CRIMINAL ASPECTS OF TERRORISM AND CORRUPTION NOT ONLY FROM HISTORICAL POINT OF VIEW IN SLOVAKIA

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ABSTRACT

In the east and central Europe exist one serious problem – the fight against corruption. Corruption is spread in all parts of society. It causes that almost all citizens of these regions have already had experiences with concrete and not official but essential payments in diverse fields.

Nowadays has been arisen new challenge for national legislation - fight against terrorism. Terrorism has taken on new importance for most people since the attacks on the World Trade Center in New York and the Pentagon in the suburbs of Washington, D.C., on 11 September 2001. In three daring attacks using airliners (as well as a fourth that failed when passengers forced the plane to crash land), terrorists took ten times more lives than they had in any previous incident in the U.S. and did so in a manner so audacious that it shocked virtually everyone around the world.

Keywords: corruption, terrorism, transnational crime, law and order, terrorist attack, legislation.

INTRODUCTION

The January 2015 terrorist attacks in the headquarters of the satirical magazine Charlie Hebdo and in a kosher supermarket in Paris, in which the gunmen killed 17 victims in total, and the March attack in the Bardo museum in Tunisia, with the death toll at 21 and dozens wounded, including many foreign tourists, together with the many like killings and other terrorists' attacks in Europe and elsewhere have revived the interest in means of legal protection against terrorism. It appears that the phenomenon of terrorism is not limited by the boundaries of national states, nor by time and means. It crosses borders and gains transnational dimensions. Hence the term "international" or "transnational terrorism". It appears that international terrorism is an example of transnational crime in our times; it is a global problem and a threat to humanity. It presents one of the most serious attacks on democracy and the rule of law, the values shared by all members of the European Union. [1]

Corruption can occur on different scales. There is corruption that occurs as small favours between a small number of people (petty corruption), corruption that affects the government on a large scale (grand corruption), and corruption

that is so prevalent that it is part of the every day structure of society, including corruption as one of the symptoms of organized crime (systemic corruption).

Petty corruption occurs at a smaller scale and within established social frameworks and governing norms. Examples include the exchange of small improper gifts or use of personal connections to obtain favours. This form of corruption is particularly common in developing countries and where public servants are significantly underpaid.

Grand corruption is defined as corruption occurring at the highest levels of government in a way that requires significant subversion of the political, legal and economic systems. Such corruption is commonly found in countries with authoritarian or dictatorial governments but also in those without adequate policing of corruption.

Systemic corruption (or endemic corruption) is corruption which is primarily due to the weaknesses of an organization or process. It can be contrasted with individual officials or agents who act corruptly within the system.

Factors which encourage systemic corruption include conflicting incentives, discretionary powers; monopolistic powers; lack of transparency; low pay; and a culture of impunity. Specific acts of corruption include "bribery, extortion, and embezzlement" in a system where "corruption becomes the rule rather than the exception.". Scholars distinguish between centralized and decentralized systemic corruption, depending on which level of state or government corruption takes place; in countries such as the Post-Soviet states both types occur“ [2].

Legal regulation of terrorism in the territory of the Slovak Republic

The fact that there has not been an incident of terrorism in the Slovak Republic, either from within or from abroad, so far, does not relieve the country from the responsibility to combat it. The Slovak Republic bears responsibility both, towards its own citizens, to whom it guarantees security within the country, and towards other countries, to which it guarantees that neither its territory nor its inhabitants would be misused for a terrorist cause, or, even more seriously, would break the law by actively supporting terrorist causes.

The state must possess effective legal tools for combating terrorism in both, substantive criminal law (criminalization of terrorist acts and their punishment, crime prevention) and procedural criminal law (means enabling detection, investigation and proof of terrorist acts in criminal proceedings) The legal tools must be understood as only a part of the whole counter-terrorism legislation.

Slovak criminal legislation does not provide a definition of terrorism, yet the Criminal Code (Act № 300/2005 Coll.) recognizes two key offences for the punishment of terrorist acts – „terrorism and some forms of participation on terrorism” [3] (Section 419) and „terror” [4] (Section 313).

Although the term itself is questionable, or, rather, more difficult do delineate, it is nevertheless absolutely necessary to define it in the law in order to comply with the maxim nullum crimen sine lege as a basis for criminal responsibility. The

exact definition is also required from the international, as well as European perspective, in support of international cooperation in combating terrorism.

The Slovak legislation (Section 129 Subsection 5 of the Slovak Criminal Code) contains a definition of the terrorist group. The mentioned provision of the Slovak Criminal Code defines a terrorist group as a structured group of at least three people that exists in a certain period of time for the purpose of committing an offence of terror or an offence of terrorism (Section 129 Subsection 5 of the Slovak Criminal Code).

This definition in the Slovak Criminal Code wholly corresponds with the definition of terrorist group in the Council Framework Decision 2002/475 on Combating Terrorism, which defines "terrorist group" as "a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences." Structured group" shall mean a group that is not randomly formed for the immediate commission an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure (Article 2 Section 1 of the Decision).

Suggestion de lege ferenda for some amendments

The Section 297 of the Slovak Criminal Code also defines the criminal offence Establishment, formation and support of a terrorist group (Czech Criminal law doesn´t contain this offence) which also criminalize membership in, participation in or providing support to such groups. Some reports criticized that criminalization of training for terrorism because "it is unclear whether national law criminalises the provision of training in cases in which no terrorist offence has been committed or attempted" [5].

It is important to note in this context that the Slovak Criminal Code also contains definitions of "terrorist group" (Section 129 Subsection 5),"activity for terrorist group" (Section 129 Subsection 6) and"supporting terrorist group" (Section 129 Subsection 7). Hence participation in a terrorist offence is not criminalized on the basis on general provisions covering various forms of participation, but as a specific mode of the offence of terrorism and some other forms of participation in terrorism in Section 419 Subsection 2 of the Slovak Criminal Code.

Introduction to the problematic of corruption in Slovakia

In Slovakia until the adoption of the single Criminal Code no. 86/1950 Coll. applied the Criminal Code on felonies and misdemeanours (Act. no. XXXIII/1896). It differentiated corruption in the form of active and passive bribery. These subject matters were defined in §§ 465 to 470. Offense of accepting a bribe could be committed by a public official. The Penal Code also defined specific people (entities) accepted a bribe, both with regard to their position in society they were punished by heavier penalties. Such entities were:

- Judges (in connection with accepting a bribe in a criminal or civil case decided illegally);

- Investigating magistrates;

- The officers conducting the auction (in connection with the adoption of a bribe acted illegally and their actions have caused damage in excess of five thousand gold coins).

Bribery was an offense committed by the person who gave a gift or a promise of such rewards. If a person gave a bribe to judge, to investigating magistrate or to a member of a jury he was punished by a higher criminal rate (up to five years and a fine up to two thousand gold coins).

Corruption legislation after 1961 to the current period.

In January 1/1962 came into force Criminal Code – Act no.140/1961 Coll. From the present point of view we can evaluate the original legislation as a step forward because the legislature was trying minimize strong ideological philosophy (also due to changes in society) but it still was a socialist Criminal Code (for instance in terms of the arrangement of the various heads of the Special Part of the Criminal Code). Corruption offenses were incorporated into 3.Title of the Criminal Code under name „bribery".

The law distinguishes three forms of the following offenses :

- Passive bribery (§ 160),

- Active bribery (§ 161),

- Indirect corruption (§ 162).

Definitions of various forms of these crimes law were derived from the previous Criminal Code but the type and level of penalties were slightly changed.

Offenses of accepting a bribe or active bribery were possible to commit only in connection with the things of general interest. This concept was further refined by the law and judicial decisions. In the seventies and eighties of the last century the legal practice recognized the seriousness of these offenses. For example problems were seen in incomplete explanations and circumstances warranting the determination of the nature and amount of the damage caused by the criminal acts of bribery.

Important change was the pass of Act no. 102/1995 Coll, which canceled the elements of the crime of active bribery (§ 161 of the Criminal Code) and the provision of effective regret. The government justified its proposal, inter alia, by deleting the aforementioned subject matter will increase the detection subject matter of passive bribe. At the time of the adoption this law a lot of voices of both professional as well as the general public that did not agree with the view to delete the above mentioned provision of the Criminal Code. Legislator finally agreed

with the opinion of government and § 161 and § 163 of the Criminal Code was canceled. The detection of corruption offenses began to stagnate and decline.

In January 28/1999 came into force law no.10/1999 Coll. This law again introduced elements of the crime of active bribery and provision of effective regret. The third section of the Criminal Code was renamed from bribery to the corruption. This was based on the theoretical - methodological point of view that the concept of corruption is wider than bribery.

The amendment further tried to capture all the requirements of international conventions and instruments, including the OECD, the Council of Europe and the EU, which are binding in Slovak republic. Subject matter were expanded forms of action: give, promise to accept a bribe and vice versa, ask a promise to give a bribe all directly or through an intermediary. The new provision was § 160b, § 161b to criminalize bribery of foreign public officials in international trade and § 160c, § 161c to criminalize bribery of foreign parliamentarians, judges and officials of international, multinational governmental organizations. In these cases, it is sufficient that bribery occurs in the exercise of their functions, although not violated its obligations.

OECD Working Group for combating corruption (CIME) recommended modify the subject matter in Criminal Code so that corruption in the Criminal Code will be rated as "more serious" offense. The new Criminal Code (Act no. 300/2005 Coll. as amended, hereinafter „CC“) was achieved this aim.

Criminal Procedure also allows that the agent (§117) could "provoke" (initiative to guide public officials/foreign public officials to commit corruption offenses, if it can be reasonably assumed that the offender would commit such an offense).

Thus we can see that the Criminal Code has been done a big changes regarding punishing corruption in a historical context.

Corruption during the elections

As it was already mentioned the offense of electoral corruption was introduced into the Criminal Code with Act no. 262/2011 (§336a of the CC) Coll. The electoral corruption is defined as be giving, offering or promising a bribe for the voter which will vote a certain way. Exist a fine line between what is and what is not a bribe. Offering souvenirs such as pens or reflective tape with the logo of a political party is not consedered as the electoral corruption. Corruption during the elections is therefore only such offering or provision of a variety of gifts, food or any other benefits, which involve a requirement of certain conduct during elections.The form in which such a requirement should be expressed is not statutory. Such a requirement can thus be expressed in words, leaflets , promotional materials, billboards, signs, posters etc. The electoral corruption is also in direct conflict with the principle of secret ballot.

"Match-fixing"

So far in Slovakia "match-fixing" (the manipulation of results of sports competitions) has been deemed a form of corrupt behaviour, namely accepting of bribe, provided for in Section 329 CC (1), which reads:

- "A person who, in connection with the procurement of a matter of general interest, accepts, requests or causes any other person to promise a bribe for himself or for any other person, directly or through an agent, shall be punished with a term of imprisonment from three years to eight years",
- as well as the provision of Section 333 CC whose Paragraph 1 reads: "A person who, in connection with the procurement of a matter of general interest, gives, offers or promises a bribe to any other person, or for that reason gives, offers or promises a bribe to any other person, directly or through an agent, shall be punished with a term of imprisonment from six months to three years."

Once again has the more extensive judicature in the Czech Republic has shown us in Slovakia that for instance, football is considered a "matter of general interest". Of course, football with its history, background and popularity enjoys such a "status", however, this needn´t hold for all sports. According to the explanatory memorandum on the new statutory instrument, such a vague perception of the sport as a subject of general interest would make the investigation into respective criminal activity in terms of any other sport more difficult (or even impossible), which is practically a correct conclusion. Anyway, as regards the activity of prosecution authorities or, as the case may be, investigation, a large amount of other matters/circumstances making the investigation significantly complicated occurs... Also for the reason mentioned the definition of corruption in the area of sports has been specified.

It remains to be said that, in terms of Europe, Slovakia is in the forefront as far as the strictness of the lengths of punishment is concerned, and we haven´t been different even in this case. Corruption in sport is linked with substantially stricter, direct or indirect, sanctions for commission (contrary to "ordinary corruption"). It´s the fact that the amendment results in the unification of the range of punishments for giving or accepting bribes in connection with the manipulation of results of sports competitions that may be considered intriguing and reasonable. The reason for such a statutory instrument is the specificity of sports environment and particularly the impossibility of measuring the amount of damage caused by criminal activity. This fact draws attention mainly to the commission of criminal activity by persons directly involved in sports events, namely sports officials, as well as to the aspects of organized criminal activity, which occur very often in practice.

As a rule, an athlete is not the person initiating unlawful action in manipulating a sports competition (match). In the majority of cases, he or she is the addressee of the offer. The person initiating unlawful action usually manipulates more than just one match.

The authors of the definition of the new crime noticed that the outcome of established legal assessment under the provision of Sections 329 and 333 CC was a paradox according to which the person initiating the manipulation (briber) could be punished with a term of imprisonment from six months to three years, i.e. basic range of punishment. On the other hand, the athlete as bribe recipient could be punished, pursuant to basic range of punishment, with a term of imprisonment from three years to eight years. That´s why the proposed wording tried to cope with this paradox by introducing basic range of punishment from one year to five years for both of the parties, i.e. briber as well as bribe recipient.

We will see how corruption in sport will or, as the case may be, will not be spreading in Slovakia after the adoption of the new crime.

CONCLUSION

Terrorist attacks, which occurred in January 2015 in Paris, as well as other terrorist activities in Europe and elsewhere, have revived the interest in means of legal protection against terrorism. It appears that international terrorism is an example of transnational crime in our times; it is a global problem and a threat to humanity. It presents one of the most serious attacks on democracy and the rule of law, the values shared by all members o the European Union.

Corruption offenses (in Slovakia) are placed in the eighth head of the Special Part of the Criminal Code - Offences against public order matters. In corruption cases but also in other cases, for example environmental damage shows that it is necessary to have criminal liability not only for the individual workers (statutory bodies) but also for the organization. We also need a lot of alternative punishments for instance prohibition of certain activities. We may say that the long-term pressure exerted by the OECD Working Party is the primary cause for adoption of the new act on criminal liability of legal entities in Slovakia, and it is probable that without the pressure by OECD the act on criminal liability of legal entities wouldn´t have been adopted in Slovakia at all.

In corruption activities which affect the public officials as beneficial in the world seems the test of integrity, which is practically used in U.S, UK and consists of lifelong control of assets (the asset increase over time) among the relevant employees and their related parties.

The introduction of offense of the electoral bribery in the Criminal Code is a step in the right direction because it ensures the freedom of elections and equality of individual candidates in elections. Difficulties during the proving before the court we can seen in particular difficulties in filling of the characters of the subject matter. In my view we can not apply the provisions of § 336a/1 letters a) to d) on the conduct "of who has the right to vote ...". It is importantly to interpreted this article along with the lines intention of the offender (as an intentional offense) - to achieve the desired behavior selector (which according to § 336a/1 is protected).

In terms of penalties and their species it is important to realize that the penalties for corrupt behavior could not be too low because then the police and the bodies active in criminal procedure thinks that corruption is not a serious crime. On the other side, very strict penalties are not acceptable due to their refusal by society.

REFERENCES

[1] This article was written in connection with resolving the scientific research project VEGA of the Ministry of Education, Science, Research and Sport of the Slovak Republic and Slovak Academy of Sciences No. 1/0082/18 titled "Criminal law aspects of fight against terrorism."

[2] Legvold, Robert (2009). "Corruption, the Criminalized State, and Post-Soviet Transitions". In Robert I. Rotberg. Corruption, global security, and world orde. Brookings Institution. p. 197.

[3] The facts of the offense are as follows:

(1)Who

a) with an intent to seriously intimidate inhabitants, seriously destabilize or defeat constitutional, political, economical or social establishment of the state or a structure of an international organisation, or to coerce a government of the state or an international organisation to act or to omit to act, threats by commitment or commit an offence endangering the life, health of people, their personal freedom or a property, or illegally produces, gets, owns, possesses, transports, delivers or in another way uses explosives, nuclear, biological or chemical weapons, or performs not permitted research and development of such weapons or weapons prohibited by law or by an international treaty,

b) with the intent to cause death or serious bodily harm or considerable damage on property or environment possesses radioactive material, or has or creates nuclear explosive machine or a machine diffusing radioactive material or emanating radiance, which may due to its radiological features cause death, serious bodily harm or serious damage on property or environment, or

c) with the intent to cause death or serious bodily harm or considerable damage on property or environment, or to coerce natural person or legal person, international organisation or state to act or omit to act, uses radioactive material or nuclear explosive system or a system diffusing radioactive material or emanating radiance which may cause death due to its radiological features, or serious bodily harm or considerable damage on property or on environment, or uses or damages a nuclear reactor including reactors installed on floats, vehicles, planes or cosmic objects, used as an energy source for driving such floats, vehicles, planes or cosmic objects, or for other purposes, or premises or traffic system used for production, storage, processing or transport of radioactive material in a manner which releases or may release radioactive material, or threats by such act in circumstances indicating credibility of the threat, or

d) asks for radioactive material, nuclear explosive system or system diffusing radioactive material or emanating radiance which may due to its radiological features cause death, serious bodily harm or considerable damage on property or environment, or a nuclear reactor including reactors installed on floats, vehicles,

planes or cosmic objects used as an energy source for driving such floats, vehicles, planes or cosmic objects or for other purposes, or premises or traffic system used for production, storage, processing or transport of radioactive material, with threats in circumstances indicating credibility of the threats or use of power, shall be imposed an imprisonment sentence for 20 to 25 years or life imprisonment.

(2)The same sanction as in the paragraph 1 shall be imposed to the person who

a) collects or provides financial or other means, personally or through another person, even partially, for the purposes of their use or allowing their use for commitment of the act listed in paragraph 1,

b) provides knowledge of methods or techniques for production and using of explosives, nuclear, biological or chemical weapons or other similarly maleficent or dangerous stuffs for the purposes of commitment of the act listed in paragraph 1 or attempts for such act or participates on such act,

c) publicly incites to commit the act listed in paragraph 1 in a manner defending or exonerate commitment of such act in case of its commitment, and herewith causes a danger of its commitment or participates in it,

d) asks another person to commit or participate in committing the act listed in paragraph 1 or attempts to ask or participate in the attempt, or

e) plans to commit the act listed in the paragraph 1 with the intent to commit or enable its commitment.

(3)The life imprisonment shall be imposed on the offender if s/he commits the act listed in the paragraph 1

a) and gives rise a serious bodily harm to more persons or death of more persons,

b) on a protected person,

c) towards armed forces or armed corps,

d) as a member of a dangerous grouping, or

e) during a crisis situation.

(4)The life imprisonment shall be imposed to the offender if s/he commits the act listed in the paragraph 2 letter a) and herewith facilitates using the financial or other sources collected or provided by him, for committing the attempt of the offence listed in the paragraph 1, or s/he personally uses them in such manner, or commits the act listed in the paragraph 2 letter d) and herewith allows commitment or attempt of the act listed in the paragraph 1.

[4] Any person who, with the intention of harming the constitutional system of the Slovak Republic, intentionally kills or makes an attempt at killing another person shall be liable to a term of imprisonment of twenty to twenty-five years or to life imprisonment.

[5] Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/919/JHA amending Framework Decision 2002/475/JHA on Combating Terrorism [Electronic resource]. – Access mode: http://ec.europa.eu/dgs/homeaffairs/elibrary/documents/policies/crisis-and-terrorism/general/docs/report_on_the_implementation_of_cfd_2008-919-jha_and_cfd_2002-475jha_on_combating_terrorism_en.pdf.