

Case Study on TERRORISM

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KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (*Seminar-Workshop*)

June 6 to 9, 2022, The Judicial Academy Philippines, Tagaytay City



ERASMUS+ Capacity Building for Legal and Social Advancement in the Philippines (CALESA)



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Members:
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Judge Rainelda H. Estacio-Montesa
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FACTS OF THE CASE

A and B, both Filipino citizens, are employees of Bang Bang Inc., (BBI), a supplier of military goods to the Philippine Army. A, the head of a labor union assembled his fellow employees to demand a pay increase from the management. He gathered 20 of his members and staged a 2-day protest in front of the BBI office. Security staff arrived and dismantled the placards and barricades blocking the BBI office's entrance. In retaliation, A threw stones at the guards and wounded some of them. A commotion ensued followed by a violent dispersal of protesters.

Meanwhile, A secretly joined the XYZ Group (XYZ), a militant group affiliated with the Islamic State of Iraq and Syria (ISIS). A informed XYZ that BBI delivered ammunitions, grenades, and other high-caliber firearms to the Philippine Army to be used for a possible raid to capture their leader, MMM. Because of this information, XYZ attacked the military camp in Marawi, occupied several buildings including the city hall, schools, hospitals, and city jail. Many people were killed by the XYZ. More were displaced from their homes and livelihood due to the massive destruction of their properties after a siege lasting six months.



1. What is/are the crime/s committed by A under Spanish and Philippine criminal legislations?

• **Spanish Penal Code**

1. A may be penalized for Public Disorder under Art. 557 for organizing a protest and employing violence in the process;
2. A may also be penalized for the complex crime of physical injury (Art. 573) and assault for throwing stones at the security guards;
3. Sedition (Art. 543);



1. What is/are the crime/s committed by A under Spanish and Philippine criminal legislations?

• **Spanish Penal Code**

4. A may be found liable for: (a) joining XYZ under Art. 571 (whoever actively participates in the organization or group or forms part thereof x x x); (b) for collaboration with a terrorist group under Art. 576 (2) (whoever carries out, procures or facilitates any act of collaboration with the activities or purposes of the terrorist organization or group); and, recruitment penalized under Art. 576 (3) (whoever carries out any activity to recruit, indoctrinate, train or induct, aimed at having others join a terrorist organization or group)



1. What is/are the crime/s committed by A under Spanish and Philippine criminal legislations?

• **Phil Penal Laws**

1. A may be held liable for Physical Injuries (caused to the security guards), depending on the degree of injuries sustained: slight, less serious or serious under Arts. 263, 265 and 266, respectively, of the Revised Penal Code;
2. A may be held liable for joining a terrorist group punishable under Sec. 10, ATA 2020, for joining XYZ;
3. A may also be held liable for facilitating the commission of terrorism punishable under Sec. 6, ATA 2020, for his act of informing the XYZ about the delivery of firearms and ammunitions to the Philippine Army to be used for a possible raid to capture the XYZ leader.



2. Would the act of protesting be considered as an act of terrorism under Spanish and Philippine criminal legislations?

- **Spanish Penal Code**

The act of protesting alone is not considered an act of terrorism unless it is done in relation to or in support of terrorist groups or terrorist acts.

- **Phil Penal Laws**

The act of protesting per se is not considered an act of terrorism. It is an exercise of freedom of expression. Basis: Executive Secretary v. Calleja.



3. Was A's act of throwing stones at the guards during the protest be considered as an act of terrorism under Spanish and Philippine criminal legislations?

- **Spanish Penal Code**

A's act of throwing stones at the security guards during the protest is not act of terrorism but may constitute other offenses under the Spanish Penal Code, as mentioned.

- **Phil Penal Laws**

A's act of throwing stones at the security guards does not constitute as an act of terrorism but may constitute Physical Injuries punishable under the Revised Penal Code.



4. After the siege, A informed B that he is a member of XYZ. B offered to A that he may stay at his home province in Cagayan. What is the crime committed by B under Spanish and Philippine criminal legislations?

- **Spanish Penal Code**

B may be held liable for cooperating with a member of a terrorist group under Art. 576, par. 2, by giving shelter to a member of the terrorist group.

- **Phil Penal Laws**

B may be held liable as an accessory under Sec. 14 of the ATA 2020 for harboring, concealing, and assisting in the escape of the principal or conspirator of the crime.



5. What is the penalty to be imposed on A under Spanish and Philippine criminal legislations?

• **Spanish Penal Code**

1. Public disorder under Art. 557 carries a penalty of imprisonment from 6 months to 3 years;
2. “Complex crime” of physical injury and assault;
3. Membership in a terrorist group is punishable by 6 to 12 years of imprisonment and special barring from public employment and office; and
4. Collaboration with terrorist groups is punishable by imprisonment for 5 to 10 years and a fine of 18 to 24 months.



5. What is the penalty to be imposed on A under Spanish and Philippine criminal legislations?

• Phil Penal Laws

1. For physical injuries:

slight [*arresto menor* (1-30 days)];

less serious [*arresto mayor* (1 month and 1 day to 6 months)];

serious [*prision correccional* (6 months and 1 day to 6 years) to
prision mayor (6 years and 1 day to 12 years)]

2. For joining a terrorist group, A may be liable under Sec. 10 of ATA punishable by 12 years imprisonment;



5. What is the penalty to be imposed on A under Spanish and Philippine criminal legislations?

- **Phil Penal Laws**

3. For providing sensitive information to XYZ, A may be held liable for facilitating the commission of terrorism under Sec. 6, ATA 2020, which is punishable by life imprisonment without benefit of parole and the benefits of RA No. 10592.



6. While serving his sentence, A exhibited good conduct and became a pastor inside the prison. Is he entitled to any time allowance under R.A. No. 10592 and Spanish criminal legislation?

- **Spanish Penal Code**

If convicted of terrorism, convict must serve at least 7 years of his sentence before he can be entitled to good conduct allowance.

- **Phil Penal Laws**

If convicted of terrorism, the convict is not entitled to benefit under RA 10592.



7. Assuming B is also a member of XYZ, went abroad for a vacation and recruited other Filipinos to join and support XYZ, is B liable for acts of terrorism under Spanish and Philippine criminal legislations?

- **Spanish Penal Code**

Yes B is liable for recruiting members to join a terrorist group under Art. 576 (3) which penalizes any activity to recruit, indoctrinate, train or induct, aimed at having others join a terrorist organization or group.

- **Phil Penal Laws**

Under Sec. 49, ATA 2020 B can still be held liable for recruitment to a terrorist organization under Sec. 10, ATA 2020 even if the recruitment was done in a foreign country.



8. Can B be prosecuted in the Philippines for recruiting other Filipinos to XYZ while he was abroad? How would this situation be decided under Spanish criminal legislation?

- **Spanish Penal Code**

Yes B can be prosecuted under the Principle of Active Personality and State Interest Principle. These are the 2 exceptions to the Principle of Territoriality observed in criminal law in Spain.



8. Can B be prosecuted in the Philippines for recruiting other Filipinos to XYZ while he was abroad? How would this situation be decided under Spanish criminal legislation?

- **Phil Penal Laws**

Under Sec. 49 on Extraterritorial Application, ATA 2020, the ATA shall apply to Filipino citizens and individuals who commit any of the acts defined under Sec. 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the ATA committed outside the territorial jurisdiction of the Philippines. Recruitment is punishable under Sec. 10 of the ATA 2020.



- THANK YOU -

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