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Combating Terrorism on the Post-Soviet Territories: from Politics to Law

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Present article studies the actual questions of combating the acts of terror and the manifestations of terrorism. The author shortly presents the genesis of political legal prohibition on the terrorist acts in the countries of the post-Soviet territory starting from 50s of the last century.

Very informative is the data on the type, structure and activity of special services combatinf terrorism and the comparative legal analysis of the acts on amenability for different forms of that crime in various states are presented: Ukraine, Russian Federation, Latvia, as well as Poland, Bulgaria and some other. The author shares some critical views on too much differentiated approach of these countries to the question of the legal norms towards the terrorist acts. The difference of the attitudes of the legislators in various countries, mainly in Europe, is illustrated when trying to define the object of the crime analyzed and the object of criminal legal protection of the values which are being harmed or may be harmed in the course of an act of terror.

At the same time the present article shows the details of criminalization of terrorism by the representatives of parliamentarians in Middle Asia and Far East, especially in Kazakhstan, Kyrgyzstan and China.

Keywords: act of terror, juridical analysis, counter-terrorism

Just a couple dozen years ago, not mentioning the earlier periods of modern society, the negative phenomenon of terrorism reminded about its existence only in two thirds of the world, i.e. in the countries practicing capitalistic type of economic relations (Western Europe, the USA, Japan, Australia) and the regions of the “third world” with so called unstable economy (almost the whole Middle East, some territories of Southern and South-Eastern Asia, Central and Latin America, Africa). The remaining third — so called socialist group — due to the solid “iron curtain”, territorially, politically and economically isolating all the republics constituting it (Russian Soviet Federative Socialist Republic, Ukrainian Soviet Socialist Republic, Belorussian Soviet Socialist Republic, Moldavian Soviet Socialist Republic, Georgian Soviet Socialist Republic, Armenian Soviet Socialist Republic, Azerbaijan Soviet Socialist Republic, Latvian Soviet Socialist Republic, Lithuanian Soviet Socialist Republic, Estonian Soviet Socialist Republic, Kazakh Soviet Socialist Republic, Uzbek Soviet Socialist Republic, Tajik Soviet Socialist Republic, Turkmen Soviet Socialist Republic, Kirgiz Soviet Socialist Republic, People’s Republic of Poland, People’s Republic of Hungary, Socialist Republic of Czechoslovakia, People’s Republic of Bulgaria, Socialist People’s Republic of Albania, Socialist Federal Republic of Yugoslavia, Socialist Republic of Romania, German Democratic Republic, Socialist Republic of Vietnam, People’s Republic of China, Democratic People’s Republic of Korea, People’s Republic of Mongolia, Republic of Cuba) from any attempts of globalization, for a long time stayed in the shade of terrorist manifestations. Nobody talked or wrote about terrorism. It didn’t exist in the media, as well as for example, gangsterism. This is not surprising because in order to name a phenomenon which is highly socially dangerous (and that is what terrorism is a crime), there are two things required: presence of the phenomenon itself and its legal regulation. But the socialist camp didn’t tolerate either the first (ignoring, for example, existence of the well-known terrorist organization “Armenian Secret Army for the Liberation of Armenia”), or the other — as a result

of it (none of the criminal codes of the socialist countries established amenability for an act of terror). Mostly it was due to the political reasons. The Soviet government couldn't admit that in the USSR as well as in other countries of the same political colour there existed the inheritance of bourgeois and under-developed countries. It would have been self-discrediting.

On the other hand, the highest authorities were aware and highly worried about terrorism realizing its urgency. Due to this in 1946 by the decision of the Party elite a special secret group "T" was introduced into the structure of the Ministry of National Security (MNS), its main aim was defined as "battling terrorism". In 1954 after MNS was reorganized into KGB that department had become a part of the Fourth Department of the Committee, and later on, in 1960, was assigned to the Second Central directorate of KGB USSR. With the time passing the functions of terrorism battling were entrusted also to the Fifth department of the Fifth Central directorate KGB USSR which was eventually transformed into the independent Seventh that together with the Eleventh (which replaced the Second Central directorate) was engaged into antiterrorist activities till the collapse of the Soviet Union.

While the time was passing it appeared that their fears were not vain as some facts reminded about existence of terrorism on the territory of the USSR. Some of them were classified as secrets for understandable reasons (shooting of the demonstration in Arkhangelsk in 1955, firing at the motorcade with cosmonauts in 1968 next to Borovitsky Gates of Kremlin, hijacking of IL-14 plane in Leningrad in 1969). Some though were not classified (explosions in Sukhumi, Tbilisi and Kutaisi in 1972, explosion next to Lenin mausoleum by a suicidal terrorist in 1973, explosions in the streets and metro in Moscow in 1977).

A confirmation of the existence of terrorism on the territory of the USSR we could find in "Izvestia" newspaper which in 1989 published an interview with the Chief of KGB USSR V.A. Kruchkov where he mentioned that in 1970s and 80s the organs of State security discovered and neutralized more than 1500 people who had planned acts of terror.

The shift to the free market system between the former Soviet republics, withdrawal of the Baltic countries from the USSR and then the collapse of the USSR and the establishment of the CIS became the main reason of massive spreading of terrorism on the territory of the post-Soviet republics. The acts of terrorism gradually swept across Transnistria, Northern Caucasus and Krasnodar region, and once the Russian-Chechen war started they began to appear in other places which seemed to be much more secure.

Realizing the gravity and also topicality of global terrorist intentions and trying to battle terrorism effectively, the states of the former Soviet Union began an active work on developing measures aimed at combating this manifestation of mass violence. Toward this end the legislator of the post-Soviet countries started adopting corresponding legal acts on combating terrorism owing to which certain lawful norms were gradually introduced into the criminal codes of these countries, which provide serious sanctions for committing acts of terror.

Let us try to illustrate the evolution of the antiterrorist legislation by the example of criminal laws some of the former Soviet republics. So the Criminal Code adopted in 1994 by the Republic of Uzbekistan (that was the first new Criminal Code on the territory of the former Soviet Union) among all the other positions had article No 155 "Terrorism". In the Criminal Code of the Russian Federation the question of criminal

liability for terrorism was legislatively solved in 1996 when art. 205 was added to the Special part. In 1997 the articles about combating terrorism appeared in the Criminal Codes of the Republic of Kyrgyzstan (226) and the Republic of Kazakhstan (233). And in 1998 Latvian legislators imposed a ban on terrorism by adopting article 88 into the Criminal Code of the Republic of Latvia. Then in 1999 antiterrorist criminal legal "baton" was taken by the Republic of Belarus and the Republic of Azerbaijan. Although, when the Azerbaijan legislator went the traditional way defining terrorism as a crime in article No 214, his colleague in Belarus chose another way of criminal legal valuation of the phenomenon discussed completely different from all other post-Soviet countries by differentiating it for 4 independent acts. So, in the Criminal Code of Belarus there were four norms of antiterrorist nature: art. 124 "Act of terror against a representative of a foreign country", art. 126 "International terrorism", art. 359 "Act of terror" and art. 289 "Terrorism".

With time the antiterrorist ideas were adopted also by the legislators of Estonia and Ukraine who introduced new Criminal Codes in 2001. The result of legislative work in Estonian was, for example, the establishment in art. 237 CC amenability for terrorism. The result of the Ukrainian legislators' work was introduction into the Criminal Code art. 258 "Act of terror" in 2001 and then later, in 2006, there appeared 4 more supplementing articles of antiterrorist nature, i.e. art. 285-1 "Involving into committing an act of terror", art. 258-2 "Public appeals to commit acts of terror, art. 258-3 "Establishment of a terrorist group or a terrorist organization" and art. 258-4 "Assistance in committing an act of terror". And the last among the countries of the post Soviet territory was Moldova in solving the question of criminalizing terrorism, whose legislators in article 278 adopted a corresponding criminal ban only in 2002.

At the beginning of 90s criminal legal measures aimed at combating terrorism were realized also in the Criminal codes of some Balkan republics, for example the acts introducing criminal amenability for terrorism appeared in CC of the Republic of Albania, CC of the Republic of Croatia and others.

Legal antiterrorist prohibition was introduced into CC of the Republic of Poland, CC of the Republic of Bulgaria, CC of the People's Republic of China. However, the legislators of these countries approached criminalization of terrorism in a different way, namely by criminal legal norms, establishing amenability for some acts which are close in their criminal legal nature to terrorism (sabotage, murder in a socially dangerous way and so on) or are among those happening in case of acts of terror (organization of explosions, arsons and so on). And we should also keep in mind that both the Republic of Poland and the Republic of Bulgaria signed and then ratified the European convention of 21 January 1977 on combating terrorism (Poland signed 1995, ratified 1996, Bulgaria — 1997 and 1998) which came into legal force imposing certain political responsibilities in establishing amenability for terrorism in particular.

To sum up the above, we can clearly see a difference between Soviet and post-Soviet periods of antiterrorist policies. If in the socialist times the Criminal law of the USSR was biased and because of this the facts of terrorism were treated quite artificially, as something ephemeral, transforming its juridical essence in some other socially dangerous acts, then in post-Soviet times terrorist activity was revealed to the most from a legal point of view and therefore was examined owing to which corresponding criminal acts aimed at combating it started appearing.

It is important to remember that with the help of such laws the states got an opportunity not only to realize an active criminal prosecution of the subjects guilty of terrorism

but also to study forms and ways of acts of terror, define the reasons and conditions contributing to committing crimes of terror, scrutiny the participants of that activity, rightly define the tendencies and scales of terrorist expansion, prevent certain social groups from it, solve questions of using the effective measures of influence on persons depending on their role in committing an act of terror.

However, as a comparative analysis of the legal norms of some Criminal Codes of the post-Soviet republics shows that even the adoption of corresponding norms on amenability for terrorism will not solve all the problems of terrorism in the Criminal law. One of such problems, it seems, is the problem of defining an object of an act of terror. Some can possibly say that this not a problem at all as it doesn't concern the strictly theoretical aspects of the question, however, we have got a different opinion about it. As a famous philosophical saying states: Theory without practice is dry, and practice without theory is blind.

So what is the essence of it? Studying the particular parts of the Criminal codes of some post-Soviet countries where the articles on criminal amenability for terrorism are located allowed us to specify 3 main social values, i.e. "public security", "peace and security of the mankind" and "state" which are considered to be crucial in defining the object of the encroachment by the legislators of republics.

The supporters of the opinion that it is public security as an independent value that is the object of the terrorism are the legislators of the Republic of Azerbaijan (Section X "Crimes against public security...", the Republic of Moldova (Section XII "Crimes against public security"), the Republic of Kazakhstan (Part 9 "Crimes against public security"), the Republic of Ukraine (section IX "Crimes against public security"), the Republic of Kyrgyzstan and the Russian Federation (in Criminal Codes of both countries it is part 24 "Crimes against public security").

The legislator of the Republic of Uzbekistan claimed peace and security of the mankind as the object of terrorism in part VIII "Crimes against peace and security of the mankind". And his Latvian colleague is certain that it is the state that is the one being harmed or in danger to be harmed in case of terrorism, and that is why in the Criminal Code of the Republic of Latvia the articles on terrorism is located in part X "Crimes against the state".

And in the end we would like to illustrate the Belorussian approach to solving the problem of the object of the crimes of the terrorist nature. Acting in advance, we would note that in the Criminal Code of the Republic of Belarus all three social values are taken into consideration as the key constituents of the objects of the encroachment. So, an act described in art. 289 "Terrorism" is defined as a crime against public security (part 27). "Act of terror" is related to the acts encroaching upon the state in art. 359. And finally the ones which can harm or create a danger of harm to peace and security for the mankind are "Act of terror against a representative of a foreign country" and "International terrorism" the amenability for which is established in the articles 124 and 126 correspondingly.

It is obvious that the legal approaches to solving the problem of defining an object of the encroachment are not simple at all. It is quite hard to see the real reasons of such a differentiation. In our opinion, the present situation owes it to several circumstances: political regime, underdeveloped legal aspect, influence of criminal legal doctrine of the neighbouring countries, particular features and frequency of the acts committed in a specific region, national susceptibility to the international laws and some others.

Whether this position is justified the time will show. One thing stays obvious: lack of a unified approach to the legal combat against terrorism and criminal legal substitution of its essence by adjacent or concomitant phenomena may in the end reveal an artificial or, what's worse, ephemeral effect.

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Abstracts

Niniejszy artykuł został poświęcony aktualnym zagadnieniom przeciwdziałania aktom terrorystycznym i przejawom terroryzmu. Autor w zwięzłej formie przedstawił genezę polityczno-prawnego zwalczania przejawów terroryzmu w państwach przestrzeni postsowieckiej, poczynwszy od lat 50. poprzedniego wieku, aż do terażniejszości.

W artykule w przystępny sposób zaprezentowano dane na temat rodzajów, struktury i działalności służb specjalnych zajmujących się zwalczaniem terroryzmu. Przedstawiono także porównawczo-prawną analizę przepisów dotyczących odpowiedzialności za różne sposoby popełnienia danego rodzaju przestępstwa w kodeksach karnych państw postsowieckich, w tym Ukrainy, Federacji Rosyjskiej, Republiki Łotewskiej, a także takich państw jak Rzeczpospolita Polska, Republika Bułgaria i niektóre inne. Autor prezentuje także krytyczne uwagi dotyczące zbyt różnicowanego między państwowe podejścia do zagadnienia oceny prawnej przeciwdziałania przejawom terroryzmu. Artykuł ilustruje różnice w zamysłach ustawodawczych różnych państwach, przeważnie w europejskiej części kontynentu na temat podmiotu omawianego przestępstwa i podmiotu karno-prawnej ochrony tych wartości, które doznają uszczerbku lub są narażone na wyrządzenie szkody podczas aktu terrorystycznego.

Jednocześnie, w niniejszym artykule wskazano również sposoby kryminalizacji aktem terrorystycznym przedstawicieli parlamentów państw Środkowej i Południowej Azji, w szczególności Republiki Kazachstan, Republiki Kirgiskiej i Chińskiej Republiki Narodowej.

Настоящая статья посвящена актуальным вопросам противодействия террористическим актам и проявлениям терроризма. Автор в сжатом представил генезис политико-правового запрета террористическим проявлениям в государствах на постсоветском пространстве, начиная с 50-х годов прошлого века, и до настоящего времени.

Очень информативно поданы данные о типах, структуре и деятельности специальных служб по борьбе с терроризмом, а также осуществлен сравнительно-правовой анализ норм об ответственности за различные проявления этого преступления в уголовных кодексах ряда постсоветских государств, в том числе Украины, Российской Федерации, Латвийской Республики, а также таких государств как Республика Польша, Республика Болгария и некоторые другие. Изложены критические замечания по поводу слишком дифференцированного межгосударственного подхода к вопросу правовой оценки противодействия террористическим проявлениям. Проиллюстрирована разница законодательной мысли различных государств, преимущественно европейской части материка в отношении к объекту рассматриваемого преступления и объекту уголовно-правовой охраны тех ценностей, которые претерпевают вред или ставятся под угрозу причинения вреда при актах терроризма.

В то же время, в настоящей статье показаны и способы криминализации террористическим актом представителей парламентов государств Средней и Южной Азии, в частности Республики Казахстан, Кыргызской Республики, Китайской Народной Республики.