

TERRORISM IN THE SLOVAK CRIMINAL CODE WITH FOCUS ON PROPOSAL AMENDMENT

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ABSTRACT

Terrorism currently represents one of the most serious problems. Many countries introduce measures combating terrorism on a national and transnational level. The Slovak Republic is no exception in this regard and as one of the members of the European Union it is also obliged to execute the transposition of the Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31 March 2017) (hereinafter as the "Directive") and full implementation of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism dated 22 October 2015 (CETS 217) (hereinafter as the "Convention") into its legislation. The author focuses in her article on the analysis of the proposed amendment to the Act No. 300/2005 Coll., the Criminal Code, as amended (hereinafter as the "Amendment"), which shall transpose the Directive and implement the Convention into Slovak legislation. The Amendment represents a major intervention in the Slovak legislation combating terrorism, since it proposes to transform the original element of the criminal offence of terrorism and some forms of participation on terrorism into two individual criminal offences, whereas at the same time it introduces two new elements of criminal offences penalizing specifically financing of terrorism and traveling for the purpose of terrorism. The criminal offence of financing of terrorism draws in part from the objective part of the element of criminal offence of terrorism and some forms of participation on terrorism, which it amends and renews on basis of initiatives from practice. The criminal offence of traveling for the purpose of terrorism and its implementation was required due to the seriousness of the threat which represents to the society committing some of the criminal offence of terrorism and mainly the need to stop the flow of foreign terrorists. The legislator therefore criminalized such acts. The author in end evaluates the potential impact of the mentioned changes to the practice and critically evaluates its positives and negatives, whereas she partially deals with the already adopted the so-called antiterrorist pack by the Act No. 444/2015 Coll., which amends the Act No. 300/2005 Coll., the Criminal Code as amended and which amends certain acts.

Keywords: terrorism; Slovak criminal law; criminal offence of financing of terrorism; criminal offence of terrorism; criminal offence of traveling for the purpose of terrorism.

INTRODUCTION

Terrorism represents an area of criminal law that is currently experiencing an unprecedented development. Thanks to the constantly evolving means of committing this unlawful act, criminal law has to promptly respond to its new forms. The Slovak legislature has recently dealt with the area of criminal law on terrorism several times. The last adopted amendment concerned the introduction of the so-called anti-terrorist package. In practice, it has been the amendment of several criminal law provisions aimed at the area of terrorism, which strengthened the competences of the police, the Slovak Information Service and other services related to the terrorist threat. This proposal entered into force on 1 January 2016 by the Act No. 444/2015 Coll., amending the Act No. 300/2005 Coll., the Criminal Code as amended and amending certain acts. Its substance was to define directly in the Act No. 300/2005 Coll., the Criminal Code as amended (the "Criminal Code") the criminal offences of terrorism in the provisions of Section 140b. With this exhaustive list, the legislator made it possible to regulate the issue of terrorism in the Act No. 301/2005 Coll., the Criminal Procedure Code (the "Criminal Procedure Code") where for criminal offences of terrorism [2] he made possible to designate the witness testimony in cases of criminal offences of terrorism as non-repeatable acts, if it can be tampered with or become difficult during criminal proceedings. Also the scope of the Specialized Criminal Court as well as the Special Prosecution Office for criminal offences of terrorism have been extended. However, the most significant change may be in the provisions on detention of persons which also affected the constitutional dimensions of the said institute as defined in Article 17 (3) of Act No. 460/1992 Coll., the Constitution of the Slovak Republic, as amended ("the Constitution"). Specifically, for criminal offences of terrorism, the detention period was set up to a record number of 96 hours from the detention. The original legislation allowed for a person to be detained up to 48 hours after the detention. Therefore, dual periods were introduced for the institute, whereas the period of 96 hours shall apply in cases of criminal offences of terrorism, while for other criminal offences the period is 48 hours. In the following text we are dealing with a new proposal from the works of the Slovak legislation regulating the issue of terrorism in the area of criminal law.

1. The proposal act in the area of terrorism in general

Currently, the legislator has in the legislative process, namely at the stage of evaluation of the inter-ministerial comment procedure, a proposal amending and supplementing the Act No. 300/2005 Coll., the Criminal Code as amended, and amending certain acts. The proposal shall fully transpose the Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, the Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings and the Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision

2005/671/JHA and the full implementation of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism dated 22 October 2015 into the legislation of the Slovak Republic. It is important to note that this is a proposal which shall comprehensively deal in the Slovak criminal law with the issue of terrorism that has been absent, since all the international obligations of the Slovak Republic for terrorism are being taken into account only now [3]. In order to transpose the aforementioned directives and the additional protocol, the legislator chose the method of amendment (proposal act) of existing legislation, namely the Criminal Code, the Criminal Procedure Code and the Act No. 91/2016 Coll., on the criminal liability of legal entities and on amendment of certain acts, as amended by the Act No. 316/2016 Coll. This choice of the legislator can be viewed as positive, because if he chose to execute the transposition of the said directives and the additional protocol by adopting a special law, it would cause considerable chaos in already rather unclear Slovak criminal law.

2. Changes in the Slovak criminal law provisions on terrorism

The most prominent change proposed by the amendment could be the abolition of the so-far the main criminal offence affecting terrorism in the Slovak legislation, namely the criminal offence of terrorism and some forms of participation on terrorism under Section 419 of the Criminal Code. This criminal offence shall be replaced according to the amendment by two separate criminal offences which will deal individually with the terrorist attack as such and some forms of participation on terrorism. In practice therefore, the division of an existing criminal offence into two separate criminal offences occurs, which shall derive their content - the constituent element from the original criminal offence, whereas the legislator according to the general part of the explanatory memorandum to this draft act stated that "*in this context he took into account the problems of application practice, international obligations of the Slovak Republic and the opinions of the professional public.*"[4] The main constituent element can be considered from the point of view of content the criminal offence of a terrorist attack pursuant to Section 419 of the Criminal Code, which constitutes the starting point for the criminal offence of some forms of participation on terrorism under Section 419b of the Criminal Code, the criminal offence of financing terrorism pursuant to Section 419c of the Criminal Code and the criminal offence of traveling for the purpose of terrorism pursuant to Section 419d of the Criminal Code. The starting designation for the criminal offence of a terrorist attack pursuant to Section 419 of the Criminal Code in relation to the other mentioned criminal offences of terrorism results from the definition of objective in its basic constituent element which also applies to other criminal offences of terrorism. This objective is "*to harm the constitutional system or defensibility of the state, disrupt or destroy the basic political, economic or social structure of the state or an international organization, to seriously intimidate the population or to force a government or other public authority or international organization to do anything, omit doing or endure anything being done*" (the "terrorist intent"[5] The stated objective can be considered as the main differentiating feature of the criminal offence of terrorism from other criminal offences. The first newly

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adopted criminal offence is the criminal offence of a terrorist attack pursuant to Section 419 of the Criminal Code. Its constituent elements read as follows:

"(1) Who intends to harm the constitutional system or defensibility of the state, disrupt or destroy the basic political, economic or social structure of the state or international organization, seriously intimidate the population or force a government or other public authority or international organization to do anything, omit doing or endure anything being done a) threatens to commit or commits an attack threatening the life or health of a person or his personal freedom; b) destroys, disables or damages public facilities, transport or telecommunication systems, including information system, a fixed platform on continental shelf, energy, water, medical or other important facility, public space or property; c) disrupts, disables or interrupts the supply of water, electricity, or other essential natural resource in order to endanger people to the risk of death or serious injury to the health or endanger the property of others to major damage; d) takes over an aircraft, ship, other means of transport of persons or goods or a fixed platform on a continental shelf, or takes control over such means of transportation or fixed platform or destroys or seriously damages the navigation device or interferes with its operation or communicates false information which threatens the life or health of people, the safety of such means of transportation or endanger the property of others to major damage; e) requires, manufactures, obtains, stores, holds, holds, imports, exports, transports, ships, supplies or otherwise uses an explosive, nuclear material, firearm, nuclear, biological, chemical or other weapon, military device or material of similar nature or does research and development of a nuclear, biological, chemical or other weapon or military device or explosive; or; f) endangers people at risk of death or serious injury to the health or property of other people to the risk of major damage by causing fire or flood or harmful effects of explosives, gas, electricity or other similar dangerous substances or forces or commits a similarly dangerous act, or such danger increases or hinders its aversion or mitigation, shall be punished by imprisonment for twenty to twenty-five years or by imprisonment for life.

(2) The offender shall be punished by punishment imprisonment for life if he commits the criminal offence referred to in paragraph 1 a) and causes serious injury to several persons or the death of several persons; b) on a protected person; c) against armed forces or armed departments; d) as a member of a dangerous group; or e) in a crisis situation." [6]

The criminal offence of a terrorist attack consists of two constituent elements, whereas in paragraph 1 of Section 419 of the Criminal Code basic constituent element is expressed and in paragraph 2 of Section 419 of the Criminal Code the qualifying constituent element. The legislator besides the specification of the objective used also in other criminal offences of terrorism also included the first part of the original constituent element of the criminal offence of terrorism and some forms of participation on terrorism pursuant to Section 419 of the Criminal Code. The object of this criminal offence is to prevent terrorist attacks. The legislator defined the objective aspect of the constituent element of the criminal offence by fulfilling the terrorist intent committed by one of the exhaustively listed

methods stipulated in points a) to f) of Section 419 (1) of the Criminal Code. Exhaustively listed ways of committing of the criminal offence include not only a threat (result of threat) but also a disturbing result. Under the result of threat can be classified the letter a), under which the offender threatens to commit an attack on life, health or personal freedom. Under the disturbing result of the exhaustively listed ways of committing may be include letters a) to f), where the harmful (disturbing) effect of a criminal offence in the form of committing an act which endangers life or health has already occurred; the destruction, disabling or damage to public facilities; disruption, disabling or interruption of the supply of the essential natural resource (water, electricity etc.); takes over an aircraft, ship or other means of transportation; manufactures, handles or requires an explosive, nuclear material, nuclear, biological, chemical or other weapon; puts people at risk of death or serious injury to health etc. From a subjective constituent element, it is an intentional criminal, specifically a direct intention expressed by the phrase "intends to". The subject is a general subject, i.e. a person at the time of committing the criminal offence is sane and older than 14 years.

The second new criminal offence is the criminal offence of some forms of participation on terrorism pursuant Section 419b of the Criminal Code. It consists of two basic constituent elements, which read as follows:

"(1) Whoever publicly encourages the commission of any of the criminal offences of terrorism in a way which defends or justifies the commission of such an act and causes the danger of committing it, shall be punished by imprisonment for three to ten years.

(2) Who a) acquires knowledge of methods or techniques or acquires skills for the manufacture or use of explosives, firearms, nuclear, biological or chemical weapons or other similar harmful or dangerous substances for the purpose of committing any of the criminal offences of terrorism; b) provides knowledge of methods or techniques for the manufacture or use of explosives, firearms, nuclear, biological or chemical weapons or other similar harmful or dangerous substances for the purpose of committing any of the criminal offences of terrorism; c) requests another person to commit or participate in committing one of the criminal offences of terrorism, shall be liable to a term of imprisonment of between seven and fifteen years" [7].

This criminal offence does not involve a direct terrorist attack as is in the case of the criminal offence of a terrorist attack pursuant to Section 419 of the Criminal Code, but a certain connection is visible, because in some participations (co-operation) on terrorism it is about the forms that usually precede the terrorist attack. The legislator chose the path of two separate basic constituent elements in which he divided the various forms. In the first constituent element of the criminal offence he deals with the incitement to terrorism, whereas it must be a public [8] incitement pursuant to the provision of Section 122 (2) of the Criminal Code. The second constituent element is dealing with the so-called "preparation" for the commission of a terrorist attack consisting in the acquisition and provision of knowledge for the production of various weapons and in the request of another

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for committing or participating in the commission of terrorism. The object of this criminal offence is to prevent individual forms of participation on terrorism for protection against terrorism. The subjective constituent element consists of intentional fault. The subject is a general subject. It is important to point out that the legislator has taken into account while imposing the criminal penalty the fact that in this criminal offence, it often can only be a verbal attack in the form of incitement or approval, but also considered the seriousness of creating the danger of committing the criminal offence. It is therefore the determination of a very wide scale of the penalty rate, where in paragraph 1 of the Section 419b of Criminal Code it is difference of 7 years as to paragraph 2 of the Section 419b of the Criminal Code.

The third consecutive newly adopted criminal offence is the criminal offence of financing terrorism pursuant to Section 419c of the Criminal Code. This criminal offence consists of two basic constituent elements and one of qualifying constituent element of a criminal offence. Its proposed wording is as follows:

"(1) Who, by himself or through another, collects or provides directly or indirectly things, financial or other means for a person who is involved in the preparation, attempt or commission of any criminal offence of terrorism, for a terrorist group, its member, or for the commission of any of the criminal offences of terrorism or collects financial or other means with the intention to be used in such a way, shall be punished by imprisonment for five to twelve years.

(2) In the same way as in paragraph 1, a person who, by himself or through another person, provides things, financial or other means to a close person of a person who participates in or participated in the preparation, attempt or commission of any of the criminal offences of terrorism, for participation in in such proceedings.

(3) By imprisonment for ten to twenty years an offender shall be punished if he commits the offence referred to in paragraph 1 a) to a greater extent, or b) as a member of a dangerous group."[9]

The object of this criminal offence is the protection of society, individual and the state from committing terrorism in the form of preventing its support from a financial point of view. The objective part of the first constituent element of the criminal offence is the unlawful act of the offender by financing terrorism, either by collecting, providing directly or indirectly, through an intermediary or alone financial means or other means intended to commit any of the criminal offences of terrorism. The second constituent element of the criminal offence also determines that it is criminal if someone provides financial or other means to a person who is a close person to a person who intends to commit one of the criminal offences of terrorism. The subjective constituent element is expressed in an intentional form of culpability, whereas in the first constituent element of the criminal offence is a direct intent (by the phrase "intends to") and in the second constituent element of the criminal offence is an indirect intent. The subject of this criminal offence in both cases is general, i.e. a person who at the time of committing the criminal offence was sane and of 14 years age. *"Support is*

provided not only at the time when the person is preparing, attempting to commit or directly committing one of the criminal offences of terrorism, as a sort of form of compensation for the absence of income, but also at a time when the person is not, due to injury or death, financially able to secure their family members. The performance of such support is a significant incentive for a person whose family members it is about, as their security is often better than if they cared for their family members alone. However, the motivation is also for other people who are convinced of the correctness and justification of terrorist attacks, but only because of the fear of later insufficient financial security of their family they hesitate over direct participation in the activities of terrorist groups."[10] It is important to note that the proposed wording punishes participation in committing terrorism and not providing assistance by close persons, municipalities, interest groups provided that such assistance is not provided in connection with participation on terrorism.

The last newly-adopted criminal offence is the criminal offence of traveling for the purpose of terrorism, which is to be stipulated in the proposed legislation in the provision of Section 419d of the Criminal Code and shall read as follows: "*(1) Who travels from the Slovak Republic or through the territory of the Slovak Republic to another state for the purpose of committing one of the criminal offences of terrorism, shall be punished by imprisonment for five to twelve years. (2) As in paragraph 1, a person who is traveling from another country to the Slovak Republic for the purpose of committing one of the criminal offences of terrorism shall be punished.*"[11] The criminal offence of travelling for the purpose of terrorism consists of two basic constituent elements. Interestingly, the legislator omitted, or did not want to change the qualifying constituent element of the criminal offence. The objective of this criminal offence is an interest in protecting society, the individual and the state from terrorist attacks. The constituent element as provided for in paragraph 1 criminalises conduct of an offender consisting of traveling from or traveling through the Slovak Republic for the purpose of committing one of the criminal offences of terrorism (the objective constituent element). From the abovementioned, we can conclude that from the subjective aspect of the constituent element it is an intentional criminal offence where a direct intention is specifically expressed using the term "for the purpose". Also, the term "for the purpose" also expressed the original facultative element of the objective constituent element of the criminal offence, which by being expressed in the constituent element becomes an obligatory element of a criminal offence, namely the purpose of the criminal offence. The subject is general, i.e. a person who, at the time of committing a criminal offence, was sane and of 14 years age. The basic constituent element set out in paragraph 2 is the unlawful conduct of an offender who travels from another country to the territory of the Slovak Republic for the purpose of committing terrorism. The explanations for the first basic constituent element of the said criminal offence can be applied to the subject and subjective constitutive element.

CONCLUSION

Given the seriousness of the threat of terrorism, it is necessary to react to its constant new forms by a legislation in a timely manner, which will reflect its development and provides the state with legal means of combating it, which will consist primarily in the prevention of its perpetration. The Slovak legislator by the abovementioned amendment of the Criminal Code proposes changes thanks to which the necessary implementation of EU legal acts against terrorism will be executed. The proposed changes can be viewed positively not only because of the removal of the nonsensical and ill-formulated original constituent elements of the criminal offence of terrorism and some forms of participation on terrorism pursuant to the Section 419 of the Criminal Code which was the only one to punish terrorism and its replacement by two comprehensively formulated criminal offences as well as the addition of two new criminal offences that affect terrorist financing and travelling for the purpose of terrorism. These criminal offences are primarily preventive measures to prevent terrorism, whereas on the one hand they limit the financial means for committing it and on the other hand, traveling for the purpose of terrorism, for example due to training etc.

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] The criminal acts of terrorism are considered the criminal offence of establishing, masterminding and supporting a terrorist group pursuant to Section 297 of the Criminal Code, the criminal offence of terrorism and some forms of participation on terrorism pursuant to Section 419 of the Criminal Code, a crime committed by a member of a terrorist group and a crime committed due to a specific motivation pursuant to Section 140 letter e) of the Criminal Code.

[3] Specifically the following international legal acts from which obligations for Slovak Republic stem: 1) The Convention on Offences and Certain Other Acts Committed on Board Aircraft (notification No. 102/1984 Coll.); 2) The Convention for the Suppression of Unlawful Seizure of Aircraft (notification No. 96/1974 Coll.); 3) The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (notification No. 16/1974 Coll.); 4) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (notification No. 131/1978 Coll.); 5) The International Convention against the Taking of Hostages (notification No. 36/1988 Coll.); 6) The Convention on the Physical Protection of Nuclear Material (notification No. 329/2001 Coll.); 7) The Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (notification No. 346/2000 Coll.); 8) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (notification No. 175/2001 Coll.); 9) The Protocol for the Suppression of

Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (notification No. 174/2001 Coll.); 10) The International Convention for the Suppression of Terrorist Bombing (notification No. 382/2001 Coll.); 11) The International Convention for the Suppression of the Financing of Terrorism (notification No. 593/2002 Coll.); 12) The International Convention for the Suppression of Acts of Nuclear Terrorism (notification No. 308/2007 Coll.); 13) Council of Europe Convention on the Prevention of Terrorism (notification No. 186/2007 Coll.); and finally 14) the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism.

[4] Explanatory memorandum – general part, pp 2, online at: <<https://www.slov-lex.sk/legislativne-procesy/SK/LP/2017/936>>.

[5] Draft act – own material, online at: <<https://www.slov-lex.sk/legislativne-procesy/SK/LP/2017/936>>.

[6] Draft act – own material, online at: <<https://www.slov-lex.sk/legislativne-procesy/SK/LP/2017/936>>.

[7] Draft act – own material, online at: <<https://www.slov-lex.sk/legislativne-procesy/SK/LP/2017/936>>.

[8] The provision of Section 122 (2) of the Criminal Code reads as follows: "The criminal offence is considered as having been committed in public if it is committed a) through the content of a printed matter or a disseminated written material, through a film, through the radio, television, with the use of a computer network, or using the means of similar effect, or b) in the presence of more than two persons."

[9] Draft act – own material, online at: <<https://www.slov-lex.sk/legislativne-procesy/SK/LP/2017/936>>.

[10] Explanatory memorandum – specific part, pp. 10 online at: <<https://www.slov-lex.sk/legislativne-procesy/SK/LP/2017/936>>.

[11] Draft act – own material, online at: <<https://www.slov-lex.sk/legislativne-procesy/SK/LP/2017/936>> .