

FORCED COMPLICITY AS A CIRCUMSTANCE EXCLUDING THE CRIME OF FINANCING TERRORISM

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ABSTRACT

The financing of terrorism is an international crime. In recent years, Russia has stepped up its interdisciplinary research on countering the financing of terrorism. The main purpose of this article is to define the limits of criminal liability for the facilitation of terrorist activities in the form of financing of terrorism; evidence of the possibility of fixing the forced complicity in the form of financing of terrorism as a circumstance precluding the crime of the act. The objectives of this article were: a comparative analysis of anti-terrorist terms and definitions, identifying the content of the financing of terrorism on the basis of a functional approach. The financing of terrorism is a form of facilitating terrorist activities; a separate form of complicity and incitement. There are conditions under which such aiding and abetting is compulsory. For example, the ransom of hostages or the financing of the return of a relative from the territory of another state, if such relative is a member of a terrorist organization. It is proposed to recognize such an act as an independent circumstance excluding the crime of the act. Circumstances forced complicity and incitement-a set of conditions under which human behavior is aimed at achieving a positive goal-to provide financial assistance in the release of the hostage (a member of a terrorist organization). A person is forced to cause harm, as provided for in Art. 205.1 of the Criminal Code. Such harm is considered socially appropriate (permissible) or socially acceptable, and such coercive actions aimed at achieving a socially useful purpose are not a crime, taking into account the observance of the conditions of their legality financing of terrorism, ransom, hostage - taking, forced complicity.

Keywords: financing of terrorism, ransom, hostage - taking, forced complicity

INTRODUCTION

Over the past five years, the number of convicts for crimes of a terrorist nature increased 1.5 times - to 590 (convicted in 2017) in Russia, according to the Supreme Court of Russia. Russian federation registered 1,871 crimes of a terrorist orientation in 2017.

Expanding of the financial base of terrorism contributes to the escalation of regional conflicts and the expansion of not only the economic but also the social base of terrorism, as well as the proliferation of weapons of mass destruction, which is increasingly used in inter-ethnic and inter-confessional conflicts [1]. Financing terrorism is a global phenomenon that not only threatens the

security of member States, but can also undermine economic development and the stability of financial ratings[2].

The International Convention for the Suppression of the Financing of Terrorism condemning this evil was adopted by UN General Assembly resolution 54/109 of 9 December 1999. [3]

According to the current Criminal Code of Russian Federation the financing of terrorism is qualified as the facilitation of terrorist activities (Part 2, Article 205.1 of the Criminal Code). The financing of terrorism in the Criminal Code of the Russian Federation is understood as the provision or collection of funds or the provision of financial services having the knowledge that they are intended to finance the organization, preparation or commission of at least one of the crimes provided for in Articles 205, 205.1, 205.2, 205.3, 205.4, 205.5, 206, 208, 211, 220, 221, 277, 278, 279 and 360 of the Criminal Code of the Russian Federation, or for the financing or other material support of a person for the purpose of committing at least one of these crimes, or to provide an organized group, an illegal armed formation, criminal community (criminal organization), which are established or being established to carry out at least one of these crimes.

«There are two aspects to the mental element of the financing of terrorism as defined in the Convention. First, the act must be done willfully. Second, the perpetrator must have had either the intention that the funds be used to finance terrorist acts, or the knowledge that the funds would be used for such purposes. In this second aspect, intent and knowledge are alternative elements. The Convention does not provide further information on these two aspects of the mental element, and therefore they are to be applied in accordance with the general criminal law of each state party»[4].

Thus, the financing of terrorism represents a form of assistance to terrorist activities, a separate (special) [5] kind (type) of aiding. Not only a review of judicial practice, but also scientists focus their research either on sources [6] of terrorist financing [7], or on what terrorists spend money [8] and attacks themselves [9].

In the present article, I will raise the issue of the limits of criminal responsibility for the facilitation of terrorist activities in the form of financing of an organized group, an illegal armed group, a criminal association (criminal organization) which are established to carry out terrorist activities. In particular, I want to justify the general hypothesis about the allocation of the institution of forced financing of terrorism in the criminal law and the recognition of such cases as a circumstance that excludes the crime of the act and, accordingly the exclusion of any criminal prosecution.

Citizens of different countries are among the terrorist organizations, , especially in IS (“Islamic State”, formerly IGIL which is recognized in Russia as a terrorist organization whose activities are banned by the decision of the Supreme Court of the Russian Federation on December 29, 2014), and unfortunately the number of Russian citizens who are inclined to radicalism and have joined this

terrorist organization is not being reduced [10]. Criminal groups keep ordinary citizens as hostages.

Definition of terrorist-hostage taking. The notion of hostage-taking was widely debated during the process leading to the adoption of the International Convention against the Taking of Hostages. The outcome of discussions on the concept was captured in article 1 of the Convention, which reads: Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (“hostage-taking”) within the meaning of this Convention[11].

For example, sea pirates do not kill hostages. Their goal is a ransom [12].

Concerns about the increased role ransoms play in funding terrorism have led to calls for a universal policy banning ransom payments to terrorists. In June 2013, the G8 leaders issued a communiqué in which they recognized that ransom payments to terrorists helps to strengthen the organization and fund future incidents of kidnapping for ransom [13].

The reasonable question is raised: should a ransom be paid in order to save the life of a kidnapped person, or such payments are the financing of terrorism and the encouragement of new kidnapping?

Indeed, American hostages have suffered disproportionately bad outcomes compared to other Western hostages [14]. In this connection, the statement of the administration of the White House which assured the families of the American hostages that they will not be threatened with harassment for complicity of terrorism if they pay a ransom to the IG to help their relatives is illustrative. Such a statement was made after the fact that relatives of the murdered American journalist James Foley who was IG prisoner said that government officials threatened them with criminal prosecution in case they try to collect and pay the required IG ransom for him.

Thus, despite a general ban on the financing of terrorism the US authorities allow families of American hostages who are captured abroad to pay a ransom for their release. The administration of the US President made a statement on this case that there will be no formal change in legislation. This fact allows to consider that the providing of money or other material support to terrorist organizations as a crime. However, it was underlined that the Ministry of Justice had never held anyone liable for ransom and that this would continue. [15]

The second case of financing terrorism which is considered in the article is the provision of financial assistance to a terrorist organization as an attempt to return a relative from the territory of another state where he is a member of this terrorist organization.

NORDSCI CONFERENCE

I will give an example of a case that was considered by Russian law enforcement agencies on February 1, 2017 of Shamil Nurmagedov who was brought to criminal liability under Part 1 of Art. 205.1 of the Criminal Code for the transfer of funds and other material assistance to a member of armed groups, that was considered as facilitation of terrorist activities by financing. He tried to turn back from IG of his brother - Marat, transferred money to him for that purpose and bought two air tickets intended for the departure of his brother from Syria.

The investigation considered these transactions as financing of terrorist activities.

The history of this case is as follows. The brother of the accused went to Syria in 2013 and his family tried to return him home. The Office of the Federal Security Service failed to achieve a positive result.

Thus, both the ransom of the hostages from terrorists and the release of relatives from a terrorist organization in the considered cases are forced actions of persons who are relatives of a hostage (member of a criminal organization). It means that the damage to the financing of terrorism, as in the case of circumstances precluding the criminality of the act “is caused in special circumstances, is forced”.

It should be noted that the characteristics of necessity (force) is peculiar to circumstances precluding the crime of the act which is provided for by Chapter 8 of the Criminal Code of the Russian Federation, and, above all this applies to extreme necessity, when a person is objectively forced to finance terrorists. From the view of criminally-legal qualification the considered acts do not fall under Art. 39 of the Criminal Code of the Russian Federation because there is no irreducibility of the consequences and a choice of means for persons who are providing financial assistance is always remain. A relative, a person close to the one who is in “captivity”, cannot fully take into account the state efforts (sometimes very weak) for his release, not being able to make rational decisions, based on special feelings and emotional stress towards the latter, and guided by emotions and feelings of deep compassion for his relative, seeking to free him from prolonged suffering in ways that seem most acceptable to the relative. In the present case of “forced complicity in the form of financing a terrorist organization” (hereinafter - forced aiding) this need is related to the understanding of the person who carries out such financing of the objective reality as a set of circumstances that characterize: 1) a real threat to their relative from the terrorists; 2) efficiency of financing as the most effective and quick way to return the victim; 3) absence of immediate prospects for the return of the victim with the passive behavior of his other relatives and law enforcement bodies; 4) a heightened sense of justice against the backdrop of calls from society and the state to fight terrorism as a phenomenon by any means in his country.

In view of this conclusion and the US practice of excluding of criminal prosecution in such cases, I propose the forced complicity in the financing of terrorism to be attributed to an independent kind of circumstances which are

provided for by Chapter 8 of the Criminal Code of the Russian Federation excluding the crime of the acts.

I would like to highlight the elements of forced complicity, which are inherent in the circumstances which are stipulated in Chapter 8 of the Criminal Code of the Russian Federation, excluding the criminality of the act: 1) acts of human behavior carried out in the form of action or inaction under certain conditions; 2) these actions or inaction are outwardly similar to those of socially dangerous acts prohibited by criminal law; 3) the legislator must recognize these actions as legitimate, aimed at ensuring of protected interests or achieving socially useful goals.

Although such behavior causes harm, which is usually of forced nature, its social significance is expressed in that it brings substantial benefit to the vital interests of the individual - it really contributes to its salvation (liberation).

I propose to recognize such assistance to terrorist activity by financing, which obviously will not correspond to the original purpose of such actions - the proportionality of the amount of the ransom or the amount of money paid to the expenses for the release of a person from a terrorist organization as the exceed of the limits of forced complicity.

CONCLUSION

This article defines the limits of criminal liability for the facilitation of terrorist activities in the form of financing of terrorism; evidence of the possibility of fixing the forced complicity in the form of financing of terrorism as a circumstance precluding the crime of the act. I propose to refer forced complicity in the field of combating the financing of terrorism to the independent institution of the General Part of the Criminal Code of the Russian Federation – as circumstances precluding the crime of the act. Such circumstances exclude all elements of a crime provided for by the criminal law such as public danger, criminal wrongfulness, guiltiness and penalty.

I will formulate the theoretical concept of the circumstances of forced complicity (forced financing of terrorism) as the set of conditions under which a person with his behavior aimed at achieving a positive goal - financial assistance to the release of a hostage (possibly a relative) - a member of a terrorist organization, necessarily causes harm as per Art. 205.1 of the Criminal Code of the Russian Federation, which, in the presence of certain circumstances, is recognized as socially expedient (admissible) or socially acceptable, and such forced actions aimed at achieving a socially useful goal are not a crime, subject to compliance with the conditions for their legitimacy.

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