inflicted on the body of the deceased and explaining what is fatal and non-fatal, it is necessary to condemn them with original participation in the murder As long as the acts committed by each of them are within the will to carry out the crime that occurred, then each of them is punished by the penalty assigned to it in the law as if he were an independent perpetrator, in accordance with the provisions of Article 76 of the Penal Code (AL-MASHHADANI, 2001, P.22).

This does not mean, however, that any prior accord to commit the crime is accompanied by premeditation. The perpetrators may suddenly agree to commit the murder and carry it out without calm thinking or planning, and then there is no premeditated circumstance there, also, there is no contradiction between the denial of premeditation and the proof that the accord has taken place between the real perpetrators (AL-NAMOUR, 2011, p.68).

The researcher notes that most legislation, especially in the Arab world, refers to premeditation as well as surveillance as two basic conditions for the completion of the crime of premeditated murder. However, there is no mention in the Jordanian Penal Code of surveillance, but a premeditated circumstance is mentioned only on the grounds that the person is stalking another with the intention of killing them. This means that a premeditated circumstance includes stalking, often as a form of premeditated circumstance, which is the prevailing view in France.

As for proof of premeditation, it can be said that the availability or lack of premeditation is a matter of substance, which the judge is competent to determine, and there is no oversight of the Court of Cassation, unless the Court departs from what is required by a legally premeditated definition, or if it finds that this circumstance or its failure to establish facts that do not lend itself to such a conclusion. The court must therefore indicate in its judgment the circumstances on which it relied to conclude that a premeditated circumstance existed, so that the Court of Cassation could observe the validity of such a finding.

As for external manifestations, they are only simple evidence to prove the contrary, and may not be useful in the accused’s premeditation. The purchase of a weapon is not always evidence of premeditation, and if the accused commits the offence, it may be the purchase of the weapon for guarding purposes and, immediately after the purchase, for murder. The existence of a grudge between the accused’s family and the victim’s does not always serves to infer premeditation of murder (AL-SHADHILI, 2002, p.52).
It should be pointed out that an instrument that is lethal by its nature is not always evidence of an intention to kill, and a tool that is not lethal in nature is not always evidence of the lack of intent to kill, but, above all, the method and place and use of the instrument must be taken into account. For example, a stick is not considered a lethal tool by nature, but if it was used to hit a person on the head, causing damage to the skull and brain and leading to death, this indicates the presence of the intention to kill, and a gun is a deadly tool by nature, but if only one bullet is fired from it, despite the presence of ten bullets in its cartridge and the injury is to the foot, for example, this indicates the lack of intent to kill (Decision of the Palestinian Court of Appeal No. 449/2019, 29 January 2020).

A court is not obliged to state premeditation in its judgment; it is sufficient for it to make a statement of reason that the accused has premeditated elements. The burden of proof of premeditation as a degree of criminal intent rests with the charging authority.

Premeditation cannot be directly established. Therefore, if the perpetrator does not admit to it, there is no way to prove it other than presumption that reveals its existence, meaning external manifestations and material acts of the perpetrator, and what he insisted upon before the committing the crime.

CONCLUSION
1. The offence of premeditated murder, which is provided explained in Article 228, paragraph 1, of the Jordanian Penal Code, No. 16 of 1960, consists of the material element of criminal conduct which results in the loss of the life of a human being, as well as criminal intent. It is therefore dealt with in all its aspects by the law and the necessary penalties are carried out, with the discretion of the judge to evaluate the case in accordance with his conviction of conscience.

2. The issue of premeditation, which is required for the availability of premeditated murder, is of great importance to all parties to the criminal relationship of an offence, an offender, criminal liability for that relationship, and even the penalty for that responsibility.

3. There is a clear legislative deficiency in the legal texts regulating the crime of premeditated murder, such as the failure to mention the psychological element as a prerequisite for premeditation. In this case, there is a serious risk that a judge will not be able to distinguish between intentional murder and premeditated murder, which results in incorrect and invalid judgments.

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Criminal responsibility for premeditated murder in Jordan's Criminal Code No. 16 of 1960

Responsabilidade criminal por assassinato premeditado no Código Penal da Jordânia nº 16 de 1960

Responsabilidad penal por asesinato premeditado en el Código Penal nº 16 de Jordania de 1960

**Resumo**

Assassinato é geralmente um ataque à vida de um ser humano por um ato que leva à sua morte, e como o direito humano à vida é o mais importante de seus direitos fundamentais, assassinato é o crime mais grave e hediondo de todos. O direito humano à vida é um direito sagrado que a sociedade faz questão de manter e cuidar porque é a base de sua sobrevivência e uma necessidade para seu progresso continuo. Como o homem é a coisa mais querida que temos em nossa sociedade jordaniana e palestina, o Código Penal jordaniano estabeleceu uma punição séria por homicídio premeditado, que equivale à morte por enforcamento, em circunstâncias agravadas, por exemplo, em razão de insistência, conforme estipulado no artigo 328/1 da Lei Penal Jordaniana.

**Resumen**

El asesinato es generalmente un ataque a la vida de un ser humano por un acto que conduce a su muerte, y dado que el derecho humano a la vida es el más importante de sus derechos fundamentales, el asesinato es el crimen más grave y atroz de todos. El derecho humano a la vida es un derecho sagrado que la sociedad está dispuesta a mantener y cuidar porque es la base de su supervivencia y una necesidad para su progreso continuo. Dado que el hombre es lo más querido que tenemos en nuestra sociedad jordana y palestina, el Código Penal jordano ha establecido una pena grave para el asesinato premeditado que equivale a muerte por ahorcamiento, en circunstancias agravadas, por ejemplo, por motivos de insistencia, como se estipula en el artículo 328/1 de la Ley penal jordana.

**Keywords:** Premeditated murder. Premeditation. Jordanian law. Criminal intent.