

HARMONIZATION OF LEGISLATION FIGHTING AGAINST INTERNATIONAL TERRORISM

KOVAČEVIĆ MILAN

Faculty for Education of the Executives, Novi Sad, Serbia

milank777@gmail.com

Abstract: *Terrorism is a planned act of violence or threats of violence undertaken by certain social groups in order to influence social and political life, and aimed to conquer or preserve power. It is therefore incumbent on the challenge and threat of terrorism swiftly responded by the international community, including the United Nations, European Union and the Council of Europe. Implementation of their resolutions, decisions and conventions required the updating of substantive criminal law in many countries, Serbia and forthcoming legislative changes in this regard. Such harmonizing regulations at the global, regional and national level tend to basic goal - to criminalize terrorist activity uniformly and comprehensively. Nevertheless, media effects and the number of victims of terrorism in practice are not reduced, indicating the need for constant review of legislative protection from terrorism, in order to comprehensively analyze the potential problems and critical evaluations.*

Keywords: *International law, crime, terrorism, legislative protection, the European Union, Council of the Republic of Serbia*

1. INTRODUCTION

The phenomenon of ideological, ethnic and religious terrorism until the beginning of the twentieth century was sporadic and primarily focused on reaching effects on the national level. It was only recently given an international dimension, in the period after the end of the so-called, Cold War developed into the most serious threat to international collective security system established after World War II under the United Nations.

In response to current challenges and the threat of terrorism there are also significant activities that are directed to the prevention and fight against this evil, not only at national but also at the bilateral, regional and global levels. The result of these efforts are many and strong measures in the field of prevention and repression of terrorism in the diplomatic, police and intelligence and legislative domain.

This time we will deal with such activities of the international community, with special emphasis on recent documents, which they have contributed to the reform of criminal legislation in the Western Balkans. These are Council Framework Decision of the European Union on the fight against terrorism (Council Framework Decision on Combating

Terrorism, 2002/475/JHA) of 13 June 2002, as amended in 2008, and the Council of Europe Convention on the Prevention of Terrorism (Council of Europe Convention on the Prevention of Terrorism CETS No. 196) of 16 May 2005.

2. LEGISLATIVE PROTECTION OF TERRORISM AT A MULTINATIONAL LEVEL

Assassinations, kidnappings and other forms of terrorism, as well as means for their prevention and control, for decades are the subject of the international community, not only worldwide organization (the League of Nations or United Nations), but of the regional organizations (European Union, Council of Europe, etc.). Specifically, there were several attempts to terrorism, because of the great social danger, declared an international crime, to provide regular extraditing and prosecuting terrorists.

League of Nations in 1937, brought the Convention on the Prevention and Suppression of Terrorism, and U.S. efforts in 1972, and 1977, for the United Nations to take the initiative to conclude a single international agreement on combating terrorist activities, which acceded to all countries, are not produced expected results. On the other hand, the United Nations in the period to 11 September 2001, passed 34 resolutions, 46 reports, seven papers prepared by the *ad hoc* Committee, the Secretary General's report 5 and 18 other documents containing 118 instruments relating to international terrorism [6].

In addition, up to the end of 2005, passed the 13 universally accepted "instruments" (conventions and protocols to the Convention), which is basically limited to the suppression of certain forms of terrorism (hijacking an aircraft, air sabotage, hostage taking, crimes against internationally protected persons, unlawful acts against navigation safety, terrorist attacks with bombs, etc.), and the prevention of terrorist financing.

Requirements to efficient global action against terrorism or influenced the strengthening and expansion of the organizational structure of the United Nations. Thus, Resolution 1373 established a new body - the Committee for the fight against terrorism (*Counter-Terrorism Committee, CTC*), composed of representatives of member states of the Security Council. The main task of the Committee on behalf of UN-led collective action of combating international terrorism, Member States are obliged, in accordance with established policies, report on progress in meeting the requirements contained in the mentioned resolution. In addition, a number of international governmental and nongovernmental organizations and bodies in the system of the Organization United Nations, meanwhile, are involved in preventing and combating international terrorism, some of which are specialized for it - for example, the Department for Combating Terrorism at the UN, and for some it is just an incidental activity - for example, "The Hague" [4].

However, the most successful in terms of legislative defense against terrorism was at the regional level. Thus, in 1977, 17 of the 19 states of the then members of the Council of Europe adopted the European Convention for the Suppression of Terrorism (the exceptions were Ireland and Malta), while a similar convention of the Organization of American States has been ratified by 13 member states. Great importance is given to the OSCE Paris Charter for a New Europe adopted in 1990, Concluding Statement of the Ministerial Council of the North Atlantic Council on 6 December 2001. and especially the statement concerning the NATO response to terrorism, a statement of the Council of Euro-Atlantic Partnership in response to the terrorist attacks in New York and Washington issued 12th September 2001, Bucharest Declaration and Decision on Combating Terrorism and the Bucharest Plan of Action to combat terrorism, the OSCE (December 2001) et al.

However, after the terrorist attacks on New York and Washington on 11 September 2001, and numerous terrorist attacks that have since followed in the UK, Russia, Spain and other European countries and the world, it is certain that terrorism (especially international) is not suppressed. Therefore, the United States and leading European countries, but also many countries in transition, was forced to step up the legislative aspect of the fight against terrorism and international level. Reacted vigorously and the international community, especially the UN Security Council, and then the appropriate mechanisms of the European Union [2].

3. FRAMEWORK DECISION OF THE EUROPEAN UNION ON THE FIGHT AGAINST TERRORISM

In the context of deterrence, prosecution and punishment of terrorists, it is especially characteristic of the Council Framework Decision of the European Union on combating terrorism of 13 June 2002, as amended, that were taken 2008, Framework Decision has thirteen members, and as for the reform of criminal legislation of individual countries within the EU and beyond, most have 1 to 3. Specifically, Article 1 Framework Decision defines terrorism, and to a unique area for the entire EU. Article 2 of this decision defines a terrorist group, while Article 3 determines the crimes that are by nature closely related to terrorism. Council Framework Decision of the European Union on the fight against terrorism is basically based on changes in national criminal legislation. The essence of this effort was the need for harmonization of minimum standards defining elements of a terrorist offense and minimum standards of its sanctions. It should be noted that at the time of adoption of the Framework Decision (first half of 2002) only France, Germany, Italy, Portugal, Spain and the United Kingdom and other disposal of the legal regulations that specifically criminalizes terrorist offense.

The starting point in defining the minimum standards is, in fact, the provisions of national criminal law. The first element of the crime of terrorism to certain incriminating acts to the national legislation and the way they are defined. These were physical aggression, which may cause death of a person, an attack on physical integrity, kidnapping and hostage taking, damaging government and public buildings, transportation systems, infrastructure facilities, including information systems, fixed platforms in the epi-continental area, public places or private property that may endanger human life or cause great economic losses; seizure of aircraft, ships or other means of transport or goods, manufacture, possession, acquisition, transport or use of weapons, explosives or nuclear, biological or chemical weapons, as well as research and development of biological and chemical weapons, the release of hazardous substances, or causing fires, floods or explosions which endanger human life, disruption or interruption of water supply, electricity or other basic natural resources that endangers human life, a threat to commit any of these works.

Another important element is the intention. Member States undertake to work as a criminal terrorist incriminate any of the aforementioned acts committed with intent to cause serious injury to a State or international organization, aiming to intimidate a population, forcing the state government or international organization to perform any act or to destroy the political, constitutional, economic or social order of the State or international organization. Member States are also obliged to criminalize the acts associated with terrorist activities, as well as encouraging, aiding, preparation and attempts of terrorist acts. The draft decision is criminalized and conspiracy to commit criminal acts.

In terms of the Framework Decision of the Council of the European Union on the fight against terrorism, a terrorist group is considered a group of three or more persons that is permanently organized to carry out terrorist acts. On the other hand, the organized group cannot be considered as a group that was not created for the execution of pre-set goal, but for now a criminal offense, whose members have certain tasks, not its permanent members, or do not have a developed structure. Punishable acts as managing a terrorist group and participate actively in its activities. Participation is considered and providing information and resources and any funding if it was known that it would help the criminal activities of terrorist groups [2]. Thus, within the terrorist group distinction is made between the entities responsible for the terrorist group and participants in the activities of terrorist groups.

As the crimes that are associated with terrorism, in terms of the Framework Decision of the Council of the European Union on the fight against terrorism, are grand larceny, forgery, extortion, public provocation to commit terrorist acts, recruitment for terrorism and training for terrorism.

Public provocation to commit a terrorist offense involves distribution or otherwise making available messages for the public, with intent to commit a criminal offense to encourage terrorism, regardless of whether the crime is committed or not. Recruitment for terrorism means the search for other persons to perform an action referred to in Article 1 Framework Decision. Training for terrorism means providing instruction in the development or use of explosives, firearms or other weapons or noxious and hazardous substances, or in other specific methods or techniques in order to commit one of the acts enumerated in Article 1. Framework decisions, knowing that these skills are for this purpose [3].

4. COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM

Council of Europe Convention on the Prevention of Terrorism adopted in Warsaw on 16 May 2005, and entered into force on 1 June 2007. It is intended to strengthen the efforts of Member States of the Council of Europe in the prevention of terrorism, and to the criminalization of public provocation, recruitment and training for terrorism. An additional objective of the Convention was intended to strengthen prevention measures at the national and international level, through the modification of existing rules on extradition and mutual assistance in criminal matters. To implement the national legislation of the Council of Europe member states are of special interest provisions of Articles 5 and 7, concerning the obligation of States Parties to regulate the aforementioned incriminations.

Thus, public provocation to commit a terrorist offense is defined as the distribution, or otherwise making available, in order to incite the commission of a terrorist offense, where such conduct, regardless of whether there is present or not directly advocating for criminal terrorist offenses, causes a danger that one or more such offenses may be committed. Each party shall adopt such measures as may be necessary to establish public provocation to commit terrorist offenses as a criminal offense under national law if done intentionally and unlawfully.

Recruitment for terrorism lies in solicit another person to commit a criminal act of terrorism or participate in the commission of such offense, or to join an association or group, in order to contribute to the association or group commits one or more terrorist acts. Recruitment can be done in different ways and by different means, e.g. over the Internet or directly stepping into contact with people. In order for a criminal offense was finished enough to successfully complete the recruitment, and it is not essential that recruiters participate in the commission of terrorist acts. It is possible to attempt this crime, if the action taken but recruitment is not

complete (for example, the offender is not convinced the person to be recruited). The Convention requires that the perpetrator of an intent that the person he or she recruits make or contribute to the criminal act of terrorism or to join an organization or group for this purpose [3].

Training for terrorism is defined as giving directions for the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, in order to carry out or contributing to the commission of a terrorist offense, knowing that the skills which teaches a person to be used for this purpose.

The Convention contains no definition of weapons, explosives, noxious or hazardous substances. These terms are defined in accordance with existing international agreements and national legislation. Thus, for example, the term "explosive" can be defined in accordance with the International Convention for the Suppression of Terrorist Bombings (International Convention for the Suppression of Terrorist Bombings).

According to Article 1 paragraph 3 of this Convention, explosive or other lethal device means an explosive or incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial property damage, or a weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial property damage drop, dissemination or action of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive materials [3].

5. RESUME

Council Framework Decision of the European Union on the fight against terrorism and the Council of Europe Convention on the Prevention of Terrorism as the result of efforts to treat the phenomenon of terrorism in Europe unifies. Therefore, these international instruments have contributed to the amendment of the criminal legislation of some countries of Western Europe (Germany, Italy, and Spain) and the Western Balkans (Montenegro, Croatia, Bosnia). They are also the basis for the forthcoming reform of the criminal legislation of the Republic of Serbia in the fight against terrorism, ahead in the 2012.

Namely, it is envisaged that with the art. 312 and 319 of Penal Code add articles 312a and 312b, which defined new crimes, such as public incitement to terrorism, recruitment and training for terrorism. In addition, Article 391 of Criminal Code is deleted, which provides for the criminal act of international terrorism, because the act is fully included in the revised (single) a terrorist offense from Article 312. This is to fulfill the obligations arising from membership of the Republic of Serbia to the Council of Europe, as well as the requirements of European Union accession process and acquiring a candidate status for EU membership, i.e. harmonize the national criminal legislation with the revised text of the Framework Decision of the Council of the European Union on combating terrorism and relevant United Nations documents.

Without going into this particular solution, we remind the attitude theorists [4], the impact of criminal law on the results of anti-terrorist campaign, however limited and conditioned by various factors. The opposition to this type of crime can be successful only if the direct perpetrators of crimes and their accomplices, instigators and accomplices effectively detect and prosecute. Thus, as with other forms of crime, and here are the perpetrators of more colors than the penalty of arrest - no matter how strict and efficient pronounced is. It must also be borne in mind that, unlike most other prisoners, terrorists continues ongoing work within facilities to serve the sentence, even when it comes to special correctional institutions (so-called super-prisons, etc.). This indicates the need for appropriate intervention and law on execution of criminal sanctions as an integral part of the criminal law in general.

REFERENCES

- [1] Gregory, F. (2003), The EUs role in the war on terror, *Janes Intelligence Review*, London, No. 1, pp.
- [2] Knežević-Predić, V. (2002), Okvirna odluka Saveta o borbi protiv terorizma, *Evropsko zakonodavstvo*, Beograd, br. 1, str.13-15.
- [3] Kolarić, D. (2011), Krivično delo terorizma – uporednopravni aspekti, *NBP --- journal of criminalistics and law*, Belgrade, No. 2, pp. 57-76.
- [4] Milošević, M. (2002), Terorizam i njegova inkriminacija u nacionalnom i međunarodnom pravu, *Zbornik Fakulteta civilne odbrane*, Beograd, str. 35-48.
- [5] Stojanović, Z. (2010), *Komentar Krivičnog zakonika*, Podgorica: Misija OSCE u Crnoj Gori.
- [6] Žarin, I. (2004), Ujedinjene nacije i međunarodni terorizam", *Međunarodna politika*, br. 1114 -1115, str. 48-50.