

ORIGINAL ARTICLE

PROCEDURAL TREATMENT OF MENTALLY ILL DEFENDANTS: A COMPARATIVE STUDY OF JORDANIAN AND EGYPTIAN LAW

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ABSTRACT

Introduction: Mental health and the ability to discern and, procedurally, the defendant's fitness to participate effectively in proceedings are central to criminal responsibility and due process. When a defendant is suspected of a mental disorder, decisions on whether to suspend or continue proceedings, order psychiatric assessment/treatment placement, and allocate decision-making authority between prosecution and court can materially affect fair-trial guarantees. This article compares Jordanian and Egyptian approaches at the investigation and trial stages.

Objectives: (1) Identify when proceedings should be suspended if illness existed at the offense; (2) define prosecutorial and judicial powers to order placement and dispose of cases; (3) assess whether time in psychiatric facilities is credited toward sentence; (4) compare the effects of findings of non-responsibility (Jordan) versus acquittal (Egypt).

Methods: Doctrinal and comparative analysis of key statutes (Jordan CPC art. 233; Penal Law art. 92; Egypt CPC arts. 338–342; Penal Code art. 62), supported by illustrative high-court decisions and recent scholarship.

Results: Jordan permits treatment placement and continued necessary investigation but lacks an explicit suspension rule when illness existed at the offense, retains an exceptional pathway to try a mentally disabled defendant with a guardian or appointed lawyer, and does not credit psychiatric confinement toward sentence. Egypt mandates suspension when illness arises post-offense (art. 339), limits placement to 45 days (art. 338), authorizes a “no basis for a criminal case” order when evidence shows illness negated culpability at the time of the offense (art. 342), and credits psychiatric confinement toward sentence (art. 341). Substantively, Jordan orders “conviction with declaration of non-responsibility,” whereas Egypt issues an acquittal.

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Conclusions: Jordan should codify suspension when illness existed at the offence, credit psychiatric-facility time, clarify trial-while-disabled provisions, and standardize medical-assessment criteria and timelines to better align due process with culpability principles.

Keywords: *Criminal procedure; criminal responsibility; Egypt; Jordan; mental health*

INTRODUCTION

Mental capacity in criminal responsibility is commonly assessed by reference to the accused's ability to understand the nature and wrongfulness of the act and, where the applicable standard so requires, to conform conduct to the law¹. In criminal law, insanity is generally treated as a legal defence concerned with functional impairment at the time of the offence rather than with the mere existence of a psychiatric diagnosis. Accordingly, the presence of a mental disorder does not in itself amount to legal incapacity unless it substantially impairs the person's ability to understand the nature or wrongfulness of the act, or to act in accordance with the law².

Insanity in the criminal law system describes a mental state that prevents individuals from understanding reality as they suffer from a mental illness³. According to Jordanian law, offenders who lacked cognitive appreciation of their actions and understanding that their behaviour violated legal statutes at the time of their offense should receive legal protection against criminal prosecution. The Egyptian law considers only those individuals who lose all consciousness and free will capacity as exempt from criminal responsibility⁴. Insanity serves as a barrier that prevents individuals from taking responsibility for their criminal actions.

Criminal investigations involving suspects with mental illness require attention to two related matters. The first is the symptoms and manifestations of the suspect's condition. The second is the clinical and legal procedures used to assess that condition.

For criminal responsibility, the relevant time is the time of the offence. The legal question is whether, at that moment, the mental disorder impaired the accused's cognitive or volitional capacity to the extent required by the applicable legal standard⁵.

Procedural criminal law provides the mechanisms for identifying and verifying the disorder. These mechanisms include ordering psychiatric assessments and regulating whether and how the proceedings should continue. Procedural law also safeguards the accused's

right to counsel, any necessary guardian protections, and the legal consequences of treatment placement.

Accordingly, substantive and procedural issues must be examined together. The procedural response in such cases depends on the substantive legal assessment of the accused's mental condition at the time of the offence.

Jordanian criminal laws do not include a general legal definition of insanity. In contrast to this situation, Egypt has established the Psychiatric Patient Care Law No 71 of 2009, which creates definitions for care contexts that serve as materials for legal interpretation. Article 1 of that Law defines a "psychiatric patient" as a "person who suffers from a neurotic psychological disorder or a psychotic mental disorder." The same article defines "psychological or mental disorder" as "any dysfunction of psychological or mental functions to the extent that it limits an individual's adaptation to their social environment; it does not include persons who have behavioural disorders only without a clear psychiatric or mental illness"⁶.

The Jordanian Code of Criminal Procedure in Article 233(5) permits ongoing trial proceedings against a defendant with an intellectual disability who requires psychiatric (mental health) treatment. The defendant now faces barriers that prevent him from joining his defence team to create and execute his legal defence strategy. The Jordanian legal system lacks explicit regulations that state that time spent in psychiatric treatment should be deducted from a person's prison term. The Egyptian Code of Criminal Procedure Article 342 allows Public Prosecution to issue a no grounds criminal prosecution order when a defendant shows mental disorder symptoms during the time of their alleged crime. The prosecution under Article 342 has the power to conduct evaluations that resemble evidence assessment and criminal responsibility determination tasks, which belong exclusively to the judicial system, according to our argument.

Researchers have studied how mental disorders affect criminal responsibility more than they have studied the legal procedures that apply to

mentally ill or intellectually disabled individuals during their time as suspects and defendants. This article fills that gap by examining comparatively how Jordanian and Egyptian law regulate psychiatric assessment, stay/continuation of proceedings, prosecutorial and judicial powers, and the procedural consequences of treatment placement (including crediting time spent in psychiatric facilities). The study supports existing research while offering specific recommendations for necessary changes.

METHODS

The research employs a doctrinal analytical method together with a comparative method. The study investigates the relevant Jordanian and Egyptian law provisions that define mental illness and intellectual disability determinations for defendants, as well as the judicial decisions that demonstrate how these laws function throughout both countries.

RESULTS & DISCUSSION

Suspension of the investigation against the defendant suspected of having a psychiatric or mental illness at the time of the crime

Article 233(1) of the Jordanian Code of Criminal Procedure does not expressly address whether the investigation should be stayed or continued, while it establishes that the accused was suffering from a psychiatric or mental disorder at the time of the offence. A comparable ambiguity arises under Article 339(1) of the Egyptian Code of Criminal Procedure, which provides that: “If it is established that the defendant is unable to defend himself because of a mental disorder that occurred after the offence, the initiation of proceedings or the trial shall be suspended until his mind returns.” This provision is framed around post-offence incapacity and, on its face, does not regulate the procedural consequences of mental disorder existing contemporaneously with the offence.

In light of this textual structure, a principled reading of both procedural regimes supports suspending investigative steps that require the accused’s effective participation once

incapacity is established, to safeguard the rights of defence and the fairness of the proceedings. Nevertheless, neither Jordanian nor Egyptian procedural law provides a clear rule on whether and on what terms the investigation must be suspended when the accused’s mental disorder is alleged or proven to have been present at the time of the offence, leaving a normative gap with direct implications for due process.

Placement of the defendant suspected of having a mental illness at the time of the crime in a treatment shelter

Article 233(1) of the Jordanian Code of Criminal Procedure obliges the Public Prosecutor to order the placement of an accused who is suspected of suffering from a mental disorder in a designated psychiatric (mental health) facility for medical observation and assessment. This measure is triggered where there are indications of a mental disorder, including where the issue is formally raised by the accused’s counsel or legal guardian, and aims to ascertain the accused’s mental condition for the criminal proceedings.

A request to initiate psychiatric observation under Article 233(1) should be based on serious and substantiated indications of mental disorder, rather than raised in a cursory or formulaic manner. While this point is not expressly articulated in the Jordanian text, a comparable approach is reflected in Egyptian judicial practice: the Egyptian Court of Cassation has held that a mere passing assertion by defence counsel that the accused “suffered a mental condition and entered a state of insanity” does not, without more, constitute a serious plea requiring the court to act upon it⁷ (Egyptian Court of Cassation, 17 May 1954).

Article 233(1) states that the defendant must remain in the treatment shelter until his psychological and mental well-being is ascertained. We note that this article does not stipulate a specific period for detention. This is in contrast to Article (338) of the Egyptian Law of Procedure No. (150) of 1950, which allows the defendant to be placed in a government mental health treatment shelter for no more than 45 days.

The purpose of placement is to verify a defendant's mental state and/or to verify his competence to appear before investigation and trial.

We believe that placing the defendant in the treatment shelter in such instances is precautionary in nature. This is done without a judicial order to mitigate the danger posed by a mentally ill defendant to himself and society⁸.

The Jordanian Penal Code (Law No. 16 of 1960) provides a comparable precautionary measure under Article 29 to address the perceived dangerousness of an offender suffering from a mental disorder. In such cases, the legal mechanism for managing this risk is the imposition of the relevant precautionary measure, notably placement in a psychiatric facility where the statutory conditions are met⁹.

Continuation of the necessary investigation while the defendant is placed in the treatment shelter

Placement of the accused in a psychiatric (mental health) facility for assessment does not, as a matter of principle, bring the investigation to a halt. Consistent with Article 233(1) of the Jordanian Code of Criminal Procedure, the prosecution may continue to take investigative steps that are necessary and do not require the accused's effective participation - such as questioning co-accused, appointing experts, hearing witnesses, and securing perishable evidence.

This is confirmed not only by Article 233(1) of the Jordanian Code of Criminal Procedure, but also by Article 340 of the Egyptian Code of Criminal Procedure¹⁰.

Decision of the Public Prosecution after the establishment of mental illness at the time of the crime occurred

When expert assessment establishes that the accused suffered from a mental disorder at the time of the offence, such that criminal responsibility may be excluded, Jordanian practice requires the Public Prosecutor to refer the case to the competent court for a determination of criminal responsibility and the

appropriate procedural disposition⁹. The Public Prosecutor is not empowered to terminate the proceedings through a non-prosecution decision on this ground; the Jordanian Court of Cassation has affirmed the absence of such prosecutorial competence¹¹. By contrast, Egyptian law authorizes the Public Prosecution, following investigation, to issue an order that there are no grounds to institute criminal proceedings (Article 209). Where such an order (or an acquittal) is issued due to a mental disorder, Article 342 regulates the resulting measures, including placement in a psychiatric facility in the circumstances set out by the statute¹². This approach, in practice, entails an evaluative determination closely connected to criminal responsibility and the evidentiary record, which should remain within the court's adjudicative competence¹³.

In Egyptian law, the Public Prosecution must verify the presence of this illness in the defendant at the time of the crime, based on conclusive evidence. The Public Prosecution may collect evidence from expert statements or from medical reports to clearly illustrate the impact of this illness at the time the crime was committed.

The task of demonstrating the impact of a mental illness on a defendant's awareness and willingness at the time of the crime is a hard one and is decided based on evidence on a balance of probabilities. It is simply not enough to have a medical examination stating that the defendant has the illness¹⁴.

If the mental illness is intermittent and the crime is committed during an episode of illness, here an order is issued stating that there is no basis for a criminal case due to the absence of criminal culpability. However, if it is committed during a recovery period, the responsibility remains¹⁵⁻¹⁷.

Where the Public Prosecution has issued an order that there are no grounds to institute criminal proceedings, that order has a binding procedural effect and precludes the reopening of the same case on the same facts against the same accused. This applies, including where the order was based on the accused's mental illness at the time of the offence. Accordingly, if such a

case is later brought before a court by mistake, the court should declare it inadmissible of its own motion, since the matter has already been conclusively resolved by a prior prosecutorial order and concerns procedural finality and legal certainty^{18,19}.

Investigation of the defendant who became mentally ill after the crime occurred

Article 233(1)1 of the Law of Criminal Procedure of Jordan does not clarify the issue of suspending or continuing the investigation of the defendant in cases where it is proven that he suffered from a mental or psychological illness after committing the crime. In contrast, Egyptian law expressly stipulates in article 339(1) of the Law of Criminal Procedure that proceedings against a defendant who suffers from a mental illness, after the committing of the crime, shall be suspended until he/she recovers.

Article 233(1) of the Jordanian Law of Criminal Procedure stipulates that the Public Prosecutor must suspend investigation proceedings of a defendant after conclusively establishing that he has a psychiatric or mental illness that renders him unable to defend himself, to preserve the defence safeguards prescribed by law.

In both Jordanian and Egyptian law, the Public Prosecution and the court can collect evidence that indicates that the defendant suffers from mental illness when the defendant is charged, during interrogation, questioning witnesses and experts, or with a clear and conclusive medical report that proves the illness of the defendant¹⁵.

During the investigation of a defendant, it is recommended that the member of the Public Prosecution must be very observant, in order to verify whether the illness is present or not. This is due to the fact that the defendant may claim, contrary to reality, that he has the illness in order to escape a penalty. The defendant may act, for example, babble with incomprehensible words, phrases, and sayings, in order to delude the member of the Public Prosecution that the defendant before him suffers from a mental illness^{15,20}.

3.6. Placing the defendant under competent government medical supervision with the suspension of trial proceedings

Article 233(2) of the Jordanian Code of Criminal Procedure empowers the trial court, where there are credible indications that the accused may be suffering from a mental disorder or an intellectual disability, to order that the accused be placed under the observation of three government physicians specialised in psychiatry for the purpose of reporting on the accused's condition²¹. In exercising this power, the court retains discretion, that is, it may order (or decline to order) psychiatric observation depending on whether the material before it gives rise to a serious doubt as to the accused's procedural capacity or criminal responsibility, an approach affirmed by the Jordanian Court of Cassation²².

Where the accused or defence counsel requests psychiatric observation under Article 233(2), the court should, as a matter of fair-trial guarantees, order the accused's placement under the prescribed medical supervision unless the request is manifestly unfounded. This approach has been affirmed by the Jordanian Court of Cassation in its criminal jurisdiction²³.

A defendant suspected of having a psychiatric or mental illness must remain under medical observation for as long as necessary to provide the court with a medical report on his medical condition.

This is contrary to Article 338 of the Egyptian Law of Procedure, which allowed placing the defendant in a government treatment shelter specialized in mental and psychological illness for a period that must not exceed 45 days.

The Jordanian and Egyptian courts have held that, where the accused (or defence counsel) raises a serious contention of mental disorder affecting the accused's capacity, the trial court should order psychiatric observation/medical supervision (or appoint an expert) rather than dismissing the request without adequate reasons^{24,25}.

Medical reports concerning the accused's mental condition are crucial to determining whether the accused is competent to stand trial and to participate effectively in the proceedings. The Jordanian Court of Cassation has expressly recognised that such reports may materially affect both the course of the trial and its outcome²⁶.

Placing the defendant in a psychiatric shelter until he/she is competent for trial

Article 233(3) of the Jordanian Code of Criminal Procedure provides that, where the court is satisfied based on competent medical supervision that the accused suffers from a mental disorder and is not fit to stand trial, it shall order the accused's placement in a psychiatric hospital / specialised mental health facility until fitness is restored, and shall stay the proceedings against that accused alone. If the court is satisfied that recovery is not expected, it may order the accused to remain in the facility. In all cases, the court resumes the trial once the accused becomes fit to stand trial¹⁵.

The Egyptian law in Article 339 gives the court the authority to place the defendant in a mental asylum, in conjunction with the suspension of his trial, until he is released. The suspension here does not include trial procedures taken with a non-defendant, such as questioning witnesses, and the suspension here does not extend to injunctions or necessary trial procedures, pursuant to Article 340 of the aforementioned Egyptian law.

It is noted that contrary to Jordanian law, Article 341 of the Egyptian Law of Criminal Procedure stipulates that the period spent by the defendant in a mental asylum shall be counted towards from the period of the sentence, similar to pretrial detention. Here, we recommend that the Jordanian legislator develop a new provision corresponding to the provision of Article 341 of the Egyptian law.

Rendering the defendant inculpable or innocent due to being mentally ill at the time of committing the crime

Under Article 233(4) of the Jordanian Code of Criminal Procedure, where the court is satisfied that the accused committed the offence and that, at the time of its commission, the accused suffered from a mental disorder that rendered him unable to understand the nature of his conduct, the court must enter a finding of guilt but declare lack of criminal responsibility, pursuant to Article 92 of the Jordanian Penal Code²⁷. Article 92 exempts such a person from punishment and provides that the person shall be detained in a psychiatric hospital (specialised mental health facility) until a competent medical committee certifies recovery and confirms that the person no longer poses a danger to public safety²⁸. The Jordanian Court of Cassation has affirmed this approach²⁹.

In comparative terms, Article 62 of the Egyptian Penal Code (Law No. 58 of 1937, as amended) provides that no criminal liability arises where the offender, at the time of the act, lacked awareness or free choice due to a mental disorder (and it further distinguishes cases of diminished capacity). This is broadly analogous to Article 92 of the Jordanian Penal Code, which exempts the offender from punishment where a mental disorder negates the relevant mental capacity at the time of the offence^{30,31}. Procedurally, Article 342 of the Egyptian Code of Criminal Procedure provides that, where an order of "no merit to file the lawsuit" is issued or an acquittal is rendered because of the accused's mental condition, the issuing authority must order the accused's placement in a specialised mental health facility (in felonies and misdemeanours punishable by imprisonment) and may only order release after reviewing the institution's report and taking steps to verify restoration of mental capacity³².

This procedural mechanism is functionally comparable to the Jordanian framework under Article 233(4) of the Jordanian Code of Criminal Procedure, read together with Article 92 of the Penal Code, in that both systems couple the outcome grounded in mental disorder with compulsory therapeutic detention until public safety concerns are resolved^{31,33}.

In Jordanian law, the court issues a special verdict: it first finds that the accused committed the actus reus of the offence, but because a mental disorder at the time of the offence negated criminal responsibility, it declares the accused not criminally responsible (and therefore not punishable). By contrast, Egyptian procedure frames the outcome as an acquittal where the case is dismissed or the accused is acquitted due to mental incapacity^{34,35}.

Specificity of the decision rendering the mentally disabled person criminally inculpable, pursuant to Article 233/5 of Jordanian law

According to Article 233/5 of the Jordanian Law of Criminal Procedure, when the court verifies that the defendant is mentally disabled, it may not prosecute him without the presence of his guardian or a lawyer to defend him. After such a trial, if he is found to be (mentally impaired) at the time of the offence, the court must convict him and issue its decision rendering him criminally irresponsible, placing him under the supervision of the probation officer for one to five years. This is confirmed by the Jordanian Court of Cassation in one of its decisions³⁶⁻³⁹.

The court may also place him before that in the National Centre for Mental Health or in any other treatment shelter to treat him from manifestations of behaviour dangerous to public order that may accompany his mental disability^{40,41}.

The fifth paragraph of article (233) of the Jordanian Law of Criminal Procedure does not clarify the issue of suspending or continuing the trial of the defendant here, but the phrase "If the court finds from the medical supervision conducted by it that the defendant suffers from a mental disability, he may not be tried except in the presence of the person who has guardianship over him, and if this is not possible, the court shall appoint a lawyer to defend him."

Article 233(5) may be understood as a narrowly tailored exception to the general procedural principle recognised in both Jordanian and Egyptian criminal procedure that proceedings should be stayed where the accused is unfit to

defend himself due to a mental disorder. The apparent legislative rationale in Jordan is that certain forms of intellectual disability are permanent and not amenable to treatment; an indefinite stay would therefore preclude any final judicial disposition and frustrate the protective measures contemplated by the statute. On this basis, Jordanian law permits the trial to continue notwithstanding the accused's placement in a psychiatric treatment facility, provided that the accused is represented by a legal guardian or defence counsel. Where the actus reus is established, the court may then issue the special disposition prescribed for such cases, including a declaration of lack of criminal responsibility and the imposition of the relevant supervisory measures. This interpretation has been affirmed by the Jordanian Court of Cassation⁴².

CONCLUSION

It should be noted that both the Jordanian and Egyptian laws empower the Public Prosecutor's Office to place the defendant suspected of psychiatric or mental illness in a treatment shelter to verify his/her psychological and mental well-being at the time of the crime. In Jordanian law, the public prosecutor must refer the case to the competent court after the defendant's psychiatric or mental illness is established at the time of the crime. In contrast, Egyptian law gives the Public Prosecution the power to issue an order stating that there is no basis for a criminal case.

In fact, if the defendant or his lawyer asks the court to refer the defendant to medical supervision to bring medical reports showing his psychological or mental condition, the court must accept this request. Jordanian law does not provide for the deduction of the time spent in a psychiatric asylum from the sentence duration imposed on the defendant, unlike Egyptian law.

Therefore, if it is proven that the defendant, at the time of the crime, was afflicted with an illness that made him unable to realize his behaviour, under Jordanian law, the court must issue its decision convicting him and declaring his criminal irresponsibility. In Egyptian law, it

must issue its decision: (acquitting him of the crime). There is an exception in Jordanian law, as follows: (The continuation of the trial of the defendant who is mentally disabled, while in the treatment shelter).

Finally, it is necessary to introduce a provision in Jordanian law on the suspension of proceedings against a defendant who has been found to have a psychiatric or mental illness until he returns to his senses, following the tracks of the Egyptian law, and to introducing a provision in Jordanian law concerning the deduction of the time spent in a psychiatric or mental asylum from the sentence imposed on defendant, as is the case with pre-trial detention, following the tracks of the Egyptian law.

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The authors declared no conflicts of interest.

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