

CRIMINAL CONFRONTATION WITH THE PHENOMENON OF PUBLISHING SECRET OFFICIAL DOCUMENTS OF THE STATE THROUGH SOCIAL NETWORKING SITES IN JORDANIAN LAW

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ABSTRACT

The Jordanian constitution guarantees freedom of opinion, expression, and publication in Article 15, whereby every Jordanian is granted the freedom to express his opinion verbally, in writing, in photography, and in all other means of expression, provided that it does not exceed the limits of the law. Thus, the state has decided a constitutional obligation to guarantee freedom of expression and opinion for Jordanians. Thus, its duty goes beyond ensuring this right by facilitating and enabling it for citizens. This freedom is absolute and there is no restriction on it, neither in form, nor time, nor means, nor place. But the constitution stipulated that it should not go beyond the limits of the law.

However, a phenomenon has emerged recently, which is the publication of secret official documents of some Jordanian ministries and state institutions through social networking sites through government sector employees to enable the community to view, comment on and share them based on multiple motives. Perhaps the most important of them is that such practices may constitute a way to monitor the general performance of those in charge of managing the public facility, in addition to taking them as an effective means to monitor the general performance of the various state institutions and the decisions taken, which the law guarantees the right to obtain under laws, the most important of which is the Right to Information Act of 2007. On the other hand, We find the law criminalizing such practices by virtue of the fact that some documents are mostly confidential documents that are protected under the provisions of various laws, the most important of which is the Law on the Protection of State Secrets and Documents for the year 1971, and that their publication is in violation of the provisions of the law that would disturb public order.

This study sheds light on the nature of the secret official document of the state and the criminal confrontation mechanism that the Jordanian legislator provides to it if it is published through social networking sites?

Keywords: Secret Official Documents of the State, Criminal Responsibility, Social Networking Sites

INTRODUCTION

Today, social networking sites have become a digital revolution as a result of their use in all aspects of life, whether economic, cultural or social. Today, it is noticed that a large segment of society is influx of these websites to an unparalleled intensity as they are the preferred place to save time and effort and communicate directly with others, whether they are users in their homes or offices or through modern means of communication. Especially since anyone can now use it to publish his written or audio opinions and video clips anywhere in the world. This led to making the world a small village and the emergence of a vast and open electronic world (The Intermediate Lexicon, 2001).

Proceeding from the depth of the importance of the role played by social networking sites and their ultimate benefit to society, as they play a positive role in all aspects of life such as investment, saving and exchanging wealth above social communication with others, negatives began to appear as a result of their use in the field of crime as a tax - sometimes exorbitant - in exchange for this advanced technological machine that was associated with its name, so it was called information technology crimes or electronic crimes, through which the threat is not limited to the lives of individuals, but its risks have exceeded to the threat to the security of the state through these technological means, so that it becomes very important to have special legislation and parties Specialized in prosecution to protect the forms of electronic incrimination generated by it. Perhaps the ease of access to these sites and pages, their low costs, the speed of their spread and popularity, and the difficulty of controlling them compared to traditional means made them a huge platform for expressing opinion and criticism, publishing, marketing, exchanging news and other electronic activities carried out by the browser at any time and from anywhere in the world (Al-Manasah, et al., 2017).

As a result, the phenomenon of publishing secret official documents of the state and undeclared through social networking sites has spread recently, based on multiple motives, considering this as a matter of freedom of opinion and expression. The publication of these documents on social media before they are officially announced is a criminal act in the law that arranges the criminal responsibility of the electronic publisher and a breach of public order (Naile, (n.d.)).

Since the legal system is characterized by reflecting the needs and desires of society, and responding to all criminal phenomena. The developed countries have realized the seriousness of these crimes, so they enacted punitive legislation, including the Hashemite Kingdom of Jordan, marked with clarity and away from complexity to pursue practices that aim to reduce their risks and deter the perpetrators. Optimal practices and activities carried out by members of Jordanian society. Taking into consideration all the circumstances, influences, factors and reasons that led the offender to commit the crime (Subhi, 1985).

There is no doubt that electronic crimes, including the publication of secret official documents, represent today the greatest challenge for the Jordanian state in light of the social, economic, political and other transformations that have a significant impact on its security and stability. Therefore, it has become imperative for us to explore the depths of these illegal practices and stand on their most prominent features and objectives to address them and prevent their dangers and damages to achieve the highest levels of security and safety for individuals to live within a calm and stable environment and to achieve the highest levels of security and human and legal security for the homeland and the citizen (Sorour, 1999).

The Importance of the Study

The steady use of modern social networking sites today is one of the prominent features in Jordanian society, which has led as a result to an increase in legal problems that have not only affected citizens and individuals, but rather have affected the state, its security and stability. The theoretical importance is demonstrated by the inventory of the texts related to the secrecy of secret official documents, the degree of their secrecy, the reconciliation of these texts with the right to knowledge and the law to guarantee the right to information, and the statement of the most important criminal forms resulting from the act of illegal publication. Its theoretical importance is also evident in the novelty of the subject of the study, the complexity of the laws concerned with them and the difficulty of listing them initially and then reconciling their texts, simplifying, analyzing and explaining them, which constitutes a qualitative addition to legal research at the level of Jordanian law. Also, this issue was not addressed by Jordanian jurisprudence. The Jordanian library still lacks

literature in this field, not to mention the importance of studying this topic from a practical point of view and its importance for judges, lawyers, government sector employees, users and pioneers of social networking sites (Sorour, (n.d.)).

Study Objectives

This study aims to shed light on the most prominent legal problems faced by users of social networking sites when they publish, comment and share secret official state documents of the Jordanian state, and express the aim of setting legal standards between safe and legitimate use, misuse and exposure to prosecution and criminalization (Tharwat, 1999).

The Study Problem

When does criminal responsibility arise if secret official state documents are published on social media? To what extent is the criminal responsibility of the electronic publisher or editor of electronic pages? Accordingly, the problem of the study is manifested through the question about the nature and types of secret official documents of the state and the extent of legal protection for them in light of the scattering of relevant legislative texts and the importance of protecting them on the one hand, and the legal limits of the right of publication, expression and access to information (Selim, 2002).

Questions of the Study

- 1) What are the determinants, criteria and requirements for considering the secret official documents of the Jordanian state, and what are their types?
- 2) When is it prohibited to publish confidential official documents of the Jordanian state?
- 3) What are the incriminating images of publishing the secret official document of the Jordanian state through social networking sites?

Study Methodology

The analytical rooting approach of the relevant legal texts was adopted by analyzing them and finding out what the legislator intended in them and their compatibility with modern electronic and technical development, then highlighting their advantages and disadvantages by discussing opinions about them and then criticizing them and supporting the likely opinion from the researcher's point of view (Al-Nawaisah, 2005).

Study Plan: The subject of the study will be addressed through the following two topics:

The First Topic: Towards a legal definition of the nature of the secret official documents of the state.

The First Requirement: rooting the legal regulation of confidential official documents in Jordanian legislation.

The Second Requirement: the requirements of confidential official documents in Jordanian legislation.

The Third Requirement: Classifications of confidential official documents in Jordanian legislation.

The Second Topic: Towards a legal definition of criminalization images for publishing secret official documents of the state through social networking sites.

The first requirement: the criminalization of publishing secret official documents of the state based on the law of protecting state secrets and documents.

The Second Requirement: the criminalization of the publication of the secret official documents of the state by the public servant.

The Third Requirement: criminalizing the publication of confidential official documents related to judicial work.

The First Topic

Towards a legal definition of what the secret official documents of the state:

Introduction

It should not be forgotten that the criminal law plays its primary role through deterrence and warning every one of the bad consequences of resorting to illegal behavior and access to unjustified benefits. Therefore, developed countries, in order to protect technological, electronic and communications relations and links, have realized the necessity of the intervention of the criminal law, which represents the policeman, when violating the laws regulating life in the field of dealing with information and communications technology or violating the interests protected under these laws. Where the bodies based on the application of the provisions of the criminal law enjoy a wide authority in their field of specialization in controlling and combating crime, more than those powers enjoyed by the bodies based on the application of other laws¹ and where a phenomenon has emerged represented in the publication of confidential official documents through websites and communication sites Although it is assumed in many of these documents that they are secret and not accessible to the public, and some of them are very secret judicial, security, political or economic books, the legislator imposes a legal penalty on their disclosure, and since these documents are not All of them enjoy the status of confidentiality, so it is necessary, from the outset, to establish a legal framework that determines what these official documents are, their types, and when they are considered secret official documents that may not be published in the first requirement, then addressing the requirements of secret official documents in Jordanian legislation, the second requirement, leading to the classifications of secret official documents in the Jordanian yes in the third requirement (Ibrahim, (n.d.)).

The First Requirement

Rooting the legal regulation of confidential official documents in Jordanian legislation:

Perhaps the legislator's realization that there is an interest that is of great importance is the reason for granting his criminal protection to it². Hence the role of the Penal Code in protecting various interests, including those related to electronic life and modern technology, so it was rightly said that criminal protection of rights and freedoms includes at the same time the protection of public order that is harmed from prejudice and prejudice³. However, this role requires consistency in criminal policy on the one hand, and it also requires unity of the curriculum on the other⁴. With the development and increase of technological and communication activities in all aspects of life in the twenty-first century in Jordan, the development of information technologies and modern means of communication, and the complexity and intertwining of relations, the importance of criminal protection for secret official state documents became apparent because of their special status in achieving security and safety for countries⁵. In general⁶, it became necessary for the criminal legislator to intervene to extend protection in case of illegal publication, but the following question arises: What are the secret official documents of the state?(Hosni, (n.d.)).

The Jordanian legislator enshrined the right to know and access to information, including official documents, which are not exempted from the right to information under the Law No. 47 of 2007⁷. He also consecrated the confidentiality of Jordanian state documents No. 50 of 1971⁸. The matter becomes that there are two types of official documents. They are either confidential documents that are prohibited to be viewed or published or non-confidential documents and therefore it is permissible to view and publish them. The legislator was in the Law of Protection of State Secrets and Documents No. 50 of 1971, which is one of the first laws that stipulated confidentiality in Jordanian legislation and the most severe in terms of secrecy, but with the addition of an electronically stored phrase that was not present in the Law on the Protection of State Secrets and Documents in A clear desire by the legislator to include electronic documents in this penal protection in keeping with the technological development and the issuance of the Cybercrime Law No. 27 of 2015, which was subjected to the secrecy of electronic official documents in the crimes of entering a website in excess or violation of the permit, as well as the crime of electronic espionage. Accordingly, we can say that official documents are any physical or electronic document issued by any of the state institutions with its three legislative, executive and judicial powers. The Cybercrime Law does not have a tangible physical entity, unlike tangible physical documents.

Regarding the issue of the confidentiality of the document, we find that Article Two of the Law on the Protection of State Secrets and Documents states: "Any oral information, written, printed, abridged, or printed on wax paper, a copier, recording tapes, photographs and films, Or plans, drawings, maps, or the like, which are classified according to the provisions of this law. And part of the jurisprudence goes by defining the secret as "an event or a characteristic that the scope of knowledge of which is limited to a specific number of persons if there is an interest recognized by the law in that its work remains limited to this scope." It was also said that "the state's impregnation of an incident or something with the character of secrecy, so that it must remain obscured by whoever is entrusted with preserving or using it unless it is decided to allow it"⁹.

Article 13 of the Law Ensuring the Right to Information states that "with due regard to the provisions of the legislation in force, the official shall refrain from disclosing information related to the following:

- a) Secrets and documents protected by any other legislation.
NS. Documents classified as confidential and protected and obtained in agreement with another country. NS. Secrets related to national defense, state security, or its foreign policy.
- b) Information that includes analyzes, recommendations, suggestions or advice that is submitted to the official before a decision is made about it, and this includes correspondence and information exchanged between different government departments about it.
- c) Information and personal files related to persons' educational or medical records, employment records, accounts, bank transfers, or professional secrets.
- d) Correspondence of a personal and confidential nature, whether by post, telegram, telephone, or through any other technical means, with government departments and the answers to them.
- e) Information whose disclosure would influence negotiations between the Kingdom and any country or other party.
- f) Investigations conducted by the Public Prosecution, the judicial police or the security services regarding any crime or case within their jurisdiction, as well as the investigations carried out by the competent authorities to detect financial, customs or banking violations, unless the competent authority authorizes their disclosure.

- g) Information of a commercial, industrial, financial or economic nature and information about bids or scientific or technical research whose disclosure leads to a breach of copyright and intellectual property or fair and lawful competition or that leads to unlawful profit or loss for any person.

It is noted that the legislator in this text - and contrary to the purpose of approving the law - has greatly expanded the circle of confidentiality of information and documents, and consequently narrowed the right of access to information, as he first emphasized the secrets and documents protected by any other legislation. The most important of these legislations is the Law on the Protection of State Secrets and Documents, which is a strict law regarding secrecy and the harsh penalties it imposed, as will be explained later. In addition, he has set eight other criteria that came in broad and ambiguous terms that set general objective criteria for confidentiality, and it should be noted that among the most important concepts that were related to confidentiality in Jordanian legislation are the concepts of national and national security, including economic, social and political security. In addition to public order, administration of justice, judicial documents, protection of privacy and children, documents relating to consultations prior to administrative decision-making, issues that may harm the reputation of the state, and what may include hate speech¹⁰.

The Second Requirement

Requirements of confidential official documents in Jordanian legislation:

One of the established principles is that the legislator may protect one interest with more than one criminalization text. Also, one text may protect several interests¹¹. In this case, the interest that the legislator aims to protect must be specified in the criminal text. The clarity of this interest leads to the extraction of the values that the street wanted to protect. The importance of defining this interest in the phenomenon of publishing secret official state documents is crystallized in that by standing on them it is possible to determine the scope of the acts that affect them and in the rooting of these acts and the memorization of the common pillars of them, which is represented in the conditions that must be met to consider them and secret official documents related to the state, distinguishing between the moral plurality of crimes and the apparent conflict of texts¹².

It is based on this that there is no room to talk about a secret official document related to the state unless there is a legal text that classifies the document as confidential by law, or a decision is issued by the legally authorized authority to consider the document confidential. Since it is known that not all interests are worthy of legal protection, there is civil, administrative and criminal protection, as the legal protection of interests varies according to the importance of these interests in the eyes of the legislator and society, and the legislator saves criminal protection - as it is the highest level of legal protection for interests that concern society to a greater degree than others¹³. And since the Jordanian legislator has classified secret official documents through texts scattered in various laws, it is necessary to treat a document as confidential by the presence of a legal text that decides that. Relegating the ruling of that text to the intended document, whether in terms of the formal or substantive conditions mentioned by the text, and then deciding whether or not the document is confidential, or a decision issued by the competent authority deciding the confidentiality of some documents.¹⁴

It is worth noting the position of the protected interest in crimes, and is it an element of the crime or not? An opinion in criminal jurisprudence goes to say that interest is one of the pillars of the crime, so that it is not enough for the accused's behavior to violate the punitive text. But it must also involve damage to a protected interest, and it negates the crime

by negating the assault on the interest, because the behavior thus loses its social concept and legal importance to become a mere natural event¹⁵.

This is expressed in the realistic requirement that these documents not be available to the public. It is not acceptable, logically and legally, to say that a document is a confidential document if it is available to the public for perusal, such as its presence on an official website that is open to the public or its publication in the Official Gazette. That confidential document is only available to a specific person or persons or to a certain group of people without others. It follows from this condition that official documents enjoy confidentiality and therefore penal protection as long as the competent authority did not disclose it, even if it intended to do so or announced a specific date for publishing the document, meaning that the secret official document remains confidential as long as it is not disclosed, if it is made available and announced Or its publication by the competent authorities no longer enjoys the status of confidentiality and has, however, lost the penal protection assigned to it.

Finally, the necessity of achieving harm to the interest that is the subject of criminal protection, as most of the jurisprudence sees that illegality is nothing but a conflict between the offender's behavior and a mandate that is included in a text of criminalization. It is an attribute that attaches to criminal behavior, and is far from the idea of interest that does not enter into ruling on a specific behavior. Collision with a criminal text necessarily presupposes an aggression against an interest guaranteed by the law to protect it; otherwise there are criminal texts that do not protect a specific reconciliation¹⁶. Accordingly, the publication of the secret official document must cause harm to the internal or external security of the state without indicating the size or nature of this damage. In the sense of violation, any document whose publication does not result in any material or moral harm to the state is thus excluded from the established protection department¹⁷.

The Third Requirement

Classifications of confidential official documents in Jordanian legislation:

Criminalization presupposes taking actions and interests in and of themselves from the circle of dissolution to the circle of prohibition. Determining the acts that publish secret official state documents and considering them within the criminalization circle must determine their type, or their amount, within the jurisdiction of the legislative authority alone, as it creates crimes and assesses their penalties as much as is appropriate to achieve the public interest¹⁸. Therefore, we find the Jordanian legislator in Article 14 of this law guaranteeing the right of access to information¹⁹ obligating each department to compile the information and documents that it has and classify what must be considered confidential and protected according to the legislation in force within a period not exceeding three months from the date of publishing the law in the newspaper official. Since the origin of these documents is that they are ordinary documents, meaning that the law does not criminalize their publication unless they are classified by the concerned department as confidential according to the text of the law - in application of the rule of criminal legitimacy - it may be sufficient to classify confidential documents at least as such, so that it is considered unless Its classification is not confidential, as is the classification of the degree of confidentiality of the document according to its legal classification, which makes it difficult for the competent employee to list these texts, not to mention the difficulty of understanding many vague concepts and terms related to confidentiality that need legal experts to explain, while it may be difficult for even these experts to understand Many of them and their interpretation, in addition to the fact that many of these laws are old laws. Consequently, they do not keep pace with modern standards regarding the right to knowledge, the publicity and transparency of the performance of state

institutions, so that it is understood from many of these texts that all official documents are confidential documents that cannot be published. While the researcher believes that the subject judge should exclude many of these texts from the application if they conflict with the texts of the modern right to information law, pursuant to the rule that the later supersedes the previous and in application of the legislator's approach to expanding freedoms (Al-Nawaisah, 2005).

Proceeding from the principle of legality of crimes and penalties, which stipulates not criminalizing acts not mentioned in the criminal rule. It is also considered as a guarantee to the offender that he will not impose a penalty other than the one stipulated²⁰. Consequently, the judge does not have the right to expand on the interpretation of the penal rule, or decide for it a broader content than the legislator wanted²¹, even if this act is inconsistent with the rules of harm, religion, or justice, and the judge, when it is proven that the act is subject to the text of the incrimination, may sign the His term is different from the penalty specified by the legislator in the text²². From here, the traditional jurisprudence began to embrace the inadmissibility of broad interpretation and the implementation of analogy with regard to the rules of criminalization, as some criminal legislation adopted and explicitly stipulated the prohibition of analogy in criminal articles²³. Therefore, the Jordanian legislator has adopted the method of legal classification on the one hand, and administrative classification on the other. The legal classification is manifested in that the legislator decides in the legal texts that establish confidentiality a set of objective criteria through which it is possible to reach the extent of the confidentiality of this document through its subject and content, such as documents related to the external and internal security of the state. In the context of criminalization and punishment which imposes certain rules on him in his interpretation of the criminal text and his deduction of the illegal incident in a manner that does not contradict the principle of legality²⁴.

As for the administrative classification aspect, the administration is the one who bears the burden of determining what is considered a confidential official document or not, so that it manages the department. As stated in Article 2 of the Law on Ensuring the Right to Information that it is the ministry, department, authority, authority, any public institution or An official public institution or the company that manages a public facility) that categorizes the extent of confidentiality of documents issued by the department to which it belongs²⁵. As for the position of the Law on the Protection of State Secrets and Documents of 1971, and secret official documents do not enjoy a single degree of protection and confidentiality, there is first: documents with a strictly confidential degree. Where the legislator specified those documents in a specific and clear way when or the right to publish them relates to the occurrence of serious damage to the internal or external security of the state or to a great benefit to any other state that would constitute or is likely to pose a threat to the Hashemite Kingdom of Jordan (Toby, 2017).

Or related to plans and details of military operations, public security measures, general intelligence, or any plan related to military operations or internal security measures, whether economic, productive, catering, urban or transportation. Or those related to international relations, agreements or treaties and all discussions and studies related to them. The same applies to information and documents related to the means of military intelligence, general intelligence, counterintelligence, counter-espionage, or any information that affects the sources of military intelligence or general intelligence, or those ignited by them. It is also considered confidential if it relates to important information related to weapons and ammunition or any source of defensive power whose disclosure would pose a threat to the internal or external security of the state (Aziz, 2017).

As for the second type of secret official documents, the Jordanian legislator classified them as confidential documents²⁶. It is less classified than documents with a degree of top

secret, which is represented by any important information whose contents divulge to threaten the safety of the state or cause damage to its interests or be of great benefit to any foreign country or any other party or inform about the sites of accumulation of defense or economic materials or vital institutions related to sources The force when it affects the safety of the state or the movements of the armed forces or public security for the weapons and forces of the brotherly Arab countries²⁷.

And then comes the third rank according to the classification of the Jordanian legislator, which is called documents of a limited degree which represents any information whose disclosure to unauthorized persons harms the interests of the state or constitutes an embarrassment to it or results in administrative or economic difficulties for the country or is of benefit to a foreign country or any other party that may reflect harm to the state. And any documents related to an administrative or criminal investigation, trials, bids, or general financial or economic affairs, unless disclosure of their content is permitted in addition to military intelligence reports, unless they are included in another classification of a higher degree, especially the reports, the disclosure of which would have a bad effect on the morale of the citizens, unless it is authorized to be published. Disclosing what is related to military radio waves belonging to the armed forces, public security, general intelligence, or any other governmental authority. Any protected information or document that harms the reputation of any official figure or affects the prestige of the state²⁸.

In application of this, and in one of the cases related to the leakage of high school exams, the State Security Court had decided the conviction based on the fact that the high school questions are secret documents of a limited type, given that the theft and disclosure of high school questions had harmed the reputation of education in the Kingdom and the level of the Jordanian General Certificate of Education. The court added that what happened had caused embarrassment to the state, given the educational reputation, level and integrity of education in the Kingdom, and came up with another reasoning that re-exam cost the state treasury 300,000 dinars, while the Court of Cassation ruled, after reviewing the terms of the confidential document in the Law on the Protection of State Documents and Secrets, especially confidential documents. Of a limited kind, in Article 9 of the law, the legislator stipulated that the document be placed in an ordinary envelope on which the name of the addressee was written, waxed with red wax, and sealed with a limited seal, and the number of the issue was written on it. The State Security Court, and according to the foregoing statement, does not make these questions a protected document within the meaning of the Law on the Protection of State Secrets and Documents No. 50 of 71. Just as theft, access to, and disclosure of them does not pose a threat to the safety of the state and its internal and external security. Therefore, the findings of the State Security Court of Legal applications on the fact of this case violate the law, and the appeal from this party is contained in the contested decision, and it is necessary to rescind it"²⁹.

The Second Topic

Towards a legal definition of criminalization images for publishing secret official documents of the state through social networking sites:

Introduction

Crime has two aspects, a legal aspect determined by the image stipulated by the law, which is called the legal model, and a realistic aspect determined by the image in which it takes place in the outside world. But this realistic aspect does not fall within the scope of criminalization unless it matches the legal aspect of the crime. In other words, the act

committed by the offender is not considered a crime unless it matches its legal model. As stipulated by the legislator, the legal model is determined by the legislator in advance, and he leaves it in the hands of the judge to be applied in each case separately, even if it becomes clear that the availability of this model in the case before him reveals the existence of the crime³⁰. It requires studying the forms of criminalization that result from the publication of confidential official documents through social networking sites through its research in the various legislations that are concerned with prohibiting the publication of secret official documents, because publishing in these legislations is a crime like other forms of criminalization in the Penal Code, as it is an integrated reality with elements, coordinated members, Its occurrence entails aggression against the basic interests of the state, and when studying it, it must be viewed as a single unit, not a group of parts³¹. And it will work on a search for images of criminalization for the dissemination of secret official documents of the state through social networking sites, through the research of criminalizing the publication of secret official documents of the state based on the law on the protection of secrets and state documents in the first requirement, then dealing with the criminalization of publishing the secret official documents of the state in the second requirement, finally addressing the criminalization of publishing Secret official documents related to the work of the judiciary in the third requirement.

The Second Requirement

Images of the criminalization of the publication of secret official documents of the state based on the law on the protection of state secrets and documents:

With the stability of the Law on the Protection of State Secrets and Documents No. 50 of 1971, we find that it stipulates the employee's commitment to this duty during his career, and the possibility of prosecuting him as well after losing this capacity. The legislator stipulated in Article (12) of the Law on the Protection of State Secrets and Documents No. 50 of 1971: This is by saying: It is prohibited for any official who has abandoned his job due to transfer or termination of service or for any other reason to disclose any information or secrets that he obtained or knew by virtue of his position and the disclosure of which was prohibited according to the provisions of this law." Article 16 of it also states: "A- From He came into possession or became aware of any secret, information, or document protected by virtue of his position or as an official, or after abandoning his position or responsibility for any reason, and then notified or disclosed it without a legitimate reason, he shall be punished with temporary hard labor for a period of no less than ten years. With hard labor for life, if this is reported for the benefit of a foreign country, and if the foreign country is an enemy, the penalty shall be the death penalty.

We find that there is an expansion in Article 16 of the law in the scope of protection for state secrets and documents, as the prohibition of disclosing secrets and information extended to a stage after the end of the legal relationship between the employee and the public administration represented by retirement, resignation, and dismissal. With regard to disclosing secrets in various legislative texts in Jordan, given the seriousness of the secrets regulated by this law, the legislator made the punishment a type of felony for which the penalty reaches the death penalty. However, the essence of this crime lies in its place, as the subject of this crime is an official document that is considered a secret related to state security according to the Law on the Protection of State Documents and Secrets, but if the secret is related to ordinary confidential documents, it is related to one of the crimes of disclosing the job secret. The law has stipulated here that the secret has reached the possession or knowledge of the actor by virtue of the job or his being responsible, and this may happen either during the actor's occupation of the job or after that as long as he obtained the secret by

virtue of it. Although these secrets are usually associated with a public function, they may reach the knowledge of the actor, whether through a public or private function³².

The material element of the crimes of publishing secret official documents of the state through social networking sites is represented in its materiality that is tangible by the senses³³, as it enters into its entity, and it does not exist without it, which is visible to the public. By publishing these documents through social networking sites and enabling the public to view, comment on and share them, there is no room for the legislator to interfere with the penalty³⁴, which is the employee's publication of the official document that carries a secret of state security secrets through a social networking site, and this disclosure may be done by photographing Or textual writing or any other means provided by these sites and the behavior necessary for the commission of the crime is not achieved as long as it is not embodied in the form of physical behavior that appears in the cyberspace³⁵, which is achieved by disclosing the document by publishing it on a social networking site and enabling others to view it, and the legislator did not require any harm to be achieved for the crime, as it is one of the formal crimes in which harm is not required, but merely disclosure is sufficient as a result of criminal behavior. With the necessity of providing the general criminal intent with its two elements, knowledge and will, that the perpetrator knows as a holder of the secret by virtue of his position or responsibility, and that he is disclosing a state security secret, and that his will is directed to committing this act and achieving the result by disclosing the secret document. In the event that the elements and elements of this crime are completed, the penalty prescribed for the offender is temporary work for a period of no less than ten years, and therefore the maximum limit is 20 years based on the provisions of Article (20/2) of the Penal Code. The maximum for it is 30 years based on the provisions of Article (20/2) of the Penal Code. If the foreign country is hostile, the penalty is death. It should be noted that the jurisdiction to consider and decide this crime rests with the State Security Court³⁶.

The Second Requirement

Images of the criminalization of the publication by a public servant of secret official documents of the state:

Jordanian law criminalizes every public employee³⁷ who is proven to be involved in disclosing state secrets, whether he was at the head of his work if he committed the process of publishing secret official state documents through social media sites or terminated his job, whether by retirement or termination of services. Article 355 of the same law imposed on every public servant who, by virtue of his position or official position, obtained official secrets and disclosed them to those who do not have the authority to access them, and recognizes the right of the perpetrator to be imprisoned for a period not exceeding three years.

It is clear that the crime scene here is the job secret, meaning that the document relates to one of the official state secrets and at the same time that the employee knows the secret during his job or by virtue of it. And draft laws, decisions, etc., and he may be aware of them indirectly, as the job work may allow the employee to see certain secrets (38). There are many texts contained in various laws and regulations that stipulate the employee's obligation to keep secrets, including Article (21/a) of the Anti-Corruption Authority Law No. (62) of 2006, and Article (19) of the Temporary General Statistics Law No (38) of 2003, etc. It was stipulated in the Financial Disclosure Law No (51) of 2006 and the Public Security Law No. 38³⁸ of 1965 and others, and here we assume that the public servant's act did not reach the gravity of violating the provisions of the Law on the Protection of State Secrets and Documents, which is the most severe law regarding the preservation of secrets.

The leakage of official documents by public officials creates two forms of accountability; they are penal and disciplinary, and the legal basis for disciplinary action is in the Civil Service System No. 9 of 2020, in addition to the Code of Conduct and Ethics for Public Service. It is clear that the Civil Service Law No. 9 of 2020 in its Article No. (69/b) prohibits the employee, under penalty of disciplinary responsibility, from keeping outside the workplace for himself any document or official communication, a copy or copy thereof, or its leakage to any external party, or writing or declaring it without it being in his power.

Article 142 of this system empowers the minister to suspend an employee who leaks documents from work for a period not exceeding three months, and to spend 50 percent of his total salary. The disciplinary penalty may amount to dismissal. He stressed that the Code of Conduct and Ethics for the Public Service, which applies to public officials, that is, government employees, and employees of independent public institutions, and in Article (6/a) obligated the public employee to refrain from any action that affects the public's confidence in the public job. Article 7 also obligates the public employee to maintain confidentiality, and prohibit the disclosure of official information, documents and documents that he obtained or viewed while performing his job, and includes the concept of disclosure, whether written, oral or electronic, and the prohibition includes any comment, statement or intervention related to topics that are still pending under study or deliberation at decision-making centers. It should be noted that the employee gives someone other than an employee that the latter has published on social networking sites, where the participation or accessory involvement is an activity related to the criminal act, and its result is a causal relationship, without reaching the extent of considering it an execution of the crime or a major role in its commission³⁹. Nor can we speak of the consequential contribution except in addition to the original contribution; because the latter is the source from which the accessory contribution derives its criminal character⁴⁰.

Consequently, criminal responsibility is achieved based on the text of Article 80/2/d of the Penal Code, where the person who has published here is considered an interfering in the crime of publishing job secret, whether the original offense was a violation of the provisions of Article 355 of the Penal Code or any other article related to the protection of job secret, and in The Court of Cassation ruled (that the first accused works as an employee in the Directorate of Education in central Amman, and the aforementioned has a friendship relationship with the second accused, who in turn has a relationship of the same description with the third accused. The first accused was assigned to preside over the general secondary examination hall at Ashrafieh Secondary School for Girls, and in an attempt to from those mentioned to invest this site in obtaining cash by exploiting the urgent need of the participating students to obtain examination papers before the date set for its start. Teach her what those questions are, between a third and half an hour before the scheduled time, and then pass the questions to the second and third defendants via the What'sApp application. A father for the cell phone used by the third defendant, who carries the number... who in turn and jointly with the second defendant sends back the stolen questions... amending the legal description of the first accusation of a felony of disclosing information that must be kept confidential in violation of the provisions of Article (16) / A) From the Law No. (50) of 1971 for the Protection of State Secrets and Documents to the misdemeanor of obtaining a personal benefit from one of the administration's transactions in violation of the provisions of Article (176/1) of the General Penal Code No. 16 of 1960 ... and the amendment of the legal description For the second charge against him of the felony of interfering with disclosing information that must be kept confidential, in violation of the provisions of Article (16/a) of the same law and in the context of Article (80/2/d) of the Penal Code No (16) of 1960 and its amendments to the misdemeanor of interference with obtaining A personal benefit from a management transaction in violation of the provisions of Article (1176) of the General Penal

Code No. (16) of 1960 and its amendments, and in accordance with Article (80/2) of the same law, pursuant to the provisions of Article (234) of the Code of Criminal Procedure No. (9) for the year 1961 and its amendments and condemnation with the amended description⁴¹ and in Here, other than the employee who publishes the confidential official document shall be punished with the punishment of the person involved in the crime of disclosing the job secret, according to the jurisprudence of the Court of Cassation⁴².

The Third Requirement

Criminalizing the publication of confidential official documents related to the work of the judiciary:

The Jordanian Penal Code prohibits publishing in judicial matters, whether related to the minutes of court sessions before regular courts or before special courts or even in disciplinary cases. Therefore⁴³ any of the laws that stipulate the confidentiality of such documents can be considered an electronic crime in the light of Article 15 of The Cybercrime Law, if it is published through a social networking site. Whereas Article 225 of the Penal Code states that, "A fine of five to twenty-five dinars shall be imposed on whoever publishes: 1. A document of a criminal or misdemeanor investigation before it is read in a public session. 2. Trials of secret sessions. 3. Trials in a lawsuit Insults. 4. Every trial the court prohibited from publishing.

By analyzing the previous text, we find that the interest subject of criminal protection is any of the judicial documents if it enjoys a confidential character based on the provisions of the article, which are the cases as stated in the text of the article. It is considered confidential in nature. The second item is the trials of secret sessions, such as juvenile court sessions or trials that are decided to be secret in order to preserve public order, for example. Thirdly, the special trials claiming the cause, because re-publishing such trials would enhance the negative impact of swearing, which criminalized swearing to reduce it, and fourthly, every trial in which a court decision was issued to prevent publication, if none of these cases applies to the document or it loses its confidentiality by publishing it, for example. By the Judicial Council or any official body after publishing it is permissible, and the publisher shall not have any responsibility for the act of publication, as it is no longer a confidential judicial document."⁴⁴

Accordingly, the employee publishes the confidential judicial document through a social networking site, and this publication may be done through photography or another means provided by these sites. Here, the disclosure of the confidential judicial document is achieved by publishing it through a social networking site and enabling others to view it, and the legislator did not require either In this crime, any harm is achieved by the commission of the crime, as it is one of the formal crimes in which harm is not required, but merely disclosure is sufficient as a result of the criminal behavior. With the necessity of providing the general criminal intent with its two elements, knowledge and will, that the perpetrator knows that he is disclosing one of the secret judicial documents and that his will is directed to committing this act and achieving the result by disclosing the secret document. The legislator decided a penalty of five dinars to twenty-five dinars based on the provisions of Article (225) of the Penal Code, which is a penalty of a type of violation because the maximum penalty is not more than 30 dinars⁴⁵, which is within the jurisdiction of the Magistrate's Court in its criminal capacity. Noting that the criminal responsibility for the illegal publication of confidential official documents includes the legal person who owns the account or the page on which it was posted, in addition to the natural person who is proven to have actually carried out the illegal publication⁴⁶.

CONCLUSION

First: The Results

- 1) The Jordanian legislator neglected to include a special text that criminalizes the publication of secret official state secrets and documents through social networking sites.
- 2) There are much different legislation that dealt with the confidentiality of state documents, which requires a precise identification or unification within one law so that the judicial authorities can prosecute the perpetrators once the secret official state documents are published.
- 3) The definition of secret official documents of the state does not include those documents kept electronically, which requires the existence of explicit texts in this regard.
- 4) Secrets and documents related to the private sector differ from those related to the public sector or the state, whether in terms of concept or in terms of the scope of protection, and therefore fall outside the scope of protection by those texts related to the protection of state secrets and documents, and thus fall within the scope of legal texts regulating activities related to them. For example, documents and secrets related to trade and industry are subject to the provisions of unfair competition laws and the protection of trade secrets.
- 5) Documents of private entities may be included in the legal protection of the Law of Protection of State Secrets and Documents, such as service provider companies and security companies cooperating with the armed forces, which may be acquainted with their work on secrets related to state security and thus gain legal protection for them.
- 6) Social media has become the most prominent platform for publishing due to several characteristics that distinguish it from traditional means of publication.
- 7) A clear phenomenon has emerged recently, which is the dissemination of confidential official documents through social networking sites.
- 8) The Jordanian legislator did not take into account the technical aspects of the act of publishing official state documents through social media sites, which may cause confusion in the judicial adaptation of the criminal act.

Second: Recommendations

- 1) A provision to criminalize the initiation of crimes of publishing secret official documents in all their forms in a clear and specific manner.
- 2) The text clearly and explicitly criminalizing the electronic publication of secret official state documents and assisting with it and participating in publishing that by the pioneers of social communication.
- 3) Personnel of specialized courts to look into crimes and attacks on the electronic publication of secret official state documents and to develop procedural texts that address investigation and trial procedures, provided that they are quick and to set a deterrent punishment to prevent their dissemination and transmission through various means of communication, in order to achieve fair trials.

- 4) Increasing international cooperation in the field of holding conferences, courses and seminars to develop common texts that would limit the electronic publication of secret official state documents.
- 5) The texts contained in the Penal Code related to the publication of official state documents and confidentiality and the breach of their sanctity were characterized by stagnation and did not change with the rapid change of the information network, so it is necessary to update and develop these texts.
- 6) Working on updating and developing the so-called cybercrime unit, and training and qualifying cadres specialized in cybercrime.
- 7) Strengthening international cooperation frameworks in combating transnational crimes, the subject of which is the electronic publication of official and confidential state documents.
- 8) Crimes committed on money via the information network are on a steady increase and in need of legislative intervention by putting in place deterrent legal texts.
- 9) Increasing societal awareness of the need to provide preventive protection to reduce the phenomenon of sharing the publication of secret official documents of the state, especially for young people and users of social networking sites, and that they will be subject to punishment if they do so.
- 10) Re-drafting the provisions of the law guaranteeing the right of access to information in response to the trend towards expanding the right to know.

FOOTNOTES

- 1) PANCRAZI (G.), Les difficultés d'application du délit d'avantage injustifié dans les marchés et les conventions de délégation de service public, l'art.432-14 du nouveau penal code, G.P. 1995, p.3.
- 2) Dr. Abd al-Rahman al-Saifi, The Criminal Rule, an analytical study of it in the light of contemporary criminal jurisprudence, Dar al-Nahda al-Arabiya, Cairo, without a year of publication, p. 127 and beyond.
- 3) Dr. Ahmed Fathi Sorour, Constitutional Protection of Rights and Freedoms, Dar Al-Shorouk, Cairo, 1999, p. 100.
- 4) Dr. Othman Hussein Abdullah, Legislative and Judicial Reform is Necessary for Economic Development, Judicial Periodical Magazine, Seventh Year, Issue One, January, 1992, p. 32.
- 5) (5) Jean-Claude JUHEL - Dominique DUFOUR, A discussion of stock market speculation, 12th world congress of Accounting Historians, Istanbul - TURKEY, 20-24, July 2008, p:30.
- 6) A document is defined in the language as a written or printed paper, bearing the original, official, or legal form of something, and it can be used to provide important information and evidence. of the debt or innocence of it, and the document is the document as well. To look at the meaning of the document in: The Arabic Language Academy (2001), The Intermediate Dictionary, Al-Shorouk International Library, fourth edition, page 1012
- 7) Article 2 of it stipulates documents classified as "any oral information, written documents, printed, abridged, electronically stored, or in any manner or printed on wax paper, duplicators, recording tapes, photographs, films, plans, drawings, maps or the like that are classified on They are confidential or protected documents in accordance with the provisions of the legislation.
- 8) Protected documents are defined in Article 2 of it as "any oral information, written, printed, abridged or in any manner or printed on wax paper, duplicators, recording tapes, photographs, films, plans, drawings, maps or the like that are classified as confidential or Documents protected in accordance with the provisions of the legislation.
- 9) Dr. Abd al-Ilah Muhammad al-Nawaisah, Crimes against State Security in Jordanian Legislation, Wael Publishing House, first edition, 2005, Amman, p. 126.

- 10) Toby Mandel, for a guide to the rules and procedures for classifying information for ministries and public institutions, Center for the Protection and Freedom of Journalists, Amman, p. 14
- 11) d. Hassanein Ibrahim Salih Obaid, The Idea of Interest in the Penal Code, National Criminal Journal, No. 2, 1974, p. 250.
- 12) Dr. Fouad Gamal Abdel Qader, The Protected Interest in the Crime of Illicit Profit, Public Security Magazine, No. 113, Year 29, April 1986, pp. 41-42.
- 13) d. Hassanein Ibrahim Obaid, The Idea of Interest in the Penal Code, previous reference, p. 237.
- 14) An example of this is the issuance of a decision by the court examining the case to prevent publication in accordance with the provisions of Article 225/4 of the Penal Code. In this regard, the Court of Appeal ruled in its decision, "And for the third reason, the appeal, which stated that the court had to amend the description of the offense to the offense of violating the provisions of Article 8." 50 of 1971, and in this we find that the appellant published it, which is a summons issued by the governor of Irbid in a case brought by her to confront the complainant, in addition to execution records, executive notifications, and a detention order issued in a joint case set up by her to confront the complainant, and where That these documents are not considered confidential and do not enjoy legal protection that prevents their publication, and no order has been issued by the Sharia court to ban the publication of these documents. Therefore, the act of the objector does not constitute a crime of violating the provisions of Article 8 of the Law of State Secrets and Documents, which is why this reason must be rejected. The appeal requires a response. Kindly see: Irbid Court of First Instance Decision in its Appellate capacity No. 13204 of 2019, Qastas Legal website publications.
- 15) d. Abdel Moneim Mohamed Ibrahim, the subject of harm in the legal structure of crime, an original analytical study, unpublished doctoral dissertation, Cairo University, p. 90.
- 16) d. Ahmed Fathi Sorour, The Origins of Criminal Policy, Ibid., p. 155.
- 17) Osama Ahmed Al-Manasah, Mediator in Explaining the Law of the State Security Court, Wael Publishing House, Amman, 2008, p. 225
- 18) d. Fattouh Abdullah Al-Shazly, Explanation of the Penal Code, General Section, Ibid., p. 129, 130.
- 19) Article 14 of the Law Ensuring the Right to Information stipulates that "A- Each department shall index and organize the information and documents that are available to it according to the observed professional and technical principles, and classify what should be considered confidential and protected according to the legislation in force within a period not exceeding three months from the date of publishing this law in the Official Gazette B- In the event that the implementation of the provisions of Paragraph (A) of this Article is not completed within the period mentioned in it, the official must obtain the approval of the Prime Minister to extend it for a period not exceeding three more months.
- 20) d. Yosr Anwar Ali, Dr. Ehab Yosser Anwar, Explanation of the Penal Code, General Theory, Dr. T, 2001-2002 edition, p. 85
- 21) d. Ahmed Subhi Al-Attar, The Crime, without a publishing house, 1985, p. 10.
- 22) d. Ibrahim Eid Nile, Penal Code, General Section, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, edition of the year 2005-2006, pp. 37, 38.
- 23) d. Mamoun Salameh, Penal Code, ibid., p. 25.
- 24) d. Tariq Selim, Introduction to Modern Punishment, Fifth Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2002, p. 196 and beyond.
- 25) Lawyer Muhammad Qutaishat, Opinion on the Law of Ensuring the Right to Information, an article written on 3/5/2011, published on the website www.ammonnews.net, accessed 20/7/2021,.
- 26) Article 3 of the Law on the Protection of State Secrets and Documents No. 50 of 1971.
- 27) Article 6 of the Law on the Protection of State Secrets and Documents No. 50 of 1971.
- 28) Article 8 of the Law on the Protection of State Secrets and Documents No. 50 of 1971.
- 29) Decision of the Jordanian Court of Cassation in its criminal capacity, No. 1114/2005, dated 24/11/2005, Qastas Publications.29
- 30) d. Ahmed Fathi Sorour, Mediator in the Penal Code, General Section, previous reference, p. 258.
- 31) d. Jalal Tharwat, General Section in the Penal Code, Dar Al-Huda for Publications, Alexandria, 1999, p. 109.
- 32) Dr. Abdul-Ilah Muhammad Al-Nawaisah - previous reference - pg. 137.
- 33) d. Mahmoud Najib Hosni, Explanation of the Penal Code, General Section, previous reference, p. 266.

- 34) The Supreme Constitutional Court ruled that: "Every crime has a material element that has no basis in anything else, which is essentially an act or omission that occurred in violation in the prohibition zone." Judgment of the Supreme Constitutional Court in Case No. 12 of the 13th constitutional year, session 3/12/1992, Official Gazette, Issue No. 49.
- 35) d. Mamoun Salameh, Penal Code, General Section, previous reference, p. 113.
- 36) See Article 3 of the Law of the State Security Court, where it says in the second paragraph of these jurisdictions, "Espionage crimes that occur in violation of the provisions of Articles (14), (15) and (16) of the Law on the Protection of State Secrets and Documents No. (50) of 1971."
- 37) The Civil Service System No. (20) of 2007 defines the public employee in Article (2) as: (A person appointed by a decision of the competent authority in a job listed in the job formations table issued under the general budget law or the budget of a department, and the employee appointed under a contract nor The person who receives a daily wage includes a person who receives a daily wage (as for the definition of a public employee in the Penal Code No. 16 of 1960, Article 169 states that) he is considered an employee within the meaning of this section every public official in the administrative or judicial corps, and every officer of the civil or military authority or a member of its members, and every worker or employee in the state or in a public administration) and the concept of a public employee in the Economic Crimes Law No. 11 of 1993 in the second article of it saying: The word "employee" for the purposes of this law includes every employee, employee or worker designated by the competent authority in any entity From the authorities stipulated in paragraph (b) of this article, and also includes the heads and members of the boards of the authorities mentioned in items (3 to 8) of paragraph (b) of this article and anyone who has been assigned a public service with or without pay b - and the phrase "money" includes For the purposes of this law, all money shall be Owned or controlled by any of the following entities or their supervision (ministries, departments and official public institutions, Senate and House of Representatives, municipalities, village councils, joint service councils, unions, federations, associations and clubs, banks, public shareholding companies, specialized lending institutions, political parties, any entity whose budget is supplemented Mainly from the state budget, any party whose money the law provides for public funds.
- 38) Amal Al-Murshidi, In-depth research on the crime of disclosing secrets and professional secrets, 2016, published on www.mohamah.net, accessed on 7/22/2021.
- 39) d. Mahmoud Najib Hosni, Criminal Contribution, previous reference, p. 247.
- 40) d. Hilali Abdullah Ahmed, previous reference, p. 339.
- 41) Decision of the Jordanian Court of Cassation in its criminal capacity, No. 1031/2017, dated 9/5/2017, Qstas Publications
- 42) Dr. Nizam Al-Majali, Explanation of the Penal Code / General Section, House of Culture for Publishing and Distribution, Amman, 2010, p. 299
- 43) See the text of Article 50 of the Physicians Syndicate Law No. 13 of 1972, which states that "the sessions of the Disciplinary Council are confidential and the rulings issued by it may not be published except after they have acquired the final degree with the approval of the Council."
- 44) In this regard, the Court of Appeal ruled in its decision, "And about the third reason for the appeal, which stated that the court should have amended the description of the offense to the offense of violating the provisions of Article 8 of the Law on the Protection of State Secrets and Documents No. 50 of 1971, and in this we find that the appellant published it in the phrase On a summons order issued by the Governor of Irbid in a case set up by her to confront the complainant, in addition to execution records, executive notifications, and a detention order issued in a joint case set up by her against the complainant, and since these documents are not considered confidential and do not enjoy legal protection that prevents their publication, and no order was issued by the Sharia court The publication of these documents is prohibited, and therefore the act of the appellant does not constitute a crime of violating the provisions of Article 8 of the Law of State Secrets and Documents, which must be rejected as one of the reasons for the appeal, and the response requires the decision of the Irbid Court of First Instance in its appeal capacity No. 1324 of 2019 Qstas Legal Publications.
- 45) Dr. Nizam al-Majali, Explanation of the Penal Code, General Section, third edition, House of Culture, Amman, 2010, p. 48

- 46) Kindly see Article (74/1) of the Penal Code, which states the following: “A legal person, with the exception of the government department or official or public institution, is criminally responsible for the actions of his boss, any member of his department or directorate, or any of his representatives or workers.” When they do these acts in his name or by one of his means in his capacity as a legal person, the legal persons are only sentenced to a fine and confiscation, and if the law provides for an original penalty other than the fine, the fine shall be replaced by the aforementioned penalty and imposed on the legal persons within the limits specified in Articles (22 to 24) of this Law.

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