

Trolling the Online Abuse Law

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...while expatriates could also be deported from the UAE under “a new Federal law”.

The news report related to a decision of the UAE’s Federal Supreme Court, which overturned two lower court sentences fining a man AED3,000 after he was convicted of swearing at another on WhatsApp. The Court reportedly supported an appeal by the public prosecutor who argued that the sentences were too lenient and did not conform to the new laws that include a penalty of AED250,000 or imprisonment for those involved in online offences.

Please be clear. We did not represent any of the parties to this Court case. While we do not have access to all the relevant facts or the Court’s judgment, the commentary set out in this article is based on what was reported in the media and our experience and knowledge of the relevant laws.

The first point is that the law the newspaper article appears to be referring to is not really new. Federal Decree by Law No. 5 of 2012 On Combating Cyber Crimes (“Cyber Crimes Law”) was issued in November 2012. The Cyber Crimes Law replaced the earlier Federal Law No.1 of 2006 concerning combating information technology crimes. The Cyber Crimes Law may have been “new” in the circumstances reported because it was possibly the first time the Federal Supreme Court had to consider the relevant Article of the Cyber Crimes Law since it was issued.

The Article of the Cyber Crimes Law that seems most applicable to the described facts is Article 20 which makes it a criminal offence to insult a third party using an Information Network or an Information Technology Tool.

An Information Network or an Information Technology Tool are defined terms in the Cyber Crimes Law and clearly would include sending insults by SMS texts, instant messaging, social media or email.

The full English translation of Article 20 is as follows:

Without prejudice to the provisions of slander crime prescribed in Islamic Sharia, any person who insults a third party or has attributed to him an incident that may make him subject to punishment or contempt by a third party, by using an Information Network or an Information Technology Tool shall be punished by imprisonment and a fine not less than (AED250,000) and not exceeding (AED500,000) or by any of these punishments.

If the insult or slander took place against a public employee or a person assigned to a public service by occasion or because of performing his work this shall be considered an aggravating circumstance of the crime.

The offence here is not simply the act of swearing online, it is insulting a third party or attributing to that third party an incident that may make that third party subject to punishment or contempt.

Previously, under Federal Law No.1 of 2006, it was an offence to use the internet or a technology device to threaten another. The punishment was imprisonment for up to 2 years and a fine not exceeding AED50,000 or either. If the threat caused defamation the penalty was imprisonment for up to 10 years.

Clearly the financial penalties are significantly higher under the Cyber Crimes Law.

In addition to the penalties under Article 20 of the Cyber Crimes Law, the Court must deport a foreigner convicted for committing an offence under that Article after executing the punishment prescribed in Article 20 (see Article 42 of the Cyber Crimes Law).

Sanctions for online abuse in the UAE are not limited to the Cyber Crimes Law. For example, in August 2015, the UAE enacted Federal Decree by Law No. 2 of 2015 Concerning Combating Discrimination and Hatred. That new law is discussed in more detail in another article in the September issue of Law Update.

Article 20 of the Cyber Crimes Law is really an online trolling or cyber bullying law. As such, it should be properly seen as part of the UAE's leading e-security initiatives, rather than a perceived curb on freedom of speech.

The way we interact with each other online has changed at a pace that most legal systems around the world have struggled to keep up with. In the absence of a specific criminal offence that makes cyber bullying illegal, law enforcement agencies have to resort to prosecuting trolls for offences under legislation that was not enacted to properly cover such circumstances. This means that victims of cyber bullying often have inadequate legal protection.

Although it is usually a standard term of the "acceptable use" policies of social media, apps and telecommunication services that those services are not to be used to abuse, harm, harass, degrade, or intimidate an individual, enforcing a breach of those terms by taking civil proceedings can be impractical.

A 2012 study of 4,600 children in the UK (where cyber bullying is not a specific criminal offence) found that 28 percent of children aged between 11 and 16 had experienced bullying on the internet or via a mobile phone. A worrying 11 per cent of those bullied said it made them depressed and 3 percent attempted suicide.

The penalties under the Cyber Crimes Law are not inconsistent with similar laws that have been enacted in other countries. At the time of writing this article New Zealand was the most recent country to make online trolling and cyber bullying a criminal offence. Under the Harmful Digital Communications Act that came into force in July of this year anyone convicted of "causing harm by posting digital communications" faces two years in prison and a NZ\$50,000 fine (approximately AED116,000). The New Zealand law passed through that country's parliament with an overwhelming 116 to 5 majority.

It is unfortunate that it seems that an advanced law to tackle the internet age problem of trolling or cyber bullying, which has been linked to the suicides of vulnerable young people worldwide, has been reduced to somewhat misleading headlines like "swearing on WhatsApp in the UAE could carry a fine".