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Terrorism as a Social and Legal Phenomenon

Abstract

This article examines the concept of terrorism as a social and legal phenomenon, its international legal and criminal-legal characteristics. Highlighted are the main aspects of cooperation of the states and the international community to counter terrorist activities. Terrorism as a social phenomenon is determined by paragraph 1 of article 3 of the Federal law of 06.03.2006 No. 35-FZ "On combating terrorism" according to which terrorism is understood under the ideology of violence and practice of influence on decision-making by public authorities, local self-government bodies or international organizations connected with frightening the population and (or) other forms of unlawful violent actions. Thus, terrorism is a social phenomenon that has many criminal legal forms of manifestation – specific elements of terrorist crimes.

Keywords: terrorism, states, combating terrorism, international law, criminal law

Introduction

In modern realities, terrorism represents a complex social phenomenon, which has long ago become a threat to security throughout the world. This is primarily associated with the fact that criminal activities, understood as "terrorism", are not only characterized by international public danger, but also have transnational parameters. The tendency toward increase in the frequency and scale of terrorist acts, beginning from the 2000-ies, has also been noted in the resolutions of the United Nations Security Council (UNSC).

At present, there is no universally recognized definition of the concepts of "terrorism" and "international terrorism", at the same time, the legal ground for combining various criminal encroachments into the category of terrorist encroachments lies in the fact that they are directed against the foundations of public security as one of the main components of the international legal order.

Doctrinal approaches to the terrorism-related issues

The analysis of the doctrinal approaches to the terrorism-related issues shows that there is also a "negative" approach to the problem of elaboration of a universal definition of terrorism, according to which the existence of a definition of terrorism is not a mandatory condition for counteraction of this phenomenon (Antonyan, 1998; Naumov et al., 2016; Keshner, 2015). For example, W. Laqueur (1997) believes that the term, which is overloaded with the meaning by its nature, does not lend itself to the efforts to elaborate a comprehensive and objective definition of terrorism. Besides, it can also be assumed that with the fixation of the definition of terrorism, this can affect the practice of the counter-terrorism measures implemented by the states in the light of interpretation of this term solely as a discretion of each

state independently, which offers various opportunities both for the unintentional violations of human rights by the state, and for the conscious abuse of the use of this concept.

The potential of international sanctions in counteracting terrorism was first fully and most consistently used by the UN Security Council in Resolution 1267 (1999), in accordance with which all the member states must define the corresponding individuals and entities and recommend them to be included in the regime list by the UN Security Council, in addition, taking into consideration the global nature of the threat that terrorist activities bring to the international peace and security, all the states must become obligatory participants in the implementation of sanctions regime of all the states.

Indeed, the absence of a universally accepted understanding of terrorism has not currently become an insurmountable obstacle in the international counter-terrorism struggle. Of great importance for the characteristics of crimes of terrorist orientation is Resolution 1368 of the UN Security Council (2001), which contains a list of the activities, which are to be prevented and which require the application of punishment for the perpetration thereof. The Security Council also calls all the states to bring to justice the perpetrators, organizers and sponsors of the terrorist attacks on the territories of these states (Resolution 1368, 2001) and to criminalize the deliberate provision or collection (by any means – directly or indirectly) of funds with the intentions to finance terrorism (Resolution 1373, 2001). However, it should be noted that it is the international treaties (universal and regional treaties), cooperation of the states within the framework of international organizations (Council of Europe, LAS, OAU, SCO (The Convention of the Shanghai cooperation organization against terrorism, 2009)), international conferences and associations that are not based on the international treaties (G20, Non-Alignment Movement) should be considered as classical forms of cooperation of the states in the light of struggle against terrorism. The Russian Federation is a party to most of them.

The Russian legislator has taken the path of implementation of the assumed international legal obligations by adopting (International Convention against the taking of hostages, 1979; International Convention for the suppression of terrorist bombings, 1997; Convention against transnational organized crime, 2004) the corresponding domestic regulatory legal acts (Federal law № 115-FZ, 2002; Federal law of 25 July 2002 № 114-FZ, 2002; Resolution 1566, 2004; The concept of counterterrorism in the Russian Federation, 2009; The decree of the President of the Russian Federation № 6, 2001; The presidential decree № 286, 2011). However, introduction of the mentioned changes is an example of mechanical implementation of the provisions of the international treaties.

This assumption is based on the fact that, from the perspective of the contents of the provisions of the international treaties, the obligations for the implementation of which are assumed by the state, one can speak of the category of the international treaties, agreements and decisions, which establishes rules of conduct in a specific sphere; in this respect, the international legal norms do not, as a rule, explicitly establish the rights and obligations of the participants in direct legal relationship, or, although they prescribe the perpetration of specific actions, they do not regulate the procedure for the implementation of these actions. In this case, the mentioned category of the provisions of the treaties and decisions is implemented through the

actions of public authorities of the state, for example, in the form of implementation of rights and obligations, and in this case, it represents a form of concretization of the set of facts of origin of the corresponding rights and obligations.

Terrorism as a social phenomenon

All dangerous and negative social phenomena objectively exist in reality, regardless of whether they have received legal regulation in the criminal legislation. This is precisely why a negative social phenomenon is always a primary one with respect to the criminal legal forms of its manifestation, which only arise provided that the corresponding constituent elements of a crime are fixed in the text of the criminal law.

As a social phenomenon, terrorism is defined by paragraph 1 of Article 3 of the Federal Law dated 06.03.2006 No 35-FZ "On Counteraction of Terrorism" (2002), in accordance with which terrorism shall mean the ideology of violence and the practice of influence on the taking of a decision by government authorities, local self-government authorities or international organizations, associated with the intimidation of the population and (or) other forms of unlawful acts of violence.

Terrorism, as a social phenomenon, should be distinguished from its specific criminal legal forms of manifestation: the constituent elements of a crime, provided for by Article 205 (Act of Terrorism), 205.1 (Contributing to Terrorist Activity), Article 205.2 (Public Calls for Perpetration of Terrorist Activity or Public Justification of Terrorism), Article 205.3 (Training for the Implementation of Terrorist Activities), 205.4 (Organizing a Terrorist Community and Participation in Such), Article 205.5 (Organizing Activities for a Terrorist Organization).

Consequently, terrorism represents a social and legal phenomenon, which has a plurality of criminal legal forms of its manifestation – separate constituent elements of crimes of terrorist orientation.

Unfortunately, the Russian legislator sometimes identifies social phenomena with their criminal and legal forms of manifestation. In the Russian criminal law, criminal responsibility for terrorism was introduced with a certain delay, on the basis of the Federal Law dated July 1, 1994, in accordance with which Article 213.4 was included in the Criminal Code of the Russian Federation. In Article 213.4 of the Criminal Code of the Russian Federation, terrorism is defined as the perpetration of an explosion, arson or other actions intimidating the population, and creating the threat of human death, infliction of significant property damage or the onset of other grave consequences (terrorism) for the purpose of violation of public security or influence on the making of a decision by government authorities. However, Article 213.4 of the Criminal Code of the Russian Federation actually does give a definition of terrorism as a social phenomenon, but as one of the criminal and legal forms of its manifestation (act of terrorism).

It appears that with this approach, the legislator has groundlessly identified terrorism, as a social phenomenon, with one of the criminal and legal forms of its manifestation. In point of fact, terrorism, as a social phenomenon, is not exhausted by the activity, provided for in Article 205.

In the current version of the Criminal Code of the Russian Federation, criminal responsibility is provided for in Article 205 of the Criminal Code of the Russian

Federation not for terrorism, but for act of terrorism, that is, for a separate criminal and legal form of manifestation of terrorism.

In our opinion, the main task of the legislator in the field of counteraction of terrorism is to detect various objectively existing forms of manifestation of terrorism and fix the attributes of these forms in the criminal law. In this respect, in the process of this activity, the legislator must take into consideration the requirements of the legislative technique and the principle of systemacity.

Unfortunately, a large number of constituent elements of crimes of terrorist orientation have been formulated in the General Part of the Criminal Code of the Russian Federation with serious deviations from the principle of systemacity. Sometimes the deviations from the principle of systemacity are caused by mechanical implementation of the provisions of the international treaties in the national criminal law. Thus, for example, in the international treaties, complicity in crimes of terrorist orientation is considered as an independent form of terrorist activity.

The legislator must design separate constituent elements of the crimes, the attributes of which reflect this social phenomenon. The constituent elements of the crimes of terrorist orientation represent the criminal and legal forms of manifestation of terrorism, each of which reflects a particular side of the mentioned phenomenon. It is only under the condition of compliance (systemacity and the rules of the legislative technique) with the mentioned requirements that a necessary prerequisite for the criminal and legal counteraction of terrorism will be created.

A successful struggle against any negative social phenomenon is only possible under the condition of clear definition of its boundaries. A concept shall mean a form of thinking, which reflects and fixes the essential attributes of things and phenomena of the objective reality.

Forming the concept of a particular phenomenon, which are inherent in this particular phenomenon and which make it possible to distinguish it from other phenomena. An effective struggle against the mentioned phenomenon is impossible without the detection of the essential attributes of terrorism, since the volume of criminalization of the crimes of terrorist orientation and the attributes of specific constituent elements of crimes depend on the approach to the understanding of terrorism.

According to the applicable legislation of the Russian Federation, the main attributes of terrorism as a social phenomenon are as follows:

1. The concept of terrorism covers both the ideology of violence, and the practice of its embodiment, associated with the acts of violence.
2. In terrorism, violence and intimidation of the population represent a means of achievement of a specific purpose – influencing the taking of decisions by government authorities and international organizations.

In our opinion, the lack of consensus on the issue of definition of terrorism is not associated with ethical or legal difficulties in the formulation of this concept, but, unfortunately, with the opportunistic and political approach to this problem. It appears that the concept of terrorism should be based on the two main attributes, which characterize the purpose and the means of terrorism as a social phenomenon. The purpose of terrorism is to influence the taking of decisions by government authorities and international organizations (to force the government authorities and

international organizations to perpetrate the acts or to refrain from the perpetration thereof). Unlawful acts of violence, which intimidate the population, constitute the means for achievement of the mentioned purpose.

In our opinion, it is precisely the unlawful means of violence that define the essence of terrorism as a dangerous and negative social phenomenon. Attention to this peculiarity was directed by I. A. Ilyin (1925), a Russian philosopher, who stated that the evil, generally speaking, is not at all limited to the "improper purpose"; improper means are equally characteristic of it.

The purpose of influencing the taking of decisions by government authorities and international organizations is in itself an ethically and socially neutral purpose. The influence on the taking of decisions by government authorities can only be considered as terrorism, which rests on the unlawful acts of violence intimidating the population.

The unlawful means of violence automatically form the unlawfulness of the purpose. This is precisely why it has been explicitly stated in the Council of Europe Convention on the Prevention of Terrorism (CETS N 196) that perpetration of crimes of terrorist orientation cannot be justified by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature. This approach is based on an immutable ethical canon, in accordance with which the end cannot justify the means.

Unfortunately, when implementing foreign policy, the states sometimes turn a blind eye to the means, which use particular forces in order to achieve the purpose. These forces begin to be considered "insurgent fighters", "fighters for self-determination", "fighters against dictatorial political regimes", etc. At the same time, the fact that these forces try to influence the taking of decisions by government authorities using unlawful acts of violence which intimidate the population.

Conclusion

In the achievement of their purpose, terrorists always use a human as a means, including such non-material benefits, belonging to the human, as life and health. In ethics, there is a compulsory requirement of the so-called categorical imperative, in accordance with which a human can always be considered as a purpose and can never be considered as a means. The ideology of terrorism always violates this requirement, considering the human life and health as a means of influence on the taking of decisions by government authorities.

In the case where we would approach the persons who perpetrate unlawful acts of violence, which intimidate the population on a case-by-case basis, depending on the nature of their purpose ("bad" or "good" influence on the taking of decisions by government authorities), we will inevitably have to take the position of ethical relativism, which presupposes the relativity of requirements of morality and justification of the means by the end. In our opinion, this is precisely why in the evaluation of a particular phenomenon as terrorism we should focus on the simultaneous presence of the two attributes: the purpose of influencing the taking of a decision by government authorities and international organizations, and the means of achievement of the mentioned purpose, associated with the unlawful acts of violence, which intimidate the population.

The simultaneous presence of these two attributes gives the grounds for recognizing the phenomenon as terrorism, regardless of the considerations the persons who influence the forced taking of decisions by government authorities are ruled by.

Consequently, terrorism, as a social and legal phenomenon, represents a complex and integrated concept, and the main task of the Russian legislator in the field of counteraction of terrorism is to detect various objectively existing forms of manifestation of terrorism and fix the attributes of these forms in the criminal law.

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