

Discuss the Crime of Advocating Terrorism and Extremism from Case Analysis

Renyi Xu^{1, a*}

¹Edinburgh Law School, The University of Edinburgh, Edinburgh EH8 9YL, UK,

^arenyixu2021@163.com

ABSTRACT

In order to enable the government to intervene as early as possible before the harmful results are occurred, the amendment of the Criminal Law (IX) substantially modifies and adds provisions related to terrorism to control the risk of related crimes propositionally and systematically. With a view to improve judicial practice, this paper analyzes the crime of advocating terrorism and extremism based on a controversial case, and clarifies the legal interests protected by the crime and the elements of crime.

Keywords: *Crime of terrorism, Crimes constituted by abstract endangerment of legal interests; Amendment of the Criminal Law(IX), propositional*

1.BRIEF INTRODUCTION

Recently, a tweet under a title of 9 month of imprisonment due to advocating Join IS With me attracted a lot of attention. From my own perspective, I believe this penalty is kind of over heavy, and did not keep in line with the principle of tempering justice with mercy.

Zhang, a 31-year-old migrant worker, did not expect to be held criminally responsible for a joke he made in a WeChat group. The First Intermediate People's Court of Beijing Municipality heard Zhang's case of advocating terrorism and extremism in public according to the criminal law[1] , But after looking up relevant case thorough instruments and keywords related, I only found the case Jing 01,[Beijing Interm. People's Ct.],2017,No.45 is similar to the mentioned one, only the name of defendant is Yang instead of Zhang. Therefore, I will continue my argument based on the case Jing 01, [Beijing Interm. People's Ct.],2017,No.45.However, the self-media did not verify the content of the report through advocacy, but reshipped this case like clickbait blindly, With the development of social networks, self-media has diminished the barrier of online communication, playing an important role of information dissemination. But at the same time, the social problems caused by its misuse of language is also increasingly distinct, self-media should take social responsibility of promoting the positive energy. This will discuss later.

Yang's criminal circumstances and court ruling are summarized as follow: Yang posted a message "Convert to Islam with me, Join IS with me" through his Xiaomi (smart phone) in a WeChat group related to autistic children care on September 4th, 2016, at 21:50, in his rental room at the location of ChangPing District, Beijing.

Subsequently, the Public Security Bureau of ChangPing summoned Yang in accordance with the law and arrested him on suspicion of advocating terrorism and extremism. Police checked his smart phone and computer but found no other comments about terrorism other than those posted on WeChat. After realizing the insufficient recognition of law of defendant, the court sentenced him of 9 months imprisonment and a fine of RMB1000.

The Sentence is issued by following reasons: defendant advocate message relevant to terrorism and extremism in a group chat which has more than 300 people , the act itself have constituted the crime of advocating terrorism and extremism, should be punished according to criminal law. Due to truthfully confess and has no criminal record before, he shall be given a light punishment according to law, but it cannot be considered to the circumstances of the alleged conduct of obviously minor.

2.THE ELEMENT OF ADVOCATING TERRORISM AND EXTREMISM

The Amendment (IX), which was adopted on August 29th, 2015, added five new crimes of terrorist activities, regulated different types of terrorism crime respectively. The Amendment (IX) is based on the principle of "Addressing both the symptoms and the root causes, Practice policies comprehensively" and answer the demand of social practice. It not only focusses on emergency control and ex post punishment of terrorist crimes, but also adopting the strategy of "counter-terrorism throughout with competing priorities", this reflects the prepositional protection of legal interests in the Criminal Law.[2]

Article 120(III) of Criminal Law regulates that Whoever advocates terrorism or extremism or instigates terrorist activities by way of preparing or distributing any book, audio or video materials or any other article advocating terrorism or extremism or by instructing or issuing information shall be sentenced to imprisonment of not more than five years, criminal detention, surveillance or deprivation of political rights in addition to a fine; or if the circumstances are serious, be sentenced to imprisonment of not less than five years in addition to a fine or forfeiture of property, besides this is the only augment of the Amendment(IX) on this crime to fill the previous void. [3]Furthermore, due to lack of scholar research and Statutory interpretation on this issue, the author will discuss and analyze the elements of this crime based on four-element system on crime.

2.1 Subject

There are no specific requirements of the subject of this principal crime, every general natural person is eligible to conduct the act of advocating terrorism and extremism in Chinese region including Chinese and foreign citizens as long as they have criminal capacity, which means it is unspecified. But a unit can not constitute this crime in a general way should be noted.

2.2Criminal Intent (MENS REA)

The criminal intention is necessary of the subject to define the advocating terrorism through internet as an act of crime, it includes direct intention and indirect intention. Generally speaking, negligence cannot be the constitution of the principal crime.

The difficult part of evaluating the mens rea of the crime of advocating terrorism is whether the subject is aware of this crime and permit this result to appear, in other words, to estimate whether it belongs to fault resulted from overconfidence or indirect intention. It is effortless to evaluate the direct intention relatively, that is, the subject advocates and abet deliberately, and

conducts advocacy of terrorism under this subjective state of mind.

Back to the case mentioned, Yang, as an adult, should be have the cognization that IS is the world extremist terrorist organization recognizable across the world, should be aware that the tweet he posted is advocating terrorism and extremism. Besides, He should also see beforehand of the real social hazardous brought by his act of posting tweets about joining the extremist group in a group chat which has more than 300 people. Curiosity, joking, thrill-seeking, and other psychological activities are not grounds for a plea of not guilty, but at most can be considered at the discretionary stage of sentencing. Although he did not advocate zealously and no result of groups mates' participation in IS happened, it is no doubt that his intent could be defined as indirect intention.

2.3 Object

The legal interest protected by this crime are security of nation and public, safety of life and property, and social order.

2.4 Criminal Act (ACTUS REUS)

There is no article stipulating the harmful results and concrete dangerousness, so the principle crime should fit in line with crimes constituted by abstract endangerment of legal interests, that is, the risk is the act itself as long as the implementation has the potential risk, without the need to judge in conjunction with the results. This refers to once the act of advocacy terrorism online is committed, the elements of this crime may be constituted. In terms of the specific conduction, this crime is mainly through the publication and distribution of books, audio, video or other items that promote terrorism, thereby causing indirect harm to the nation and the public.

Back to the case mentioned, the act of post "Convert Islam with me, Join IS with me" in a public group chat had already violated to the article No.120(III) of Criminal law and constitute this crime.

The act of terrorism advocacy in the perspective of criminal law has the characteristics of cybercrime with the beginning of judicial practice, and networks propaganda has already been a major way to conduct this crime. Generally speaking, the main performance of inchoate protection of certain legal interest is adding regulation on the crime of danger (especially Crimes constituted by abstract endangerment of legal interests) and a crime in preparation, in order to form the exception to the normal[4]. This is also suitable for legislative practices of Criminal Law which appears a trend of extension, demonstrate the position of prevention on certain crime.[5]

3. JUDICIAL PRACTICE AND REFLECTIONS ON THE CRIME OF ADVOCATING TERRORISM AND EXTREMISM

The act of advocating terrorism and extremism are mainly conducted through internet, using Weibo, WeChat group chat, WeChat moments, QQ group chat, Qzone, Net disk and other software as major instruments.

And the subjects with direct intention with advocating terrorism and extremism are not the majority, on the contrary, they have a weak awareness of the law system and do not consider their acts as immediate and real danger, do not consider the acts as violation to Criminal Law, and defend themselves with the excuse of significantly minor crime and not much actual malice.

I found plenty of similar case to Yang's' in the process of having the literature review and case search on this crime, such as No.55(2017) of Primary Criminal Court in Beijing, No.215(2017) of Primary Criminal Court in Guangdong and NO.46(2017)[6] of Primary Criminal Court in Beijing.

The subjects all argued that they lacked clear understanding of terrorism and only conducted the act of advocating or posting terrorist tweets or videos for fun and excitement, did not have the direct intention of publicize and spreading them subjectively.

3.1 Ouyang Tianyi On Advocating Terrorism and Extremism, Jing 01,[Beijing Interm. People's Ct.],2017,No.55.

The Case Fact:

The Subject released a video with the title of "Curiosity Killed the Cats, Do Not Approach If You Are Timid" at 12:00 on August 26th, 2016, in his temporary residence in No. 4, Row 4, West Bungalow, No. 38 Yuanbei Road, Haidian District, Beijing, through his Weibo with the nickname of "Ouyang Ty Crazy 315", The content of the video is related to the advocacy of terrorism and extremist ideology, which is a typical terrorist video, with a high level of hazard

Convictions & Reasons:

The subject claimed that he lacked acknowledgement of terrorism and only posted it out of curiosity. His defense proposed that his client did not have a clear understanding that the video had terrorism and did not have the intention to advocate and spread it subjectively.

The content of the video in the case is a terrorist organization with extremely bloody and violent means to mutilate the lives of others, which obviously reflects the intention to advocate terrorism and extremism, person with general cognitive ability should have a basic judgment, the subject is an adult who has educated in

university and has sophisticated experience and normal understanding and judgment ability; in Ouyang Tianyi released the violent video involved in the case with a note name of curiosity and timid, which is sufficient to demonstrate his awareness of the violent and terrorist nature of the video.

3.2 Wu Chao-lin On Advocating Terrorism and Extremism Canton 01,[Guangdong Interm. People's Ct.],2017,No.215.

The Case Fact:

At 8:43 p.m. on May 9, 2017, while logging into his QQ chat software via a Lenovo B470 laptop in his rented room, Wu discovered in a group chat called "Tangxia Working Friendship Group" that someone had uploaded a video with a series number, the content is a man with an axe were chopping a man's neck. (The video was defined as terrorist advocacy). The length of is 10 seconds.

At 8:53 to 55 on the same day, Wu reposted the video to "life can't afford the society" "Changping chatting friends' group" "world miscellany" and other three QQ groups (group Members were 355, 138, 665).

Convictions & Reasons:

Wu argued that he his reason of posting the videos was chasing the fun and excitement, not intentionally.

As an adult with full criminal responsibility, Wu has the ability to distinguish whether an act is right or wrong and the ability to control his behavior. The main content of the video involves endangering the lives of others by bloody and brutal means and advocating terrorist, which is inciting, intimidating and violent obviously. Besides, it is a typical violent and terrorist advocating video with a certain degree of hazard. After watching the video, knowing that it was a violent and terrorist video, Wu still reposted it to three QQ groups with a large number of people who announced it to the public.

3.3 Yang Bo On Advocating Terrorism and Extremism Jing 01,[Beijing Interm. People's Ct.],2017,No.46

The Case Fact:

Yang posted five violent and bloody videos in a WeChat group called "Old Boys" through his smart phone at around 00:00 on August 28, 2016, in his temporary residence in Chaoyang District, and then reposted two of them in a WeChat group called "WuDu University Called Death".

Convictions & Reasons:

Yang has a weak sense of the law. The act of posting videos related to terrorism and extremism through his phone had already constitute a violation to the principal crime.

It is true that excessively expanding the scope of criminalization of terrorist acts and overemphasizing the protection of legal interests may violate civil liberties and human rights, interfere with citizens' freedom of expression, the human rights protected by the Constitution and the acceptability and the principles of necessity of criminal law, and are incompatible with the concept of cautious punishment in modern society.

However, the freedom of expression stipulated in the Constitution requires respect for the human dignity of others and does not violate the mandatory provisions of the law, while the advocacy of terrorism and extremism, did cause dangerous influence on people's mind and infringe on the legal interests of national stability both in form and substance. On the other hand, although there are plenty of risks of using Criminal Law to combat terrorism, the Law still reflects its advantages of adherence to the principle of responsibility, *nulla poena sine lege* and the Punishment should Meet with the Crime and Responsibility relative to others methods of cracking terrorism.[7] The expansion of legislation related to terrorism is undoubtedly proceeded from the need to maintain the security of the nation and its citizens with legitimacy of legislative. In order to avoid overexpansion in judicial practice that may infringe on civil liberties improperly, the criminal law on terrorism should also be properly understood and make it provided with the legitimacy of judicial practice. The sophistication of the rule of laws is highly related to the national strength. but due to the complexity of citizens' education level and income structure, plus the influence of social factors, some citizens have weak legal acknowledgement, vague legal concept, and lack of legal beliefs. It is clear that there is still a long way to go to enhance the rule of law.

Furthermore, it is quite often mentioned that Internet is not a lawless place. Each Internet user is responsible for their words and action, any illegal behavior of disruption of the network order and damage to the network ecology will have to bear the legal liability.

According to the Decision of the Supreme People's Court to Amend the Some Provisions on Evidence in Civil Procedures (2019) (referred to as "the Decision") [8] published on December 26, chat logs such as WeChat and Weibo can be formally used as evidence in trials, and there have been cases of using chat logs as crucial evidence. The promulgation of the Decision emblemized that the national highest judicial authority has formally confirmed the status of WeChat and Weibo chat logs as evidence in the judicial interpretation, and also put into practice that "the Internet is a lawless place"

In the era of Internet, the scale of the Chinese Internet users group is gradually swelling, but the current situation of legal consciousness education on them still has many corrupt practices[9]. Therefore, to strengthen the legal awareness and moral literacy education of them is necessary. The online-media should implement the

responsibility of disseminate an elementary knowledge of law, and the government departments must also improve the relevant legal education and propaganda, give a clear introduction to Internet users to enhance their legal meaning through various ways actively.[10]

4.CONCLUSION

Back to Yang's case, as analysis previously, I believe that he was found guilty of advocating terrorism and extremism, and it is appropriate that he was sentenced to nine months imprisonment compared to 5 years legally-prescribed punishment. But the risks behind a seemingly joke may be endless is all I can say, and it may also bring great threat to national security and social stability. The influence of the result of judgement of Yang is more than just a warning and punishment to the perpetrator, but also "beat the dog before a lion", achieve the full potential of the Criminal Law on preventing and deterring this crime, express the zero-tolerance of China to terrorism and extremism, crack down on the principal crime strictly and seriously.

Meanwhile, some scholars believe that Yang's behavior should not constitute this crime, that his act is in line with the elements of the crime of advocating terrorism seemingly with abstract endangerment. However, this is the result of the understanding of crimes constituted with abstract endangerment to legal interests by the court bluntly, abstract endangerment is not direct adjudication without sessions judgement without notice.

The reason of abstract endangerment can be regarded as the outcome or result of certain crime is because the endangerment has the possibility of transforming into real harm[11]. Yang's act did not create the abstract endangerment of infringement to legal interests, and does not have the possibility of transforming into real harm. In other words, Yang's behavior is only ostensible criminal illegality, the substance of the act does not constitute the legal interest's infringement, thus should not constitute the crime[12].

I believe that the view mentioned above is a misinterpretation of the abstract endangerment, it is undoubtedly that there is potential danger of Yang's behavior, and it would expand the scope of the target audience once it was conducted, caused infringement to the legal interests. Some people with extreme ideas of terrorism or discontent with real life and society can be easily influenced by the advocacy and go astray. When someone really listens and joins IS, when this abstract endangerment is transformed into real harm, then it will be too late to "shut the gate" when the conductors of such crime are convicted and punished. Once the terrorist attack is conducted, it will cause immeasurable harm to public safety, and post-incident punishment is often useless to compensate and restore the social order. the Criminal Law should intervene in advance to stop this

hazard at the gestation stage before it brings endangerment to public security while the terrorist and extremist ideas is advocating[13]. It could prevent problems before they occur and stop the crime from continuation effectively, and also maintain long-term social stability[14].

REFERENCES

- [1] Jing 01,[Beijing Intern. People's Ct.],2017,No.45
- [2] Feng, C.Preliminary Study on the Crimes of Advocating Terrorism,Extremism, and Incitement to Commit Terrorist Activities. Forum of Criminology, 2017,3(5), 1112.
- [3] Chen X. Interpretation and Comments on the Criminal Law Amendment Bill (IX). Journal of Guizhou University of Nationalities (Philosophy and Social Sciences Edition), 2016 (1),121.
- [4] Zhang, M. Regarding the Terrorist Crimes Prescribed under the Amendment IX to the Criminal Code. Modern Law Science, 2016, (1), 23.
- [5] Li, H. Criminal Legislation on Terrorist and Extremist Crimes in the Criminal Law Amendment (IX) Act - From the Standpoint of How to Limit the Scope of Establishment of Abstract Dangerous Offenders. Journal of Soochow University (Philosophy and Social Sciences Edition), 2016(6), 89-92.
- [6] Data Collated from PKULaw(<http://www.pkulaw.cn>) and Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts(<http://wenshu.court.gov.cn>).
- [7] Liu, R. Terrorism and Criminal Law Norms. China Law Review, 2015, (2), 173.
- [8] One article is added as Article 14: "Electronic data includes the following information and electronic documents: (1) Information released by web platforms such as webpages, blogs, and microblogs. (2) Communication information through network application services such as short text messages, emails, instant messaging, and communication groups. (3) User registration information, identity
- [9] Pi,Y, Yang M. Micro-terrorism and its legislative governance in the cyber age. Wuhan University Journal (Social Science), 2017 (2),73.
- [10] Mei C, Zang J. Sanctions for network advocating terrorism and extremism: Based on the investigation of the current 20 sample cases. Journal of Chongqing University(Social Science Edition), 2019 (5) : 154 - 166.
- [11] Liu, Y. Criminal Law (2nd ed.),Peking University Press. 2016, Vol. 115–120.
- [12] Ouyang, B., & Zhang, L.The Terrorism Network Propaganda in the Perspective of Criminal Law. Journal of Henan University of Economics and Law, 2018, (6), 88.
- [13] Tian G. An Empirical Analysis of Terrorist Crimes in China and the Future Response of Criminal Law Legal and Commercial Research. 2015 (5).34.
- [14] Zhao B, Du M. New Developments in China's Anti-Terrorism Criminal Law and Reflections on Them - A Review of the Relevant Contents of the Amendment to the Criminal Law (IX). Shandong Social Sciences, 2016 (3),98.