



The Extent To Which The Personal Right Prosecution Is Required To Initiate A Public Right Lawsuit In Electronic Slander Crimes

Abdallah Majed Abdelmutaleb Alakayleh^{1*}, Mohammad Meqbel Salem Alandali², Meshal Daher Doushan Almadi²

^{1*}Associate Professor of Criminal Law, Faculty of Law, Ajloun National University, Jordan, Email: akakakak1988@yahoo.com

²Associate Professor of Public Law, faculty of Law, Irbid national University, Jordan, Email: mohdal63@yahoo.com, Mohammad_alandali@inu.edu.jo

²Assistant professor of public law, faculty of Law, Irbid national University, Jordan, Email: m.madi@ju.edu.jo

Citation: Abdallah Majed Abdelmutaleb Alakayleh et al. (2024), The Extent To Which The Personal Right Prosecution Is Required To Initiate A Public Right Lawsuit In Electronic Slander Crimes, *Educational Administration: Theory and Practice*, 30(5), 10470-10478, Doi: 10.53555/kuey.v30i5.4773

ARTICLE INFO

ABSTRACT

The study aimed to clarify one of the most critical procedural problems facing cybercrimes of slander, which is the extent to which the prosecution of a personal right is required or not to trigger the public's lawsuit, as the Jordanian legislator necessitated the availability of this condition in the traditional slander crimes stipulated in the Penal Code only for the general public. And this was not required in electronic slander crimes, which confirms the necessity of applying general rules in the absence of a special text. Some of them require the necessity of claiming a personal right, and others do not require that, contenting themselves with the freedom of the Public Prosecution to initiate the case directly.

Keywords: The personal right; the complaint; the legislative; the judiciary; the criminal case.

Introduction

There is no doubt that the crimes of defamation, slander, and humiliation committed through electronic means are considered one of the most prevalent crimes in our time. These crimes occur through electronic messages that are committed via smartphones, social media, and email, as well as by publishing in publications and electronic forums in the shadow of the forest. Electronic cowards and those who are unable to confront them face-to-face use this virtual medium with the aim of offending others, which results in sayings, signs, drawings, or images that carry the meaning of abuse and insult as a problem for one of the crimes of slander, slander or contempt ⁽¹⁾. The type of crime was not satisfied with punishing them in their traditional form stipulated in the Penal Code. Still, it came with legal texts punishing this under the Cybercrime Law, according to Article 11 ⁽²⁾. Although the Jordanian legislator has dealt with many substantive aspects of this type of crime, it has neglected many procedural aspects, all of which cannot be discussed in this study. The victim has a personal claim as a condition for initiating the public prosecution. It is not hidden from anyone that the public prosecution is considered the main body competent to file a public rights lawsuit so that others may not institute this lawsuit. It is not entitled to leave it, stop it, or disrupt its progress except in accordance with the stipulated cases. The law requires that the public prosecutor initiate the public rights case directly before the competent court ⁽³⁾. Still, there is a range of crimes in which the public prosecutor may not initiate the public rights case until after the restriction required by the legislator is achieved. Perhaps the most important of these The restrictions are (complaint or claim of personal right, request, or permission), and accordingly, in the cases in which the law requires to file a criminal case, the existence of a complaint or claim of personal right from the victim or others, the plaintiff may not The general public may not take any action on it except after the occurrence of this complaint or this allegation.

In order of the foregoing, electronic slander crimes are considered a category of crimes in which the Public Prosecution may not initiate a public right lawsuit directly except after submitting a complaint or claiming a personal right from the victim or others, as the Public Prosecution's hand remains unchallenged from initiating this lawsuit until it is achieved. The existence of this complaint or allegation ⁽⁴⁾. But the matter is

not without controversy and a jurisprudential and judicial discussion about the extent to which personal rights are involved in cybercrime of slander, which the study focuses on.

The importance of the study

The paramount importance of the research lies in shedding light on the extent to which the legislator requires the victim's complaint or the personal right claim as a condition for triggering the public right lawsuit in the traditional crimes of slander that fall on the general public, and not requiring this claim in the cybercrime law, and what is the fate of the public right lawsuit in these crimes The latter, and what are the consequences of raising it without claiming a personal right.

Objectives of the study

The research aims to clarify the concept of the complaint, the public right claim, the personal right claim, and the distinction between it and the abolition of the personal right, highlighting the position of the legislator, jurisprudence, and the judiciary, which was different about the extent of the requirement for the existence of the personal right claim as a basis for moving the public right case or not in electronic slander crimes.

Study problem

The main research problem lies in that the legislator in the traditional crimes of slander and slander and contempt stipulated in the Penal Code has singled out a legal text that does not initiate a public right lawsuit in these crimes until after the victim submits a personal right claim, and this was not required for crimes of slander, slander, and contempt stipulated in the Electronic Crimes Law, did the legislator in this last law require a restriction on moving the public right case? If the answer is no, does that mean a return to the rule of general rules? It seems that there is a discussion and disagreement about this, which resulted in divergent views, whether in judicial rulings and decisions or jurisprudence statements, which we will explain in some detail.

Research Methodology

The study depends primarily on clarifying the extent to which the claim of personal right is required to trigger the public right lawsuit in electronic slander crimes. The position of the Jordanian legislator, whether in accordance with general rules or special laws and the same matter we will resort to clarifying the judicial and jurisprudential position.

The research questions

- 1- What is meant by claiming a personal right, and what is the difference between it and dropping a personal right?
- 2- Did the legislator, in the cybercrime law, require the existence of a personal right claim to initiate a public right lawsuit?
- 3- Why did the jurisprudential and judicial debate over the extent of the requirement to claim personal rights in cybercrime of slander?
- 4- Why is it not necessary to refer to the general rules in the Penal Code to solve the problem of claiming a personal right to close the door of discussion and jurisprudence?

Research structure

The first chapter is the legal and jurisprudential position on the requirement to claim a personal right in cybercrimes of slander

The first requirement: the position of the legal legislator on the requirement to claim a personal right

The second requirement: the doctrinal position on the requirement to claim a personal right

The second topic is the judicial position on the requirement to claim a personal right in electronic slander crimes

The first requirement: the trend opposing the existence of a claim of personal right in electronic slander crimes

The second requirement: the trend in favor of the existence of a claim of personal right in cybercrime of slander

The third requirement: the position of the study

Conclusion

results

Recommendations

List of references

The first chapter

The legal and jurisprudential position on the requirement to claim a personal right in cybercrime ⁽⁵⁾

There is a difference between dropping the personal right claim and dropping the personal right, for the first means the civil lawsuit filed by the plaintiff before the judiciary asking for reparation for the harm resulting

from the crime, while the second means the victim's desire not to legally punish the offender, and its effect is either the demise of the public right lawsuit or the penalty or as a reason for mitigating the penalty. Accordingly, we will talk in this topic about the extent to which a complaint or claim of personal right is required in two demands.

The first requirement: the position of the legal legislator on the requirement to claim a personal right

We will discuss the position of the Jordanian legislator through two sections. In the first section, we will discuss the position of the criminal law in both parts of the Penal Code and the Code of Criminal Procedure. As for the second section, we will discuss the position of the cybercrime law and other laws as follows:

Section one: In criminal law:

At the outset, it can be said that the public rights lawsuit is a set of measures taken by the Public Prosecution as an investigative authority from the moment it is notified of the news of the crime until the issuance of a final ruling on the matter, whether acquittal or conviction, or it is a request directed by the state through its competent body of accusation. To the judge against the person accused of committing the crime to determine the extent of the state's authority to punish him ⁽⁶⁾.

As for the legal position, based on the text of Article 2/1 of the Jordanian Code of Criminal Procedure, the general rule states that the Public Prosecution is the authentic and competent authority to file a public rights lawsuit, and the exception to that lies in the fact that the legislator may sometimes depart from this rule in such a way that the initiation of the public right case is restricted by the existence of a claim for the personal right of the person who was harmed by the crime, or by the presence of a complaint from the victim ⁽⁷⁾.

In the Penal Code and applying to the subject of the research, the legislator stated in general about crimes of defamation, slander, and contempt, where the Public Prosecution may not initiate a public right case unless the victim or the victim of the crime submits a complaint or claim of personal right based on the text of Article 364 of the Penal Code, which states that (claims of defamation, slander, and contempt depend on the victim taking the capacity of the personal plaintiff) ⁽⁸⁾, and also Article 365, which states that (the personal plaintiff may request, in the lawsuit he institutes, to include the material damages he suffered from the slander, slander, or humiliation, and what he estimates of the inclusions cash.

In return for the moral damage he thinks, the court must estimate these implications according to the nature of the crime and the severity of its impact on the victim and in relation to his social status and rule accordingly.

And in order of the foregoing, in crimes of defamation, slander, or contempt, if the victim or the victim of the crime showed their desire not to move the complaint or to claim a personal right, then the Public Prosecution may not take any action in it in the light of Article 3/1/a of the Code of Criminal Procedure, which states that "in all cases in which the law requires the filing of a criminal case, the existence of a complaint or a personal claim from the victim or others, no action may be taken in the case except after the occurrence of this complaint or allegation, and this means the legislator necessitated a restriction on moving the public right case and criminal prosecution. Thus, the Public Prosecution Office is prevented from establishing and initiating a public right lawsuit, unless the complainant submits a claim for a personal right.

In the sense of violation, if the complainant did not file this claim and did not pay the judicial fees, the trial procedures and their consequences would be in violation of the law. In addition, the complainant's retention of the personal claim in the complaint list at any stage of the case is not considered an actual claim necessary to trigger the public rights case. For example, he mentions the phrase, "and the complainant retains his right to claim a personal right in the complaint list" and that the complainant's payment of the lawsuit fees later in the complaint does not correct the prosecution. The person claiming the personal right refuses to attend the hearing after he has assumed this capacity, as this is not considered a justification for the court to stop the prosecution. The latter must continue the case and the prosecution and complete all necessary procedures for the issuance of the judgment. No definitive ruling was issued.

Section Two: In the Cybercrime Law and other laws

As for the scope of the Electronic Crimes Law and other laws, first of all, we must point out that the Jordanian legislator criminalized and punished all crimes of electronic slander in the Electronic Crimes Law in accordance with Article 11 of it and the Publications and Publishing Law under Articles (38/d) (46/e) ⁽⁹⁾, as well as the Communications Law under Article 75/A of it ⁽¹⁰⁾. Still, the legislator in all of these articles did not mention what indicates the necessity of a personal right claim in order to move the public rights case afterward. Perhaps the question that arises here is whether a personal rights claim is required in order for the public rights lawsuit to be triggered? Or is it sufficient to refer to the general rules that require, as we said, the existence of a personal right claim in order for the Public Prosecution to recover its authority to file a public right case?

To answer that, we say that the legislator did not refer, either closely, from afar, explicitly or implicitly, to the existence of a personal right claim in the mentioned laws, and this means that it becomes a rule to apply the general rules as we mentioned earlier, meaning that the public right lawsuit is moved without the need to The

existence of a claim of personal right. Despite the clarity of the general rules, the matter is different in jurisprudence as well as in the judiciary.

The second requirement is the doctrinal position on the requirement to claim a personal right

There has been a lot of doctrinal controversy about the extent to which a personal right claim is required as a condition for moving the public right suit in the crimes of slander stipulated in Article 11 of the Electronic Crimes Law, so this dispute resulted in two different opinions, which we will explain in the following two sections:

Section one: Opinion against filing a personal right claim

Supporters of this view ⁽¹¹⁾ argue that there is no requirement for the existence of a personal right in cybercrime crimes, based on the fact that the cybercrime law is a law in force as no such restriction is included in it and that how this type of crime is committed differ from those stipulated in The Penal Code, the restriction contained in this last law stipulated in Article 364 only applies to the traditional slander crimes mentioned in it and does not relate to the slander crimes stipulated in Article 11 of the Electronic Crimes Law, and this opinion supports its argument by relying on a ruling of the Jordanian Court of Cassation Where she said in her ruling (The crimes of defamation, slander, and humiliation are considered crimes in which prosecution does not depend on taking the status of claiming a personal right in accordance with Article 11 of the Electronic Crimes Law) ⁽¹²⁾.

Even some of the jurisprudence ⁽¹³⁾. He goes even further, even within the scope of traditional slander crimes, as he sees that the text of Article 364 of the Penal Code applies only to acts of slander, slander, and humiliation committed against individual people. The public rights case is suspended on the claim of personal rights. Still, if the slander or slander is or contempt directed at a public official during the performance of his job or because of what he did by virtue of his position or was directed at the National Assembly or one of its members, or at one of the public institutions, public administrations, or the army, the text of Article 364 does not apply so that the Public Prosecution has the freedom The full right to initiate a public right lawsuit even if the victim has not taken the capacity of claiming a personal right.

Section Two: The opinion in favor of the existence of a personal right claim

The proponents of this opinion ⁽¹⁴⁾ rightly argue for the necessity of necessitating the existence of a personal right claim as a condition for initiating a public right lawsuit in electronic slander crimes, justifying their opinion that there is no difference between slander crimes stipulated in the Electronic Crimes Law and those stipulated in the Penal Code, as they are similar in terms of elements And the general legal elements necessary for its establishment, regardless of its legal position, and this difference cannot be based on the absence of a personal right claim. Rather, some of them confirm that this crime is a misdemeanor, which the legislator stipulates that it is not permissible to initiate a public right lawsuit except after the existence of a personal right claim. The victim may relinquish this claim at any stage of the case and before a final judgment is issued, and this results in dropping the public rights case in light of Article 52/1 of the Penal Code and Article 47/4 of the same law.

Second chapter

The judicial position on the requirement to claim a personal right in cybercrime

As for the judicial position, it seems that the rulings of the Jordanian courts have differed regarding the answer to the previous question. Some of them ruled that there is no need for a personal rights claim, which allows the Public Prosecution to initiate the public rights case directly. In contrast, some other courts ruled that there should be Claiming a personal right in order for the Public Prosecution to recover its right to initiate a public right case. In fact, the rulings of the Court of Cassation are vacillating in this regard, sometimes inclined to the necessity of a personal right claim and at other times to the absence of it. Accordingly, we will clarify these trends in the following demands, respectively:

The first requirement: the trend opposing the existence of a claim of personal right in electronic slander crimes

Some courts have gone to the non-requirement of a claim for a personal right in cybercrime of slander, and to confirm this, the Amman Court of First Instance, in its appellate capacity, said, "In this respect, our court finds that the offense ascribed to the respondent is slander, slander, and humiliation, contrary to the provisions of Articles 188, 189,190 of the Penal Code and in the context of Article 11 of the Cybercrime Law, which is not one of the crimes that depend on the victim filing a complaint and/or taking the status of a personal right claimant, and therefore does not fall in accordance with the provisions of Articles 52 and 53 of the Penal Code, in addition to the fact that the Cybercrime Law did not include that the offense is contrary to the law. The provisions of Article 11 of it are forfeited by dropping the complainant's personal right ⁽¹⁵⁾, and therefore the findings of the Court of First Instance are contrary to the law and make the reason for the appeal respond to the appealed decision and be subject to annulment."

The Amman Court of Appeal decided this by saying, "In this regard, we find that the offense against which the appellant is accused is the offense of slander, slander, and contempt by electronic means in accordance with

the text of Article 11 of the Cybercrime Law No. 27 of 2015, and therefore what is stated in this article is a special provision related to a particular offense Which is the crime of slander, slander, and slander by electronic means, and the legislator has singled out a special punishment for this crime that is different from the punishment for slander, slander and contempt referred to in the Penal Code. He did not place any restriction on moving the public rights lawsuit, as it is the first to be applied based on Article 57, which stipulates that "if the act applies a general description and a specific description, the specific description shall be taken" ⁽¹⁶⁾.

In its criminal capacity, the Court of Cassation addressed this matter in its Decision No. 648/2019 related to the competent reference, where it decided that the crimes of defamation, slander, and contempt stipulated in 11 of the Cybercrime Law, in which the prosecution does not depend on the plaintiff taking the capacity of claiming a personal right, which means that it excludes recourse to the rulings. The general rule in the Penal Code requires in order to initiate a public right lawsuit that the plaintiff submits a request to claim a personal right, and the strange thing in this matter is that the same court has once again revoked this statement. We find that the court did not discuss the elements and elements of the accusation attributed, nor did it clarify how the petitioner's actions constituted an offense of slander and contempt in contravention of Article (11) of the Cybercrime Law. It is vague and lacks causation and justification, which makes the reason for the request relevant to it and must be rescinded" ⁽¹⁷⁾.

It is understood from this that the Court of Cassation urges the Court of Appeal, whose decision is challenged to discuss the elements and elements of the offense of slander, slander, and contempt and discuss the elements of the material element and their availability or not. It clarified its elements and the material pillars that make them up, given the lack of reference to these pillars and their elements and even their concept in the cybercrime law.

The second requirement: the trend in favor of a claim of personal right in cybercrime of slander.

Most of the court rulings emphasized the necessity of subjecting electronic slander crimes to the general provisions contained in the Penal Code. Issuance of final judgment in the case.

In application to this, the Rusaifa Court of First Instance ruled in its criminal and appellate capacities, and from what was stated in this ruling that (the prosecution of the respondent for the crimes attributed to him shall be discontinued because the complainant did not take the capacity of claiming a personal right, and upon extrapolating the text of Article (11) of the Cybercrime Law, we find that The legislator did not come to the legal ban, which is the inadmissibility of prosecution in cases of defamation, slander and contempt committed through electronic means, except by taking the capacity of the victim to claim a personal right, but at the same time the legislator did not expressly provide for this legal prohibition, which requires the disruption of the General Regarding that legal ban, because it is not permissible to circumvent this legal prohibition regarding the prosecution of the perpetrator as long as there is no special provision by the legislator in the Cybercrime Law to the contrary, meaning that deviation from the general provisions is considered an illegal assumption ⁽¹⁸⁾.

The researchers believe that the effect of this ruling came as a result of the absence of the cybercrime law from any text that requires the existence of a personal right claim to trigger the public right's claim regarding the offenses of slander stipulated in Article 11 of this law and that deviating from the general rules in the Penal Code regarding cybercrimes of defamation is considered In and of itself an illegal assumption.

In another ruling of the same court, it ruled, and in another ruling of the same court, it confirmed (The provisions contained in the Cybercrime Law included texts that criminalize slander that is committed through electronic means, and therefore the court finds that these criminal provisions contained in the Cybercrime Law relate only to a statement The means by which this type of crime is committed, and the appropriate punishment is imposed on it. However, these texts kept the pillars and conditions for crimes of defamation, slander, and contempt subject to the general rules in the provisions of the Penal Code, and accordingly, the court finds that the crimes of defamation, slander, and contempt committed by electronic means are in them. The initiation of a public rights lawsuit is contingent upon a complaint by the person affected by this crime ⁽¹⁹⁾.

The researchers believe that the content of this judicial ruling came on the basis that Article 11 of the Electronic Crimes Law came to criminalize acts of slander committed through electronic means. Perhaps this criminalization relates to the statement of the means by which this type of newly created crime is committed. Still, the legislator kept the conditions and elements of The legality of this crime as stipulated in the Penal Code.

The Amman Magistrate's Court also ruled by saying that (by extrapolating the text of Article 11 of the Electronic Crimes Law, the policy of the legislator is evident, which tends to tighten and toughen the punishment for anyone who commits these crimes using modern electronic means. The criminal characteristic of defamation, slander and humiliation when the perpetrator commits it by electronic means, that is, the text in the Cybercrime Law did not add any special elements and conditions. There is no special text regarding it in the Cybercrime Law that is subject to the general rules contained in the Penal Code and the Code of Criminal Procedure, given that they are the general Sharia for substantive and penal procedural provisions, including the issue of claiming a personal right in crimes committed in violation of the text of

Article 11 of the Cybercrime Law. In this case, reference is made to the general rules in the Penal Code and the Code of Criminal Procedure ⁽²⁰⁾.

The researchers believe that this provision appears through the importance of the aforementioned Article 11 that the legislator's policy is characterized by severe punishment for this type of crime, and therefore the legislator's goal of this article lies in the criminalization of electronic slander crimes if the offender commits them by any electronic means. Therefore, this text did not add any special conditions or elements to this crime, as it is completely similar to the crime stipulated in the Penal Code, and all that is in the matter is that the legislator has specified the means of committing this crime represented by electronic means, and accordingly, what is not mentioned in the Crimes Law Electronic slander is subject to the general provisions contained in the substantive and procedural criminal law, and the most important of these matters is the issue of claiming a personal right, as some Jordanian courts have argued that electronic slander crimes should be subject to the provisions contained in the traditional slander crimes contained in the Penal Code based on the aforementioned Article 364, which requires The existence of a claim of personal right in all crimes of defamation, slander, and contempt.

In application of this, the West Amman Magistrate's Court, in its criminal capacity, stated that (in crimes of defamation, slander and contempt, the prosecution depends on a complaint from the injured person or by taking the status of a personal right claim, and when referring to Article (52) of the Jordanian Penal Code, we find that it It made dropping the personal right a reason to drop the public right lawsuit in such crimes, that is, what was stated in Article (52) of the Penal Code is among the general rules in the law that Article (11) of the Electronic Crimes Law did not bring, and accordingly it is Article (11) of the Cybercrime Law is subject to the general provisions of the law contained in Article (52) of the Penal Code, and the forfeiting of the personal right in crimes of slander, slander and contempt committed by electronic means results in dropping the public right lawsuit, because the crimes of defamation, slander and electronic contempt included In Article (11) of the Cybercrime Law, it is governed by the general rules and principles of the law ⁽²¹⁾.

The researchers believe that the result of this ruling was based on the text of Article 52 of the Penal Code, in which it was stated that the public right lawsuit falls by dropping the personal right, and this means that the general provisions contained in this mentioned article apply to Article 11 of the Electronic Crimes Law. Therefore The public right lawsuit in electronic slander crimes shall be extinguished by dropping the victim's right to a personal claim.

The third requirement: the position of the study

The study tends to popularize the opinion that calls for not moving the public rights lawsuit until after the victim files a complaint or claims a personal right, and therefore we do not take the opposing opinion that requires moving the public rights lawsuit directly without relying on the complaint for several reasons, we summarize them as follows:

First: The requirement for the existence of a personal right claim to trigger a public right lawsuit in electronic slander crimes is stated in the general provisions for your slander actions stipulated in the Penal Code, and legally, it is recognized that what is not stipulated in the special penal laws, it is referred to the general rules in The Penal Code, because the latter considers the general Sharia to confront any deficiency and clarify any ambiguity surrounding the private texts.

Second: There is no doubt that electronic slander crimes and traditional slander crimes only share with each other the first differs from the second in terms of publicity and means, and therefore when any criminal case related to electronic slander crimes is raised, referring to the provisions of the Penal Code is inevitable and necessary because, without reference According to these provisions, it is not possible to know the elements of these crimes, their elements and the reasons for their justification.

Third: The requirement for a personal right to file a public right lawsuit in electronic slander crimes is dictated by logical and practical considerations since these crimes are among the most common crimes on the ground through electronic news sites and social media.

Fourth: The obligation of the Public Prosecution to initiate the criminal case as soon as it becomes aware of, informs, or even sees defamation content on websites or social media would place a heavy burden on it and the courts, given the frequent occurrence of this type of crime on the ground. At the same time, the Public Prosecution's refusal to initiate the criminal case will investigate the crime of negligence in carrying out functional duties based on Article 183/1 of the Jordanian Penal Code.

Fifth: The researchers question the wisdom for which the legislator did not require the personal claimant to file a claim in the crimes of electronic slander, slander, and contempt, while this was required in the same crimes in their traditional form stipulated in the Penal Code, as we see that the text of Article (11) of the Electronic Crimes Law It does not conflict at all, directly or indirectly, with the provisions of the Penal Code related to the requirement of a complaint and a claim for a personal right to see a suit of slander, slander, and contempt, nor with provisions related to dropping and statute of limitations in misdemeanor cases. The condition of publicity and means is what distinguishes these crimes from each other. It, therefore, cannot be a reason for moving a public rights case without the presence of a personal prosecution complaint. Accordingly, we hope that the legislator will put a text in the cybercrime law to the effect that the competent authorities will not move the right case General unless the plaintiff submits a private right claim or leaves the matter to

the general rules of the Penal Code in accordance with an express provision to prevent jurisprudence and to resolve the matter in the discrepancy of judicial rulings.

Results and conclusion

- 1- The Jordanian legislator requires in the Penal Code for the traditional crimes of slander, slander, and contempt not to file a criminal case except after submitting a personal right claim. Still, it did not require this for crimes of defamation committed by electronic means.
- 2- Electronic slander crimes are similar to traditional slander crimes in terms of elements, elements, and conditions. Still, electronic slander crimes differ from their peers in terms of publicity and the method committed only.
- 3- The Electronic Crimes Law and the Communications Law and the Press and Publications Law were devoid of any text stating whether or not to suspend the filing of a public right case on the existence of a personal right claim.
- 4- Based on Article 15 of the Electronic Crimes Law, the legislator has referred to the imposition of the penalty stipulated in the same law if any traditional crimes were committed by any electronic means.
- 5- The rulings of the Jordanian judiciary and the sayings of jurisprudence are different. Some of them require the existence of a personal right claim in order to initiate the public right case, and others do not require that, content with moving the Public Prosecution to claim the common right directly before the competent court.
- 6- The victim may waive his claim of personal right at any stage of the case, and before the final judgment is issued in it so that this leads to the dropping of the common right case, and if this waiver is after the issuance of the judgment, this does not affect the fate of the common right case.
- 7- We have noticed some of the jurisprudence that goes by saying that the text of Article 346 of the Penal Code requires a requirement to claim a personal right only if the acts of defamation are committed against individual people or if they are against a public official or any member of the National Assembly or public administrations and the like The Public Prosecution has the right to initiate the case even if the victim has not taken the capacity to claim a personal right.
- 8- The Jordanian legislator's formulation of Article 11 of the Electronic Crimes Law was poor and weak. It did not contain all electronic means, as the legislator specified only two means: the information network and the website.

Recommendations

- 1- We appeal to the Jordanian legislator regarding cybercrimes of slander to add a new paragraph to the text of Article 364 of the Penal Code stating that a personal right is required as a condition for filing a public right lawsuit.
- 2- The similarity between electronic and traditional crimes of slander in terms of the substantive framework does not mean they lack similarity in terms of the formal framework. It was devoid of stating that, which requires by necessity a reference to the general rules.
- 3- We appeal to the Jordanian legislator to stipulate the requirement to claim a personal right as a condition for filing a public right lawsuit in cybercrime, at least in the cybercrime law, as it is the main reference for all crimes committed by electronic means.
- 4- We appeal to the competent courts to consider this type of crime to activate the text of Article 15 of the Electronic Crimes Law, not only in terms of the substantive aspect of imposing punishment but also in terms of the formal aspect by stipulating the claim of personal right as a prerequisite for initiating a public right lawsuit.
- 5- Until the legislator completes the legal text, we appeal to the Public Prosecution, as well as the competent regular courts, to unify their decisions and judicial rulings, with the need not to file a public right lawsuit in cybercrime of slander until after the victim has submitted a personal right claim. We support them with the text of Article 364 of the Penal Code.
- 6- Since the legislator permitted the victim to waive his claim of a personal right that leads to the fall of the common right lawsuit before the final judgment is issued in the case, we appeal to the legislator himself to make this waiver a reason for mitigating the penalty if it is after the issuance of the final judgment in it, as long as The policy of the legislator in the recent amendments to the Penal Code tends to expand the abolition of the public right lawsuit according to the dropping of the personal right.
- 7- We appeal to the Jordanian legislator to require a personal right claim as a condition for initiating a public rights lawsuit, whether the traditional or electronic acts of slander are directed at a person or at any of the members of the National Assembly and those who are in their position. But it is not a justification to initiate the common right lawsuit directly without requiring the personal right to be claimed.
- 8- We appeal to the Jordanian legislator to reformulate the text of Article 11 of the Electronic Crimes Law to be as follows: "Whoever intentionally sends, resends, or publishes data or Information about any person that involves defamation, humiliation, or slander through the information network, website or any other information system.

Definition of terms

- (1) Dr. Abdulelah Al-Nawaisah, Information Technology Crimes, Wael House for Publishing and Distribution, first edition, Amman, 2017, p. 344.
- (2) Article 11 of the Jordanian Electronic Crimes Law No. 27 of 2015 stipulates that "anyone who intentionally sends, resends, or publishes data or Information through the information network, website, or any information system involving defamation, slander, or contempt of any A person shall be imprisoned for a period of no less than three months and a fine of no less than 100 dinars and not more than 2,000 dinars.
- (3) Dr. Abdullah Majed Al-Akaileh, The Legal Jurisdictions of the Judicial Commissioner in Ordinary and Exceptional Cases, A Comparative Critical Analytical Study, House of Culture for Publishing and Distribution, Amman, 2010, p. 314. See also Article Two of the Jordanian Code of Criminal Procedure No. 9 of 1961, as amended By-Law No. 32 of 2017.
- (4) See Article Three of the Jordanian Code of Criminal Procedure, a reference previously mentioned.
- (5) The concept of cybercrime of slander does not differ from its concept contained in the Penal Code, and accordingly, slander is defined as "attributing a certain substance to a person - even in the face of doubt and questioning - that would harm his honor and dignity or expose him to people's hatred and contempt, whether that article was A crime that requires punishment or not." As for defamation, it is an attack on the dignity, honor, or consideration of others – even if it is in the context of doubt and questioning – without specifying a specific substance. As for defamation, "it is every humiliation or insult – other than slander and slander – directed at the attacker face to face with words or movements, or by a scribe or drawing, which were not made public, or by telegram or telephone communication, or by rough treatment." See Dr. Abdul Rahman Tawfiq, Explanation of the Penal Code, Special Section, Crimes against Persons, House of Culture for Publishing and Distribution, Amman, 2021, p. 230 and beyond.
- (6) Dr. Muhammad Saeed Nammour, The Origins of Criminal Procedures, third edition, House of Culture for Publishing and Distribution, Amman, 2019, p. 157.
- (7) The complaint is defined as the notification submitted by the victim or his agent to the Public Prosecution or to a member of the judicial police about a specific crime, requesting the initiation of legal procedures against the perpetrator. See Dr. Muhammad Saeed Nammour, Origins of Criminal Procedures, previous reference, p. 198.
- (8) Some of the jurisprudence believes that the text of Article 364 of the Penal Code applies only to acts of slander, slander, and humiliation committed against a person, but if the slander, slander, or humiliation is directed at a public official while performing his job or because of what he did by virtue of his position, or was addressed to the National Assembly or one of its members, or to one of the public institutions, public administrations, or the army, the text of Article 364 does not apply so that the Public Prosecution has complete freedom to initiate a public right case even if the victim has not taken the capacity to claim a personal right. See Dr. Adel Azzam Saqf Al-Hait, Crimes of Defamation, Defamation and Humiliation Committed Through Electronic Means, House of Culture for Publishing and Distribution, Amman, 2019, p. 99. Dr. Muhammad Saeed Nammour, Explanation of the Penal Code, Special Section, Crimes against Persons, House of Culture for Publishing And Distribution, Amman, 2021, p. 357
- (9) See Articles 38 and 46 of the Jordanian Press and Publication Law No. 8 of 1998, according to its latest amendments.
- (10) See Article 75/A of the Jordanian Telecommunications Law No. 13 of 1995, according to its latest amendments
- (11) Close to this opinion, Dr. Muhammad Shibli Al-Atom, Information Technology Crimes, House of Culture for Publishing and Distribution, Amman, 2021, p. 78. Dr. Adel Azzam Saqf Al-Hait, previous reference, p. 99. And lawyer Ghanem Mardi Al-Shamir, Information Crimes, House Culture for Publishing and Distribution, Amman, 2016, p. 63.
- (12) The decision of the Jordanian Court of Cassation in its criminal capacity No. 648/2019, Qstas Publications.
- (13) Dr. Adel Azzam Saqf Al-Hait, previous reference, p. 99. Dr. Muhammad Saeed Nammour, Explanation of the Penal Code, Special Section, Crimes against Persons, House of Culture for Publishing and Distribution, Amman, 2021, p. 357. Dr. Abdul Rahman Tawfiq, previous reference, p. 233.
- (14) Dr. Kamel Al-Saeed, the correctness of a decision asking the complainants to take the status of claiming a personal right, an article published on the Ammon Agency, on 9/27/2021 AD, accessed on 3/29/2022, on the following website: <https://www.ammonnews.net/article/636656>, and Lawyer Muhammad Ahmad Al-Majali, Condition of Complaining and Claiming a Personal Right to the Crime of Violating the Provisions of Article 11 of the Cybercrime Law, article published on the Internet, on May 13, 2022 AD, accessed on 29/ 3/2022 AD on the following website: <https://mohamadalmajali.com/?p=263>
- (15) D, Adel Azzam Saqf Al-Hait, previous reference, p. 99. Dr. Muhammad Saeed Nammour, previous reference, p. 309.
- (16) Judgment of the Amman Court of Appeals, Decision No. 22261 of 2018, Qantas Publications published on: IUG Journal of Sharia and Law Studies (Islamic University of Gaza) / CC BY 4.0
- (17) Dr. Muhammad Saeed Nammour, previous reference, p. 309
- (18) Rusaifa Court of First Instance Judgment in its Criminal Appeal No. 439/2020, Qastas website publications.

(19) Judgment of the Amman Magistrate's Court in its criminal capacity No. 5963/2020, Qstas website publications

(20) Judgment of the Amman Magistrate's Court in its criminal capacity No. 21004/2019 - Qstas website publications.

(21) Judgment of the West Amman Magistrate's Court in its criminal capacity No. 2329/2020, Qstas website publications. And in another ruling of the same court stated, "On 28/7/2019, the Public Prosecutor of South Amman issued Decision No. 3170/2019 to refer the case to the South Amman Penal Conciliation Court, which has the authority and jurisdiction to consider the case to prosecute the two defendants for the misdemeanor of publishing statements on the information network that include defamation and defamation. On 28/7/2019, the South Amman Penal Conciliation Court issued its appealed decision No. 5557/2019 to stop the prosecution of the appellee for offenses of slander, slander, and contempt in accordance with the provisions of Article 11 of the Cybercrime Law assigned to them. The complainant did not take the capacity to claim a personal right in accordance with the provisions of Article 364 of the Penal Code. See the judgment of the Amman Criminal Court of First Instance, No. 5557 of 2019, issued on 28/7/2019, Qstas Publications

References

- 1- Dr. Abdulelah Al-Nawaisah, Information Technology Crimes, Dar Wael for Publishing and Distribution, first edition, Amman, 2017.
- 2- Dr. Muhammad Saeed Nammour, The Origins of Criminal Procedures, third edition, House of Culture for Publishing and Distribution, Amman, 2019.
- 3- Dr. Muhammad Saeed Nammour, Crimes against Persons in the Jordanian Penal Code, without edition, without publication year, Dar Ammar, Amman, 2019.
- 4- Dr. Abdul Rahman Tawfiq, Explanation of the Penal Code, Special Section, Crimes against Persons, House of Culture for Publishing and Distribution, Amman, 2021.
- 5- D, Adel Azzam Saqf Al-Hait, Crimes of Defamation, Defamation, and Contempt Committed Through Electronic Means, House of Culture for Publishing and Distribution, Amman, 2019.
- 6- Dr. Abdullah Majed Al-Akaileh, the legal competencies of the judicial police officer in ordinary and exceptional cases, a comparative critical analytical study, House of Culture for Publishing and Distribution, Amman, 2010.
- 7- Dr. Muhammad Shibli Al-Atom, Information Technology Crimes, House of Culture for Publishing and Distribution, Amman, 2021.
- 8- Attorney Ghanem Mardi Al-Shammari, Information Crimes, House of Culture for Publishing and Distribution, Amman, 2016.

Jordanian laws:

- 1- Penal Code No. 16 of 1960 and its amendments by Law No. 7 of 2018.
- 2- Criminal Procedure Law No. 9 of 1961 and its amendments by Law No. 32 of 2017.
- 3- Cybercrime Law No. 27 of 2015.
- 4- Press and Publication Law No. 8 of 1998, according to its latest amendments.
- 5- Telecommunications Law No. 13 of 1995, according to its latest amendments.