

About Some Problems of Criminal liability Regulation for Terror Crimes

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Abstract

The article is devoted to the problem of criminal legal responsibility regulation for terror crimes. The authors analyze the legislative design of such crime compositions, provided by Ch. 24 of the current RF Criminal Code, first of all, the novels included in the Criminal Law in 2013 - 2017, the sanctions on criminal law norms, as well as the effectiveness of their implementation in practice. Critical remarks are made and proposals are introduced aimed at criminal legislation, as well as law enforcement practice improvement. The authors raise the problems of punishment imposition for committed crimes, in particular, criticize the legislator's position on the imposition of less stringent sanctions for more dangerous forms of assistance to terrorists, and on the imposition of stricter sanctions for less dangerous forms of assistance to terrorism. Judicial practice is analyzed with the purpose to reveal the effectiveness of individual article provision application from RF Criminal Code. They performed the comparison of the criminal law revisions, and they analyzed the introduced changes. The authors make specific proposals to amend certain provisions of the criminal law, in particular, on the criminalization of responsibility for the financing of terrorism as an independent crime.

Keywords: Terrorism; terrorist activity; Terrorist crime; Criminal responsibility; Constructive signs; Sanction.



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1. Introduction

The National Security Strategy of Russia issued on December 31, 2015 determines the activities of terrorist and extremist organizations as one of the main threats to such security. The goals of such organizations are the violent change of RF constitutional system, its territorial integrity, the destabilization of public authority work, the intimidation of population, etc (Belyaeva *et al.*, 2018).

The sign of terrorism threat level increase at the present stage is the tendency to terrorist attack performance, the scale and intensity of which is becoming one of the most acute and topical problems of global significance due to their inhumanity and cruelty (Pochinok, 2008a). The functioning of terrorist associations has been international in recent years, as, for example, the international terrorist organizations Al-Qaeda, the Islamic State and Jebhat An-Nusra, banned in Russia and participating in a full-scale civil war in Syria and other countries of the Arab world. Terrorism in all its forms and manifestations is defined as a serious threat to international peace and security, and therefore any acts of terrorism are criminal, regardless of the motives and the purposes of their commission.

The problem of international terrorism concerns the whole of mankind, leads to significant economic and social losses and it is a global problem (Korshunova, 2006).

The threat of terrorism increases due to the availability of the latest technologies among terrorists in the field of ideological, informational and financial influence, which makes terrorism especially dangerous for society (Gadrakhmanov, 2015).

Terrorism is a purely criminological concept, the extreme manifestation of which is terrorist activity. In the explanatory dictionaries, the basic meaning, the aim of terrorism, is denoted rightly - to frighten by death, execution, and violence (Hill, 2012).

According to A.I. Dolgovaya "terrorism is the commission of socially dangerous acts in relation to the life and health of people, the rights and legitimate interests of various actors in order to force a third party to take decisions required by terrorists" (Pochinok, 2008b).

The legal literature provides 100 - 200 definitions of terrorism, both doctrinal and official ones (Gazeta, 2006).

2. Methods

In this paper, they use the method of dialectical cognition. By this method they studied the composition of crimes provided in Ch. 24 of RF Criminal Code. They also used such general scientific methods as analysis, historical and comparative methods.

3. Results and Discussions

It seems that there is no need to determine the international legal basis to counter terrorism in this publication. The legal basis for combat with terrorism, as well as the basic principles of its prevention, is presented by the Federal

Law No. 35-FL "On Terrorism Counteracting" issued on 06.06.2006 (Pochinok, 2008b). This normative act served as the basis for the introduction of appropriate changes in the criminal legislation.

Since the basis of responsibility in criminal law is the commission of an act containing all the elements of an offense envisaged by the criminal law, it seems obvious that criminal responsibility should be for specific actions aimed at terrorism goal achievement and forming one or another type of terrorist activity. The legislative decision on the change of the original name of the Art. 205 of RF Criminal Code ("Terrorism") by the "Terrorist Act" is quite justified. Conversely, the name of the article 361 "Act of International Terrorism", included in Chapter 34 of RF Criminal Code, raises questions, because on the basis of the objective side of the main composition, it is almost identical to the composition of the terrorist act (Article 205 of RF Criminal Code).

In the original version, the Criminal Code of 1996 referred the compositions contained in the following articles to the terrorist crimes: 205 (terrorism), 206 (hostage-taking), 207 (knowingly false report about an act of terrorism), 277 (a terrorist act in respect of a state or a public figure committed with the purpose to stop his state or other political activity or as a revenge for such activities).

The spread of terrorism, its scale and unprecedented consequences, necessitated the expansion of the range of measures of criminal legal impact to counteract its manifestations.

Criminally punishable articles within the framework of Ch. 242 of RF Criminal Code: the support of terrorist activities (Article 205.1), public calls for terrorist activities, the public justification of terrorism or the propaganda of terrorism (Article 205.2), the training to conduct terrorist activities (Article 205.3), the organization of a terrorist community and the participation in it (Article 205.4) and other articles.

We welcome the decision of the legislator to recognize the incitement to terrorist crimes, the arming or training of persons for their commission, the financing of terrorism (part 1 and 1.1 of the article 205.1), the complicity of a terrorist act, the organization of an illegal armed formation, especially qualified type of hostage taking (Part 3 of the Article 205.1), the organization of crimes under Art. 205, art. 205.3, part 3 and 4 of the Art. 206 and part 4 of the Art. 211 of RF Criminal Code, as well as the organization of terrorism financing (Part 4, Article 205.1) as independent compositions.

There is no doubt about a differentiated approach to responsibility for the crimes provided by Part 1 and Part 1.1 of the Art. 205.1 of RF Criminal Code, due to the different level of criminal act danger in which a perpetrator involves other persons. In our opinion, such a differentiation would be more logical and consistent if its criterion was one or another category of crimes in accordance with the provisions of the Art. 15 of RF Criminal Code. In our opinion, the attribution of a terrorist offense to the category of a particularly serious crime (Article 208, part 2 and 3 of the Article 211, Articles 277, 278, 279), to which a subject inclines, recruits, etc. should be recognized as a qualifying sign, and therefore to incur responsibility not according to Part 1, but according to Part 1.1 of the Art. 205.1 of RF Criminal Code.

The financing of terrorism is a more dangerous form of terrorist activity support than its incitement. In our opinion, this is due to the decision of the legislator to transfer this objective sign of the composition in Part 1.1 of the Art. 205.1 of RF Criminal Code. The financing of terrorism is a targeted, motivated, always active form of criminal behavior that infringes upon public safety, directed not only at financial or other material security of a person for the purpose of committing a terrorist crime, but also to organize the commission of such crimes, and also to ensure the activities of terrorist associations. Therefore, we believe that the proposals made in the literature on the criminalization of the responsibility for terrorism financing as an independent part of the crime "Financing of Terrorism" are quite substantiated (Medeshova *et al.*, 2016).

We share the position of the legislator who criminalized the act, when a person does not inform about the facts of the terrorist offense being prepared, committed or committed, which are known to him. The responsibility for this type of relation to the crime was provided for in Soviet criminal law, but was not implemented in modern legislation. The provisions of the sanction of the Art. 205.6, which determines the punishment for this crime, are quite justified.

On the contrary, the questions raised about the changes in the Art. 207 of RF Criminal Code, which regulates the responsibility for a knowingly false report of a terrorist act. Practice shows that this is one of the most common crimes of a terrorist nature. So, the RF courts of general jurisdiction considered the following number of cases under the art. 207 of RF Criminal Code followed by conviction: 546 in 2013, 613 in 2014, 562 in 2015, 745 in 2016, and 345 during the first half of 2017 (Тарбагаев and Москалев, 2017).

The current version provides a great differentiation of responsibility for such an act as compared with the previous one. A qualifying sign, in addition to major damage cause or the occurrence of other grave consequences, is the commission of an act in relation to social infrastructure objects, in order to destabilize the activities of government bodies, the consequences in the form of a person's death. Obviously, these circumstances serve as the objective indicators of public danger degree increase and should serve as the criterion for criminal responsibility differentiation. The following raises doubts: 1) the necessity to include hooligan motives as the only motive for committing such actions like a mandatory constructive sign of the subjective aspect of this crime basic composition; 2) the reasonableness of the change concerning the obligatory attribute of the subjective party of an especially qualified composition provided in Part 4, Art. 207 of RF Criminal Code. According to the current version of this article, the attitude of the perpetrator to grave consequences is characterized only by an exceptionally careless form of guilt.

In the literature, the issue of penalizing the training for the purpose of carrying out terrorist activities is also debatable. Of course, there is no doubt about the danger of such behavior. However, is the sanction of the Art. 205. 3 of RF Criminal Code justified from the point of view of criminal studies?

The principle of justice in criminal law is that the punishment and other measures of criminal-legal nature applied to the person who committed a crime must correspond, first of all, to the nature and the degree of crime public danger.

By the nature of danger, the crime provided in Art. 205.3 of RF Criminal Code, and the acts indicated in the dispositions of this norm, to which a perpetrator can be prepared, coincide. But the second criterion of public danger is its degree. And, in our opinion, it differs drastically in relation to the preparatory activities (the passage of training) and the completed crimes (hostage taking (Article 206 of RF Criminal Code), an act of international terrorism (Article 361 of RF Criminal Code), etc.).

At the same time, the main types of punishment in the sanction of the Art. 205.3 of RF Criminal Code are presented in the form of imprisonment: 15 - 20 years and life imprisonment. The sanctions of the basic composition of completed crimes, for example, Part 1 of the Art. 206 and part 1 of the Art. 211 of RF Criminal Code provides the imprisonment for a period of 5 - 10 years and 4 - 8 years. It is unlikely that this situation may indicate the observance of justice principle during the development of sanctions of the analyzed legal norms. According to the Judicial Department at the Supreme Court of the Russian Federation 11 people were sentenced in 2014-2017 under the Art. 205.3 of RF Criminal Code. The punishment actually imposed by the courts is represented by the following data: the imprisonment for 2-3 years is assigned to one convict, 3-5 years - to one convicted person, 5-8 years - to seven convicts and 10 - 15 years - to two convicts. Thus, in all cases, when a person was convicted for the training in order to carry out terrorist activities, the lower limit of the punishment imposed by the court is much lower than that stipulated by the Sanction of the Art. 205.3 of RF Criminal Code (Тарбагаев and Москалев, 2017).

The legislator's logic is not clear as he did not include a terrorist act in the list of crimes for the commission of which a guilty person is being trained, according to the Art. 205 of RF Criminal Code. And the legislator indicated the crimes provided in Art. 205.1 of RF Criminal Code. Since the inclusion of this article in RF Criminal Code, we think about a possible technical error during the development of the disposition for this norm.

A terrorist community and a terrorist organization are the most dangerous forms of terrorism manifestation (Gazeta, 2012). The danger of these crimes is determined by the creation of criminal associations to carry out terrorist activities and commit terrorist crimes. In our opinion, the decision of the legislator to include two sets of crimes in RF Criminal Code is conditioned by this: "The organization of a terrorist community and the participation therein" (Article 205.4 of RF Criminal Code) and "The organization of a terrorist organization activity and the participation in the activities of such an organization" (Art. 205.5 of RF Criminal Code). During the period from 2013 up to now, 1 person was convicted for the organization of the terrorist community and 3 persons were convicted for the participation in such an association. The Art. 205.5 of RF

Criminal Code is more effective from the point of view of law enforcement practice. 21 organizers and 110 participants of the organizations recognized as terrorist ones were convicted during its operation (Тарбагаев and Москалев, 2017). In our opinion, a significant role in an insufficient effectiveness of the Art. 205.4 of RF Criminal Code application is played by the legislative construction of the disposition in part 1 of this article, since it contradicts the provisions of Part 4, Art. 35 of RF Criminal Code to some extent, which defines the generic concept of a criminal community.

The analysis of judicial practice shows that the actions of the organizers and the participants of a terrorist association are often classified under the Art. 208 of RF Criminal Code, which provides for the responsibility for the organization or participation in an illegal armed group. So, in 2013-2017 RF courts convicted 40 organizers under the part 1 of this article, under the part 2 - 859 participants of such criminal associations (Тарбагаев and Москалев, 2017). This approach of the law enforcer is apparently based on the explanation of RF Supreme Court Plenum contained in the paragraph 23 of the Resolution No. 1 "On Some Issues of Judicial Practice in Criminal Cases on Terrorist Crimes" issued on 09.02.2012, from which it follows that "according to the Art. 208 of RF Criminal Code an illegal armed formation is an association, a detachment, a squad or other armed group established for the accomplishment of certain purposes (for example, for the commission of terrorist acts, the violent change of the constitutional order or the violation of Russian Federation integrity) (Solomon Jr, 2012). Such an interpretation of the objectives for the creation of an illegal armed formation after the inclusion of the Article 205.4 in RF Criminal Code in 2013 contradicts its content. We believe that the position of RF Supreme Court Plenum should be changed by making appropriate adjustments to the text of the mentioned resolution.

4. Conclusions

The results of this study allow us to draw the following conclusions.

The Federal Law "On Counteracting Terrorism" became the basis for the introduction of appropriate

1. Changes in the criminal legislation.
2. Since the financing of terrorism is a dangerous form of terrorist activity support, it is entirely justifiable to single out the "Terrorism Financing" crime composition as an independent one.
3. It is possible for the legislator to make a mistake during the development of the art. 205.3 of RF Criminal Code, who did not include a terrorist act provided in Art. 205 of RF Criminal Code in the list of crimes for the commission of which a guilty person is being trained.
4. A terrorist community and a terrorist organization are the most dangerous forms of terrorism manifestation, which is confirmed by the inclusion of the Art. 205.4 and the Art. 205.5 in RF Criminal Code.

5. Summary

The current legislation requires the introduction of appropriate adjustments by the legislator. In our opinion, the design of dispositions, as well as the sanctions of a number of provisions of the Special Part of RF Criminal Code, contradict the provisions of the articles of the General Part of RF Criminal Code to some extent. It is also worth noting that some of the norms of the Ch. 24 of RF Criminal Code are ineffective and almost not used by courts during the qualification of committed, which also tells us about the need to amend the criminal legislation.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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