

The Cyber Terrorism Crime in Jordanian Law

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This research is concerned with stating the legal provisions set for the crime of cyber terrorism as stated by the provision of article 3 of the Jordanian Anti-Terrorism Law. In fact, and at the beginning, the research approached the definitions of each of the terms of terrorism and cyber terrorism according to the methodology of the Jordanian legislators. Further, the provision of article 3 of the Anti-Terrorism Law was analysed, after which the elements on which the crime is based were concluded, followed by examining some of the cases presented to the Jordanian judiciary.

Key words: *Cyber Terrorism, Jordanian Law, Justice, Cyber-Crimes, Anti-Terrorism Law.*

Introduction

The Information Systems Crimes Law 2010 (now cancelled), and in article 10, provided for the crime of cyber-terrorism, and the wording was as follows: ‘every person who uses information systems or the Internet or otherwise creates a website for facilitating the performance of terrorist acts, supporting a terrorist group, promoting adopting its ideas or financing it shall be punished by temporary hard labour).

Yet, the legal committee of the Parliament deleted the said article from the Cyber Crimes Law as the said provision is similar to that set in the Anti-Terrorism Law No. (55), 2006. In fact, the Parliament approved deleting it from the law¹.

Definition of Terrorism and Cyber-Terrorism

The term ‘terrorism’ is deemed of the most difficult terms for definition yet, the Jordanian legislator included a definition for it in the Penal Code and the Anti-Terrorism Law. In fact,

^[1] Addendum of the Official Gazette, the Parliament, the minutes of the twenty third session (the sixth day) of the second ordinary term of the seventeenth Parliament held on Tuesday, 14 April 2015, No. 23, Vol. 50, P.61.

the said definition has been subject to several amendments for which the legislative development of the terrorism definition should be approached.

Actually, the Jordanian Penal Code used to define terrorism in article 147 of the same by stating that: ‘the terrorist acts mean: all the acts that aim at creating a state of panic and are committed by such means as explosives, flammables, poisonous or burning products and epidemic or microbial agents that would cause a public danger’. In fact, it is noticed that the said definition used to focus on two elements: the psychological condition and the means. In fact, and in order to have a terrorist act according to the said condition, then a panic condition should be generated for the public while the panic means the severe fears, not only the fears that would result from any crime. As for the means, then the provision provides that the means applied would create a public danger. Actually, the concept of the public danger is not clear – which resulted in saying that the definition of terrorism is a difficult matter (Attallah, 2000).

In fact, the legislator amended the said definition according to the temporary law No. 54/2001 certified by the Parliament pursuant to the amended law No. 26/2007 whereby the definition has been read as follows: ‘terrorism means using violence by any means whatever or threatening to use it regardless of its incentives and objectives which is an execution by an individual or group criminal project aiming at endangering the community and its security if the same shall result in raising fears among people and frightening them or endangering their lives or otherwise causing damage to be sustained by the environment, public facilities and properties, private properties or the international facilities, diplomatic missions or otherwise by occupying any of them, confiscating them or endangering the national resources or otherwise to force any government, international or regional organisation to perform any act or refrain from the same’.

In fact, and by the amended law No. 27/2017, the definition has been read as follows: ‘terrorism means: every deliberate act, the threatening or the abstention of the same regardless of its incentives and objectives or means being in execution for an individual or group criminal project that would endanger the community and its security or otherwise creating sedition if the same would breach the public order or raise fears among people, frighten them or endangering their lives or otherwise causing damage to be sustained by the environment, public facilities and properties, private facilities or international facilities or diplomatic missions, occupying any of them, confiscating the same, endangering the national resources or the economic resources or otherwise forcing a legal authority, international or regional organisation to perform any act or refrain from the same or otherwise to hinder the application of the constitution, laws or regulations’.

As for the Anti-Terrorism Law No. 55, 2006, then it defined the terrorist act in article 2 as being: ‘every deliberate act committed by any means whatever resulting in killing any person,

causing physical harm or causing damage to public or private properties, means of transportation, environment, infrastructure, the facilities of the international commissions or the diplomatic missions if the same shall be aiming at breaching the public order, endangering the community and its security or hindering the application of the provisions of the constitution or the laws, influencing the policy of the state or the government or otherwise forcing it to do something or abstain the same or otherwise breaching the national security by frightening, terrorising or violence’.

Thereafter, the said definition was amended according to the amended law No. 18, 2014 to read as follows: ‘the terrorist act: each deliberate act, threatening or abstaining of the same regardless of its incentives, objectives or means in execution for a group or individual criminal project that would endanger the community and its security or otherwise creating a sedition if the same would breach the public order, raise fears among the people, frightening them, endangering their lives, causing damages to the environment, public facilities and properties, private properties, international facilities or diplomatic missions or otherwise occupying any of them, confiscating them, endangering the national or economic resources, forcing a legal authority, regional or international organisation to perform and act, abstain the same or otherwise hindering the application of the constitution, laws and regulations’.

Actually, the definition of cyber-terrorism does not differ from that of traditional terrorism other than that the first uses cyber means in the terrorist acts for which the elements of ordinary terrorism shall be met to consider cyber-terrorism as being existing (Al-Nawaiseh, 2017).

Criminalising Cyber-Terrorism

As we elaborated herein, terrorism may be committed via cyber means in which case the application of the traditional provisions may be practised without any obstacles, e.g. the accused using electronic media to endanger the community.

In fact, it seems that using electronic media in terrorist operations has specific fields as terrorists use electronic and technological modern media for facilitating terrorist acts and promoting terrorist organisations, supporting or organising the same. Hence, and out of the specialty of the fields in which the terrorists use electronic media, then the Jordanian legislator has criminalised the same according to paragraph (E) of article 3 of the Anti-Terrorism Law which considered the following acts as being of the prohibited terrorist acts:

‘Using the information system, Internet or any publishing means or media, creating a website for facilitating the performance of terrorist acts or supporting a group, organisation or society performing terrorist acts, promoting their ideas, financing them or otherwise committing any

act that would endanger the Jordanians or their properties to be exposed to the risk of aggressive or retaliatory acts’.

The Elements of Cyber-Terrorism Crime

The judiciary has been established to believe that the said crime is of two elements: *Actus rea* and *Mens rea*.

Actus Rea

Actus rea of the said crime is realised through several manners listed by the Jordanian legislator in article (3/E) of the Anti-Terrorism Law No. (55), 2006 and the amendments thereof which include promoting the ideas of terrorist organisations whereby the Jordanian criminal legislator has been seeking through the same to avoid the risk to which Jordanian state security is being exposed and criminalising that resulting or that may result in endangering the Jordanians or their properties to sustain non-political stabilisation as well as granting the largest amount of protection to the entity of the state and its basic rights as well as to maintain the safety of its lands and citizens against the danger of the said terrorist group, taking into consideration the nature of the risk of the means used as well as the standard in the same being material, objective, moral and self at one time for which the nature of the said means used, the subject matter of the crime, shall be considered in addition to the matter that whether the means itself was the tool for the act, the pictures and the speeches which involved the crime of promoting the ideas of the said terrorist groups, improving, decorating and promoting their ideas and whether the same included matters that would result in influencing the addressees taking into consideration the circumstances of the place and time attaching the same as well as the objective and personal respects which matter is called “the crimes of risk”, as logically to the effect that introductions, and based on the logic of the matters, usually lead to conclusions that may be anticipated according to the natural part of the matters².

In fact, and if we are to analyse the text, then the legislator has limited the application of the provision to specific means and to specific material activities that are stated hereunder:

A - The Means

The legislator, and for the said crime to be established, provided to use the information system while the information system, as defined by article 2 of the Cyber Crimes Law, is: ‘a set of programs and tools prepared for creating data or information electronically, or otherwise sending, receiving, processing, saving, management or presentation of the same via the

[2] See e.g.: criminal cassation 1152/2018 dated 15/4/2018; criminal cassation 503/2018 dated 15/3/2018; criminal cassation 1676/2018 dated 14/10/2018 Qistas Publications.

electronic means;’ or otherwise using the Internet which is according to the same previous article: ‘a collection between more than one information system to avail data and information and occur the same’ or using any publishing or media means or otherwise the means of the said crime shall be creating a website³ which website is ‘a space for availing information on the Internet via a specific address’.

B - Manners

The legislator determined the physical activities that constitute the manners of this crime as ‘this crime is established if the perpetrator shall commit any of the activities listed in article (3/E)’. In fact, some criticised the said provision in terms of the expansion of the legislative clause, its being very broad, unclear and being of a wide concept in addition to using terms resulting in standardisation in the operation of criminalisation (Al-Momani, N.D.). In fact, the physical activities set by the provisions are as follows:

Facilitating Performing Terrorist Acts

Facilitation in language means smoothing (Ibn Manzour, 1999), which is derived from "facilitate" meaning smoothing by which one can say credit facilities meaning facilities granted by the bank to its clients (Omar, 2008). Further, the legislator did not point out the meaning for facilitating performing terrorist acts, but the same may be made by giving the same meaning of interfering as being one way of criminal participation by which facilitation is realised by submitting capabilities to the terrorist organisation or removing the obstacles hindering it to attain its objectives (Al-Adli, 2003).

Supporting a Group, Organisation or Society Performing Terrorist Acts

Lisan Al-Arab included that ‘supports a matter means: supporting a thing against falling’ (Ibn Manzour, 1999). While *Al-Mojam Al-Wasit* stated that ‘we say he supported someone meaning helped and empowered him’ (Academy of the Arabic Language, 2011). Also, the legislator did not include a clarification for the meaning of support, but we believe supporting here does not mean financial support as the same falls within the scope of terrorism financing, while support in this regard includes moral support.

[3] "Terrorists create and design websites for them on the Internet to transmit their deluded ideas, preaching their oblique principles, demonstrate the power of the terrorist organization, ideological mobilizing and the mobilizations of the new terrorists in addition to granting instructions and electronic instructing as well as the electronic training by teaching the methods and means that help in launching terrorist attacks". (Al-Fil, 2011).

Promoting the Ideas of the Terrorist Groups

According to language, promoting a matter means giving it notoriety to be demanding (Omar, 2008), while promotion here does not go beyond its linguistic meaning as it means disseminating matters that may support the people's acceptance for the ideas and objectives of the terrorist organisation by encouraging them to adopt and defend the same after being convinced by them.

In fact, promotion means advertising and disseminating the ideas of the organisation, its philosophy and objectives as well as seeking to disseminate the same by statement and act to acquire new supporters for it (Darwish, 2010). Actually, the term promotion bears the meaning of advertising, as promoting merchandise shall be made by advertising it in several mass media and in several ways for which promotion is not realised by writing articles that have not been published yet or being not made for publishing at all, but it shall not be a condition to promote the articles by their writer as some other person may do so (Attallah, 2000).

In fact, it should be stated that promotion should involve the advertisement and favouritism for the terrorist organisation for which the mere transfer of news is not deemed a promotion. In addition, the promotion shall be focussed on the illegal objectives sought to be attained by the organisation (Sorour, 2013).

In fact, the legislator was keen to criminalise promoting terrorism since promoting is deemed as a means for creating a community ground for the organisation in which it stands to be the best means and of the least cost in order for the organisation to acquire a wide popular base, after which constitution it shall not be imagined to be got rid of it easily (Falah, 2014).

Actually, and if promoting is of the activities on which the crime is based, then shall a specific character be met by the promoter? In fact, the said issue raised a dispute in jurisprudence:

In fact, some said – rightfully – that the provision did not require any character, i.e. the perpetrator is not required to be a member of the terrorist organisation or from those who created, established or managed it (Nael, 1996).

On the other hand, the other opinion tends to say that this crime is not envisaged to be committed except by he or she who does have a capacity in the terrorist organisation promoted by the perpetrator by being one of its members (Said, 1995).

Terrorism Financing

The terrorist groups depend basically on financial resources as once the organisation has more funds, then its activity shall be of more efficiency and the organisation shall be more powerful, for which terrorism financing should be criminalised.

Hence, an international agreement was concluded for suppressing terrorism financing in the year 1999, which included that the party states consider terrorism financing as being of a severe concern to the whole international community, noting that the number and risk of international terrorism acts depends on the financing that may be obtained by the terrorists.

In fact, the Jordanian legislator included a definition for terrorism financing in article 2 of the Anti-Money Laundering and Terrorism Financing Law, 2007 as being: 'committing any of the acts mentioned in paragraph (B) of article (3) of this Law'. And if we are to refer to paragraph (B) of the said article (3), then it shall be shown that financing terrorism means: 'offering funds, raising the same, procuring their obtainment or transfer by any means whatever whether directly or indirectly and even if the same shall be from legal resources for a terrorist, a terrorist organisation, commission, society, group or a terrorist act knowingly whether the said funds shall be totally or partially used or not, and whether the said acts shall occur or not'.

We notice that the definition of the Jordanian Legislator is consistent with the agreement of suppressing terrorism financing, which elaborated in defining financing terrorism, "as it did not limit it to offering funds in tending to be used in specific terrorism acts but expanded its concept to the mere raising of funds for the purposes of attaining the said objective. Further, the resources of the said funds, and whether being legal or illegal, shall be equal as long as the objective of offering the same is to be used in a terrorist act which is the difference between the crime of financing terrorism and the crime of money laundering which provided that the resource of the funds aimed to be washed shall be illegal transactions" (Sorour, 2013).

Performing Any Act That May Endanger the Jordanians or Their Properties to the Risk of Aggressive Works or Retaliatory Acts against Them

According to the provision, then this manner is realised by performing any act meaning that the said manner includes any act that has not been provided for in the article but provided that the said act would endanger the Jordanians or their properties to the risk of aggressive or retaliatory acts sustained by them while the protection includes the persons and the properties. Actually, the legislator does not provide for the realisation of a specific result of the said act while it shall be sufficient to the endangering, which crime is considered as being of the crimes of risk that do not require a specific result.

Mens Rea

In order for using the information system, the Internet or any publishing or mass media or otherwise creating a website to be criminally accountable, then the aim of the same shall be facilitating performing terrorist acts or supporting a group, organisation or society that performs terrorist acts or to promote their ideas while the perpetrator shall be behaving intentionally while having full knowledge about the nature of the act committed intending freely to attain the said result, in addition to the other evidences by which the court shall firmly be satisfied that the accused was freely behaving intentionally to manipulate and encroach the security of Jordan and its stabilisation as well as to jeopardise the principles of the Jordanian community fighting against terrorism and terrorists under the conditions surrounding the Kingdom and the risks threatening its security, as well as the security of the Jordanian community, which matters may result in the occurrence of bad outcomes.

In fact, the legislator was not satisfied only by the necessity to have the general intention (knowledge and free will), but necessitated having the special criminal intention been satisfied represented by having the objectives sought by the perpetrator in the long run to be facilitating performing terrorist acts, supporting a group, organisation or society performing terrorist acts or promoting their ideas whether the same shall be attained or not, seeking to cause the persons to believe that the acts of the said groups are rightful to stand by them by all the material ways like supporting them, joining them, sympathising with them or participating in disseminating their ideas, which is the denoting of the provision of article (3/E) of the Anti-Terrorism Law.

In fact, and while searching the elements and factors of the accusation as charged, we should refer to the fact that the Jordanian legislators, in the Anti-Terrorism Law No. (55) of 2006 and its amendments, did not provide that the said crime, and in order to be established, then the same should be resulted from the act of using the information system or the Internet to facilitate performing a terrorist act or supporting a group, organisation or society that performs terrorist acts by acting on or promoting its ideas, while it shall be sufficient that the intention of the perpetrator has been so and that it shall not be necessary for using the Internet to endanger the Jordanians or their properties to the danger of aggressive or retaliatory acts to be sustained by them or by their properties, while it shall be sufficient to have the attainment of the same to be probable, which is called the risk of crimes taking into consideration the nature of the means used as being the Internet, writing, typing and preparing publications and tags as well as distributing the same which standard is material, subjective, moral itself at the same time in addition to the necessity to consider the nature of the means used, the subject matter of the crime and whether itself, the means through which it was made, the phrases, pictures and videos, were up to influence the safety and security of the Jordanian State, the Jordanians and their properties and whether it included malice, decoration and influence in a way that shall be of an influence on those addressed taking into consideration the circumstances of the place and

time accompanied with the same as well as the subjective and personal respect surrounding the same as mentioned before⁴.

The Penalty of the Crime

The penalty of this crime has been set in article 7 of the Anti-Terrorism Law whereby the perpetrator of this crime shall be punished by temporary hard labour (paragraph (C), which is the ordinary penalty of the crime as it may be lifelong labour according to paragraph (A) if the terrorist act shall result in :

- 1- Causing damages, even if partial to a public or private building, and industrial establishment, a vessel, an aircraft, any means of transportation or any other institution.
- 2- Interrupting the means of communication and computer systems or hacking its systems .

In fact, the penalty of the terrorist act shall be execution according to paragraph (B) in any of the following cases :

- 1- If the terrorist act shall result in the death of a human being.
- 2- If the terrorist act shall result in demolishing a building totally or partially were a person or more shall be therein.
- 3- If the terrorist act shall be committed by using explosives, flammables, poisonous or burning products, epidemic, microbe, chemical, radioactive materials or via arms, immunities or the like.

Case Law

The Jordanian Court of Cassation considered this crime to be attained in the following cases:

The First Case

The accused created a page for himself on the social media named Facebook in the name of (A.S.) and that his said page is a public page which may be seen by all having many friends for him on the said page and that he is the sole one who publishes on his page. Further, and following the war in Syria and the emergence of organisations that fight against the Syrian Regime, then the accused posted several posts time after time on his Facebook page which included the operations performed by the terrorist organisation *Jabhat Al-Nusra* which name was changed thereafter to be known as the organisation of *Jbhat Fath Al-Sham* against the Syrian Regime as the accused was supporting the said terrorist organisation as it was fighting the Syrian Regime. In fact, and on 6 December 2015, the accused posted poetry praising the terrorist organisation *Al-Nusra* on his Facebook page, i.e. (The meaning: you are lions

[4] Criminal cassation 1152/2018 dated 15 April 2018; criminal cassation 503/2018 dated 15 March 2018; criminal cassation 1676/2018 dated 14 October 2018 Qistas Publications.

resuming the bright days while our organisation shall have victory). In addition, and on 28 July 2016, he posted a picture for the person named *Abu Mohammad Al-Julani*, who is the prince of *Al-Nusra* in Syria on his Facebook page while it was on 20 October 2016, the accused posted a video showing the fighting operations by the terrorist organisation of *Fath Al-Sham* against the Syrian Army on his personal Facebook page. In addition, and on 11 January 2017, the accused posted news telling of the killing of fifteen warriors from the organisation of *Fath Al-Sham* on his Facebook page on which he commented by saying (rest in peace) noting that all those having access to the page of the accused on Facebook were liking the said posts posted by the accused in support by him for the terrorist organisation of *Jabhat Al-Nusra* and its fighting against the Syrian Regime forces.

Hence, the acts of the accused represented by his posting pictures, releases and videos belonging to the terrorist organisation of *Jabhat Al-Nusra* on his personal page on the social media (Facebook) seen by his followers and friends as well as his praising of the said organisation and praying for the killed persons to rest in peace being of the supporters of the said terrorist organisation aiming at acquiring more supporters for the said terrorist organisations knowingly with his free will, then the said acts are deemed as a promotion for the ideas of a terrorist organisation⁵.

The Second Case

The acts committed by the accused to the effect of supporting the terrorist *Daesh* organisation through her relationship held with the person named Hawaa and her sister, the person named Amneh who are members at the said terrorist organisation in Syria and having the accused, and after joining a group on the application (Whatsapp) bearing the name (*Al-Akhawat Fellah*), posted songs specially related to the terrorist *Daesh* organisation in addition to posting the news of the said terrorist organisation and the links concerned with the organisation itself to the remaining members of the said organisation in Jordan knowingly with her free will, the said the acts stand to be a promotion for the ideas of a terrorist organisation constituting all the elements of the crime provided for in article (3/E) of the Anti-Terrorism Law⁶.

The Third Case

Following the events happening in Syria and Iraq, the accused began following the news related to the terrorist *Daesh* organisation on the Internet till he became one of the supporters of the said terrorist organisation after which, and at the beginning of the year 2015, created a page for himself on the application (Facebook) in the name of (N.A.S.) and proceeded with promoting for the said terrorist organisation by posting their news and their fighting Shiites on his personal

[5] Criminal cassation 360/2018 dated 6 March 2018, Qistas Publications.

[6] Criminal cassation 1152/2018 dated 15 April 2018, Qistas Publications.

page to his friends and relatives aiming at acquiring more supporters to the said organisation for which the said acts stand to be a promotion for the ideas of a terrorist organisation⁷.

The Fourth Case

The acts committed by the first accused (Qutaiba) represented by following up the releases of the terrorist *Daesh* organisation on the Internet via the application Youtube, Telegram and Google+ as well as the channels supporting the terrorist *Daesh* organisation in addition to having after that talked in front of his colleagues at the quarry in which he works about the legitimacy of the terrorist *Daesh* organisation and their true application of the provisions of Islam as well as having the second accused (Mohannad) supported the terrorist *Daesh* organisation and viewing the releases of the said terrorist organisation in addition to following up its news through the news channels in addition to presenting videos for the fighting operations performed by the said terrorist organisation and its releases by the first accused, Qutaiba in order to find more supporters for the said terrorist organisation and a popular incubator for it from among the individuals of the Jordanian community in addition to having them defended it as being a rightful organisation that applies the true Islamic Sharia knowingly with their free will which all in all constitute all the elements of the crime of promoting the ideas of a terrorist group⁸.

Conclusion

This research shows that the Jordanian legislator has realised since 2006 the seriousness of cyber terrorism, and therefore includes all forms of crime in the Anti-Terrorism Law.

We also note that the judiciary is strict in punishing those who commit cyber terrorism because of the danger it perceives to society, but there must be controls in punishing, especially in proving the moral element (*Mens rea*), where it is noted that there is leniency in proving it.

Despite the importance of criminalising cyber terrorism, we should not deny that criminalisation is not the best way to confront terrorism. Good legislation prevents crime before it occurs, so we believe that eliminating the cause of crime is the best way to prevent it.

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[7] Criminal cassation 503/2018 dated 15 March 2018, Qistas Publications.

[8] Criminal cassation 359/2018 dated 13 March 2018, Qistas Publications.

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