



THE PUNITIVE POLICY FOR COMBATING THE CRIME OF TERRORISM FINANCING IN JORDANIAN LEGISLATION: AN ANALYTICAL STUDY

A POLÍTICA PUNITIVA DE COMBATE AO CRIME DE FINANCIAMENTO DO TERRORISMO NA LEGISLAÇÃO JORDANIANA: UM ESTUDO ANALÍTICO

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ABSTRACT

Like other contemporary criminal legislations, the Jordanian legislation has adopted a dual punitive policy to combat the crime of terrorism financing. This policy is based on two key aspects: deterrence, by imposing severe and strict penalties on perpetrators of this crime, and leniency, by encouraging offenders to cooperate with justice authorities in uncovering such offenses. While deterrence is a common approach to crime prevention in general, it is particularly essential in addressing the crime of terrorism financing. Therefore, the Jordanian criminal legislator has implemented a punitive policy that leans toward severity in punishing anyone who commits or participates in this crime. At the same time, it has adopted a lenient policy toward offenders who cooperate with justice authorities in exposing these crimes, thereby mitigating their serious consequences and serving the public interest of society.

Keywords: Punitive policy; Terrorism financing crime; Jordanian legislation.

RESUMO

Tal como outras legislações penais contemporâneas, a legislação jordana adotou uma dupla política punitiva para combater o crime de financiamento do terrorismo. Esta política baseia-se em dois aspectos fundamentais: a dissuasão, ao impor penas severas e rigorosas aos autores deste crime, e a clemência, ao encorajar os infratores a cooperarem com as autoridades judiciais na descoberta de tais crimes. Embora a dissuasão seja uma abordagem comum à prevenção do crime em geral, é particularmente essencial na abordagem do crime de financiamento do terrorismo. Portanto, o legislador





penal jordaniano implementou uma política punitiva que se inclina para a severidade na punição de qualquer pessoa que cometa ou participe neste crime. Ao mesmo tempo, adotou uma política indulgente para com os infratores que cooperam com as autoridades judiciais na exposição destes crimes, mitigando assim as suas graves consequências e servindo o interesse público da sociedade.

Palavras-chave: Política punitiva, crime de financiamento do terrorismo, legislação jordaniana.

1. INTRODUCTION

Legislative action to combat terrorism, particularly through the criminalization of its financing, has become increasingly vital. This is based on the recognition of the significant risks posed by financial and material support provided to terrorists. It is well established that terrorist activities often require substantial financial resources for execution. Consequently, contemporary legislations classify such financing as a terrorist crime.

Terrorism financing involves providing or collecting funds by any means, whether directly or indirectly, with the intent of using them, in whole or in part, for terrorist acts and activities (Teichmann, 2023). As a result, modern legislations, including Jordanian law, strictly prohibit individuals or legal entities from supplying funds, financial assets, or economic resources to individuals who commit, attempt to commit, or participate in terrorist acts regardless of the extent of their involvement. This establishes terrorism financing as a terrorist crime, subject to the specialized punitive system applicable to such offenses.

The Jordanian legislature has adopted a strict and rigorous approach, treating terrorism financing as an independent crime governed by a specific law. This approach reflects a firm stance on punitive policies against perpetrators, classifying the financier as a principal offender in a terrorist crime rather than merely an accomplice, despite their role being limited to financial support. Moreover, severe penalties and sanctions apply to individuals and legal entities involved in this crime. At the same time, Jordanian law incorporates a leniency policy when cooperation with authorities serves the public interest.





1.1. Significance of the Study

A terrorist crime requires two main components: a human element and a material element. Financial resources play a crucial role in any human activity, and as the scope and severity of such activities expand, so does the need for funding. This is particularly true for terrorist operations, which require financial and material support for execution. The concept of terrorism financing is relatively recent, as early counterterrorism efforts primarily focused on combating terrorism through direct measures rather than targeting its financial backbone. It was not until the adoption of the 2003 International Convention for the Suppression of the Financing of Terrorism that the global community formally recognized terrorism financing as a crime falling under the category of terrorist offenses.

1.2. This Led to the Enactment of Numerous Legislations

In response to the growing threat of terrorism financing, many contemporary nations, including Jordan, have enacted specific laws to regulate and criminalize this offense. Jordan introduced Law No. 20 of 2021 (2021). Given the law's recent enactment, it has not yet been thoroughly examined in academic research to identify potential shortcomings. Such studies are crucial in guiding the Jordanian legislator on necessary amendments to align the law with modern punitive policies in this area (Bani Issa and Khataybeh, 2024).

1.3. Problem of the study

Since this study focuses on the punitive policy adopted by Jordanian legislation in addressing terrorism financing, its central question revolves around whether this policy is proportionate to the gravity of the offense committed by those who provide financial and material support for terrorist activities. This inquiry leads to several related questions, including:

Do the provisions of Jordanian law align with the strict punitive policies that modern legislations have adopted to combat terrorism financing?

Does the leniency policy, which includes exemption from punishment or sentence reduction under certain circumstances, conform to this strict approach?

Has Jordanian legislation adequately regulated terrorism financing as an independent crime to ensure effective legal intervention, considering that financial





support is the backbone of terrorist operations?

Is there a need for the Jordanian legislator to adopt a new approach that is either stricter or more lenient in specific cases?

Are there shortcomings in Jordanian legislation that hinder its effectiveness in combating terrorism financing in accordance with contemporary punitive policies?

This study will attempt to answer these questions by analyzing relevant legal and academic sources, along with examining the Jordanian legal framework governing terrorism financing.

1.4. Defining Terrorism Financing in International Conventions

Terrorism has become a global concern, as its consequences now threaten the international community rather than just individual states. Consequently, numerous international treaties have been established to combat terrorism. However, these treaties have varied in their definitions of terrorism.

One of the earliest attempts to define terrorism was made at the Third Conference for the Unification of Criminal Law, held in Brussels in 1930 (Elie, 2013). Terrorism was defined as:

"The deliberate use of means capable of creating a widespread danger to commit an act that endangers life, threatens human safety and health, and destroys physical property. These acts include arson, explosions, drowning, the use of suffocating or harmful substances, disruption of transportation and communication systems, destruction of government property, intimidation of individuals by harming or threatening their lives, freedoms, or security, environmental damage, or the occupation and seizure of public or private property, as well as endangering natural resources."

This definition highlights the broad scope of terrorist acts, emphasizing intentional harm, public intimidation, property destruction, and threats to human safety as core elements of terrorism.

1.5. The Evolution of Terrorism Financing in International Agreements

Following the 1930 Brussels Conference, numerous international treaties addressing specific forms of terrorism were established. However, the term "terrorism financing" was first introduced in the 2003 International Convention for the Suppression of the Financing of Terrorism.





Article 2 of the convention defines the crime of terrorism financing by focusing on the perpetrator's actions. Paragraph 1 of this article states:

"A person commits an offense within the meaning of this convention if, by any means, directly or indirectly, unlawfully and willfully, they provide or collect funds with the intention that they be used, or knowing that they will be used, in whole or in part, to:

(a) Carry out an act that constitutes an offense under one of the treaties listed in the annex to this convention.

(b) Commit any other act intended to cause death or serious bodily injury to a civilian or any other person not taking an active part in hostilities in the event of armed conflict, where the purpose of such an act, by its nature or context, is to intimidate a population or compel a government or an international organization to act or refrain from acting." (Al-Zadjali, 2010).

1.6. Terrorism Financing in the Arab Convention

The 2012 Arab Convention on Combating Money Laundering and Terrorism Financing also provides a definition of terrorism financing. According to Clause 9 of Article 1, terrorism financing is:

"The collection, provision, or transfer of funds, whether directly or indirectly, to be used in whole or in part to finance terrorism, as defined in the Arab Convention on Combating Terrorism, with the knowledge of such intent."

The Arab Convention on Combating Terrorism (1998) further defines terrorism in Article 1(2) as:

"Any act of violence or threat thereof, regardless of its motives or purposes, carried out as part of an individual or collective criminal plan, intended to instill fear among people, intimidate them by harming them, endangering their lives, freedoms, or security, causing damage to the environment, public or private property, occupying or seizing such property, or threatening national resources." (Council of Arab Foreign Ministers, 1998).

These definitions emphasize the intentional use of financial resources to support terrorism, highlighting the broad impact of terrorism financing on security, stability, and public safety at both national and international levels (Al-Saad, 2006).





1.7. Legislative Definition of the Crime of Terrorism Financing

The Jordanian legislature defines the crime of terrorism financing by focusing on the perpetrator's actions, as outlined in Article 4(a) of the Anti-Money Laundering and Terrorism Financing Law:

A person is considered guilty of terrorism financing if they:

Directly or indirectly, and willfully, provide or collect funds, whether from a legal or illegal source, knowing that these funds will be used, in whole or in part, to commit a terrorist act or by a terrorist individual or organization.

Deliberately contribute to the commission of a terrorism financing crime by supporting or assisting a group of individuals in committing it.

Finance the travel of individuals to countries other than their residence or nationality for the purpose of:

- Committing, planning, preparing, or facilitating terrorist acts.
- Providing or receiving training on terrorism-related activities.

Participate in organizing, directing, or instructing others to commit any of the terrorism financing crimes mentioned in this section.

Attempt to commit any of the crimes listed in this section.

Article 4(b) further clarifies that the crime of terrorism financing is established regardless of whether:

- The terrorist act actually occurs or is merely attempted.
- The funds are used for the terrorist act or not.
- The financing is linked to a specific terrorist act or is provided without a designated purpose.

- The terrorist act occurs within or outside Jordan.

Critical Analysis of the Legislative Definition

Although defining crimes is typically not the role of the legislature, the Jordanian legislator recognized the complexity of terrorism financing and introduced a precise legal definition. This approach is commendable, as it eliminates ambiguity and provides a clear legal framework.

However, some limitations exist:

- The law restricts financing to monetary support, whereas it should have





included other forms of assistance, such as:

- Weapons, ammunition, explosives, communication devices, or intelligence information intended for terrorist activities.

- While the law criminalizes financing for terrorist organizations, it fails to define what constitutes a "terrorist organization" or establish criteria to assess:

- The dangerousness of the perpetrator.
- The role and hierarchy of individuals within such organizations.

Since terrorist organizations do not form spontaneously, their structure involves specific roles among members ranging from leadership to operational execution. Therefore, penalties should vary based on each member's level of involvement (Frid, 2020).

1.8. Jurisprudential Definition of the Crime of Terrorism Financing

Scholars have defined terrorism financing in various ways:

1. Al-Shammari (2016): The act of providing or collecting—under any name—funds or services related to terrorism intended for use, in whole or in part, to benefit any individual or collective terrorist project, regardless of whether the act is carried out.

2. Arafa (2009): A process aimed at supplying terrorist groups with money, equipment, and tools necessary to execute their terrorist plans, whether the source of the funding is legal or illegal.

3. Al-Saad (2006): Financial support or assistance of any kind for terrorism, or for those who promote, plan, participate in, assist, or personally carry out terrorist acts.

Analysis of the Jurisprudential Definitions

While these definitions provide valuable insights, they have several shortcomings:

Some definitions limit financing to money only, excluding other forms of material or logistical support (e.g., weapons, explosives, communication tools).

The mental element (*mens rea*) of the crime is not clearly defined, particularly regarding the perpetrator's intent.

The definitions do not specify the geographical scope whether financing terrorism inside or outside the state is equally punishable.





2. RESULTS

2.1. A More Comprehensive Definition

Based on the above, terrorism financing can be defined as:

"The deliberate provision of funds, weapons, ammunition, explosives, or electronic communication means—by any method to another person or terrorist organization for the purpose of executing a terrorist act, whether inside or outside the country, regardless of whether the act is ultimately carried out."

Punitive Policy of the Jordanian Legislator on Terrorism Financing

The Jordanian legislature adopts a dual approach in combating terrorism financing:

1. Strictness (punitive deterrence): Severe penalties for those involved in terrorism financing.

2. Leniency (cooperation incentives): Lighter penalties or exemptions for offenders who collaborate with authorities to prevent terrorist acts.

The details of this dual policy will be explored further:

2.2. Strict Policy on the Crime of Terrorism Financing

The punitive approach adopted by Jordanian legislation in dealing with the crime of terrorism financing is characterized by strictness and severity. This is achieved by imposing deterrent penalties on perpetrators, deviating from general provisions related to punishment, and ensuring penalties are proportionate to the seriousness of this crime whether the offender is a natural or legal person. This strictness manifests in several aspects, which can be summarized as follows:

1. Classifying Terrorism Financing as a State Security Crime:

The rationale behind criminalizing terrorism, in general, lies in maintaining public order in its broadest sense. A crime of this nature is inconceivable without the offender's intent to harm public order (Elie, 2013). Therefore, Jordanian legislation, like other contemporary legal systems, has confronted this type of crime to protect public order, as it serves as the fundamental pillar of society in political, social, economic, and moral aspects, as defined by the legal system of that society (Mullins and Wither, 2016).

In Jordanian legislation, terrorism financing has been classified as a crime against state security and assigned to a specialized judicial body different from the





regular judiciary, the State Security Court. The Amman Court of First Instance has stated that the reason for establishing this court is its jurisdiction over specific crimes to protect societal security from perpetrators due to the seriousness and impact of these crimes on the state and society.

2. Classifying Terrorism Financing as a Felony:

Jordanian legislation follows a three-tier classification of crimes: felonies, misdemeanors, and infractions, depending on the prescribed punishment. Felonies are the most serious category, reflecting the offender's high level of criminal danger. Jordanian law classifies terrorism financing as a felony and imposes a penalty of temporary hard labor, ranging from three to twenty years. This reflects the Jordanian legislator's inclination toward severity in addressing this crime.

3. The Necessity of Imposing Fines Alongside Deprivation of Liberty Penalties:

Jordanian legislation has not overlooked the imposition of fines, which should not be less than the amount of money involved in the crime of terrorist financing. This is in addition to the temporary hard labor penalty prescribed for anyone who commits, initiates, intervenes, participates, incites, or conspires in this crime, as stipulated in Article 30/A of the aforementioned law. The Jordanian legislation is commendable for this approach, as the imposition of fines inflicts pain on the perpetrator, achieving the intended purpose of deterrence, in addition to the severity of the deprivation of liberty penalty associated with it.

4. The Necessity of Confiscating Funds Related to the Crime:

Confiscation involves the state seizing funds or items related to the crime, whether the crime has occurred or is feared to occur. Confiscation is enforced compulsorily through a judicial ruling. The Jordanian legislator has adopted this financial penalty, mandating under Article 30/A the confiscation of proceeds, revenues, and benefits of the crime of terrorist financing, as well as any means or tools used or intended to be used in the crime, while taking into account the rights of bona fide third parties.

In this manner, confiscation is mandatory for what is obtained from the terrorist crime or what falls within its scope, including its benefits, means, or tools used or intended to be used in the crime. The Jordanian legislator has considered the rights of bona fide third parties those unrelated to the crime, meaning they are neither perpetrators nor primary or secondary contributors to it (Al-Jbour, 2012). Therefore,





their property, over which they hold ownership rights, cannot be confiscated. The text is general and does not specify the limits of these rights.

5. The Diminishing Concept of Attempt in the Legal Model of the Crime of Terrorist Financing:

The Jordanian legislator has regulated the provisions of attempt in the Penal Code, imposing a more severe penalty for the completed crime. Article 69 of the aforementioned law states:

"If the acts necessary to complete the crime have been carried out, but due to preventing circumstances beyond the control of the perpetrator, the intended crime was not completed, the perpetrator shall be punished as follows:

(1) Life imprisonment or hard labor for twenty years if the penalty for the felony attempted requires the death penalty; fifteen to twenty years of the same penalty if the penalty is life imprisonment or life detention; and twelve to fifteen years of the same penalty if the penalty is hard labor or detention for twenty years.

(2) A reduction of any other penalty by one-third to half.

(3) The penalties mentioned in this article may be reduced by up to two-thirds if the perpetrator voluntarily desists from completing the crime they intended."

Fear in Society and the Necessity of Expanding the Scope of Mandatory Exemption for the Perpetrator:

The fear prevalent in society necessitates expanding the scope of mandatory exemption for the perpetrator if they report a crime similar to the one that has occurred, due to the benefit it brings to the public interest.

The fourth condition relates to the effect of the perpetrator's report, which, according to the aforementioned article, results in one of four outcomes: either the report leads to the arrest of the accomplices in the crime, the seizure of its proceeds, the prevention of the crime, or the mitigation of its effects. It is noteworthy that by providing multiple options for the effective report, the legislator clearly reflects the flexibility adopted in the leniency policy toward the perpetrator of the crime of terrorist financing, who plays a key role in assisting the relevant authorities in uncovering this serious crime and mitigating its effects.

If the aforementioned conditions are met, the exemption from punishment is justified. A question may arise in this regard: which authority has the power to grant this exemption? According to Article 33/A of the aforementioned law, the crime of terrorist financing has already occurred, but the relevant authorities





are not yet aware of it, meaning no investigation has been conducted until the perpetrator reports it. Is the authority that decides on the exemption from punishment the Public Prosecution or the competent court? In such a case, it is our view that the perpetrator subject to exemption should be referred to the court, which will decide on their non-liability. This is because exemption from punishment implies that a crime with all its elements has been committed, and the perpetrator is punishable under the law, but they are exempted due to circumstances deemed significant by the legislator. The basis for exemption in this case is not the absence of one of the elements of the crime, but rather considerations of social benefit. The committed act constitutes a crime, and the Public Prosecutor refers the reporting perpetrator to the court, which has the right to assess the availability of the exemption from punishment.

Secondly, Discretionary Exemption from Punishment in the Crime of Terrorist Financing: The second paragraph of Article 33 of the aforementioned law states: "The competent court may exempt from the penalty referred to in item (1) of this paragraph if the crime is reported after the relevant authorities become aware of it, and the report leads to the arrest of the accomplices in the crime, the seizure of its proceeds, the prevention of the terrorist act, or the mitigation of its effects."

According to this text, exemption from punishment is discretionary if one of the individuals involved in committing the crime of terrorist financing reports the crime after the relevant authorities have become aware of it, provided that the conditions for mandatory exemption previously discussed and outlined in the aforementioned paragraph are met. These conditions include the arrest of the accomplices, the seizure of the proceeds, the prevention of the terrorist act, or the mitigation of its effects.

The previous assumption reflects that a crime related to terrorist financing has indeed occurred and has been brought to the attention of the competent authorities. However, one of the individuals involved in committing the crime has taken a positive stance by reporting it to these authorities, provided that this reporting leads to the arrest of the contributors to the crime or the seizure of its proceeds, or prevents the terrorist act from occurring or mitigates its consequences. Herein lies the importance of this reporting, and perhaps the legislator recognized this importance by allowing the perpetrator to be exempt from punishment in exchange for their positive cooperation with the competent authorities.

The aforementioned text stipulates that the reporting of the crime must occur after the competent authorities have become aware of the crime, without specifying





whether the reporting was before the initiation of an investigation or if those authorities have already commenced their investigations. This is inferred from the general and unrestricted nature of the text, meaning it is equally valid whether the reporting occurs before the initiation of an investigation, during the preliminary investigation, or throughout the final investigation, provided that this reporting occurs after the authorities have knowledge of the crime and that it produces one of the effects specified by the legal text. The exemption from punishment, as mentioned, is discretionary, and it is up to the judge to grant or deny it. The judge may, according to their discretionary power, apply the ruling of exemption from punishment to the cooperating perpetrator, or may sentence them to the prescribed punishment for the crime despite the fulfillment of the conditions for exemption, if the circumstances surrounding the criminal act warrant it.

There is no doubt that the use of the past tense in the phrase "led to" in the aforementioned text places the responsibility for others on the reporting perpetrator. It is known that the arrest of the contributors to the crime falls on the shoulders of the competent state authorities. If they fail or neglect to achieve this despite the sufficiency of the information provided by the perpetrator in their report, or if they attribute the success of the arrest to themselves despite being guided by the perpetrator's statements and the information they provided regarding the matter, and other similar cases, then the judge is precluded from exercising their discretionary power to rule on the discretionary exemption.

If the perpetrator senses that they are at the mercy of what the competent authorities do, especially since the exemption they seek is discretionary and may or may not be granted by the court, it may cause them to hesitate greatly and possibly refrain from cooperating with those authorities in arresting the contributors to the crime, thereby thwarting the legislator's intent in providing for the discretionary exemption.

In reality, the two reasons mentioned in the text for exemption, whether mandatory or discretionary, are based on the positive cooperation of the perpetrator in the form of reporting the crime to the competent authorities, which raises a question about the scope of this reporting: is it necessary for the reporting to lead to the arrest of all contributors to the crime or just some of them? In truth, a literal interpretation of the text indicates that the reporting must lead to the arrest of all contributors to the crime, which would narrow the scope of the exemption, especially since it may be difficult for the perpetrator to provide a comprehensive report on all contributors to





the crime. However, if we consider the purposive interpretation of the text, which involves determining the purpose of the text by identifying the goal that the legislator aims to achieve with the text, which seems more harmonious and logical, then it is sufficient for the perpetrator's reporting to lead to the arrest of the remaining contributors to the crime or at least the most important ones, thereby allowing them to benefit from the exemption. This is what we hope the Jordanian penal legislator will adopt in their subsequent amendment of the law.

4. CONCLUSION

This study focused on the punitive policy adopted by Jordanian legislation in addressing the crime of terrorist financing. We reviewed the provisions related to this policy, whether concerning the severity of penalties for those committing the crime or those contributing to it, or the exemptions from punishment. The study concluded with several findings and recommendations, which can be summarized as follows:

1. The study revealed that Jordanian legislation follows a punitive policy towards the crime of terrorist financing that tends towards severity. This is reflected in categorizing this crime as a felony, treating both the principal perpetrator and accomplices equally in terms of punishment, and applying equal penalties whether the crime was completed or only attempted. Moreover, even if the intended terrorist act did not occur, the prescribed penalties were not harsh enough, as the law did not specify aggravated circumstances for certain cases.

2. The study showed that Jordanian legislation adopted a lenient policy by providing exemptions from punishment for those involved in terrorist financing if they cooperate with justice authorities under specific conditions. However, the exemption was not conditional on the offender's commitment not to engage in future terrorist crimes, nor did it extend to situations where the offender disclosed a different crime of a similar type and severity.

3. The study revealed that Jordanian legislation lacks any legal provision to address cases where the offender receives exemption from punishment, whether mandatory or discretionary, if they provided false statements or information. Additionally, the legislation lacks any provisions that regulate the judiciary's discretion in deciding whether to grant discretionary exemption for the offender who provides truthful information about the crime under legally defined conditions.

4. The study indicated that Jordanian legislation did not restrict the court in





applying mitigating legal factors for the crime of terrorist financing, including reducing the prescribed penalty in accordance with Article "99" of the Penal Code. The severity of punishment for such crimes is justified as a means of preserving societal security and stability.

5. Jordanian legislation did not specify cases where punishment could still apply for an offender who reports a terrorist financing crime, if their report does not meet the conditions for mandatory or discretionary exemption from punishment. This limits the scope of the lenient policy in addressing the crime of terrorist financing.

5. RECOMMENDATIONS

The study concluded with the following recommendations:

1. The importance of reconsidering the punishment for the crime of terrorist financing in Jordanian penal law, with a focus on increasing penalties for offenders, regardless of their level of involvement in the crime, to include life imprisonment if the financed terrorist act results in the death or permanent disability of an individual or an illness that is unlikely to be cured.

2. It is necessary to establish legal standards to guide the judiciary when exercising discretionary power to grant exemption from punishment to an offender who reports a terrorist financing crime.

3. The importance of conditioning the exemption for the offender reporting a terrorist financing crime on their commitment not to engage in any future terrorist crimes, and extending the exemption to situations where the offender reports another terrorist crime unknown to the authorities, provided that the new crime is similar in nature and severity to the one the offender was involved in.

4. It is crucial to introduce provisions that address cases where an offender obtains an exemption from punishment, whether mandatory or discretionary, based on providing false information or statements.

5. The importance of restricting the discretionary power of the court in applying mitigating factors for the crime of terrorist financing, ensuring that the court does not reduce the penalty below the minimum prescribed by law. The severity of punishment for this type of crime is justified by the need to maintain security and stability in society.

6. There is a need to specify cases where the punishment for an offender who reports a terrorist financing crime, but whose report does not meet the conditions for





exemption, should still be mitigated. The judiciary's broad discretion to grant full exemption from punishment, while limiting their ability to reduce the penalty, points to a legislative contradiction that requires intervention to correct this imbalance.

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