

Russian experience in the implementation of the provisions of international legislation on criminal responsibility for an act of international terrorism

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Abstract. This work aims to address the completeness and comprehensiveness of implementing the provisions of international law on criminal responsibility for an international terrorism act. The work used the method of dialectical knowledge, the comparative-legal method, the method of analysis of legal documents, and the synthesis of scientific data. The findings of the work are scientific data on the completeness and comprehensiveness of the implementation of the provisions of international legislation on criminal responsibility for an international terrorism act. The Russian experience in implementing the provisions of international legislation on criminal responsibility for an international terrorism act is comprehensive and complete, although it is debatable. The legislation considers both the criminal responsibility for committing an international terrorism act and its financing. Peculiarities of criminal responsibility and punishment for an international terrorism act are indicated that this crime is the most dangerous of those prohibited by the national legislation of the Russian Federation.

Keywords: terrorist act, international terrorism act, implementation, criminal responsibility, sanctions, punishment

1 Introduction

Responsibility for the international terrorism act was established in the Russian national criminal legislation on July 6, 2016. Federal Law No. 375-FZ. Article 361 of the Criminal Code of the Russian Federation (CC RF) has correlative links with such a normative legal act as Federal Law from 06.03.2006 No. 35-FZ (ed. of 06.07.2016) “On countering terrorism” (with amendments and additions, in force from 01.01.2017); in Article 3 several key concepts are defined. International terrorism acts are also mentioned in the UN Security Council declaration “on global efforts against terrorism”, which notes that international terrorism acts are one of the most serious threats to international peace and security in the 21st century.

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Terrorism (according to Article 3 of the Federal Law of 06.03.2006 No. 35-FZ) is an ideology of violence and the practice of influencing the decisions of public authorities, local governments, or international organizations, associated with the intimidation of the population and (or) other forms of illegal violence.

2 Materials and methods

During the study, we will try to decompose the provisions of Article 361 of the CC RF into constituent parts, namely the features of the crime, analyze them, see how the international terrorism act is applied in conjunction with other crimes; distinguish it from related crimes; analyze the qualification of preliminary criminal activity and features of criminal responsibility, after which it will be necessary to conclude.

Literature review. The international terrorism act has received a great deal of scholarly attention in recent times. This question was developed by Suvorov [1], Belsky, Yakimova, Karpushin [2], Makaeva [3], Ilyasov, Donskoy [4], Kashirkina, Morozov [5] and many others.

Crime element analysis. Part 1 of Article 361 of the CC RF criminalizes the commission outside the territory of the Russian Federation of an explosion, arson, or other actions endangering the life, health, freedom, or inviolability of citizens of the Russian Federation for violating the peaceful coexistence of states and peoples or directed against the interests of the Russian Federation, as well as the threat of committing these actions. This is the main element of the crime.

By design features, this crime element is quasi-material (*corpus delicti* of threat), it is recognized as legally complete from the moment of committing the actions specified in the disposition of the commented article, formally regardless of the onset of consequences; but the following is fixed as a specific consequence: the occurrence of danger to the life, health, freedom, and inviolability of citizens of the Russian Federation. If the threat to the designated objects is realized, and harm to health, liberty, inviolability of citizens of Russia is inflicted, then it is covered by qualification under Part 1 of Article 361 of the CC RF, no additional qualification under the articles of criminal law establishing criminal responsibility for crimes against the person is required; if harm to human life, then the act must be qualified under Part 3 of Article 361 of the CC RF.

It also seems necessary to note that the legislator, in parallel with the mentioned construction of the quasi-material *corpus delicti*, also uses elements of the construction of the limited *corpus delicti*: concerning the threats of committing acts specified in the disposition of this norm.

The main direct object is the relations ensuring the peaceful coexistence of states and peoples and the interests of the Russian Federation in its relations with other states and peoples.

Additional objects are legal relations ensuring the inviolability of life, health, freedom, and property of citizens of the Russian Federation.

The international terrorism act implies the figure of a special victim – citizens of the Russian Federation.

The objective side of the crime is characterized by a special place of commission of this act – outside the territory of the Russian Federation. The problem of the transboundary nature of committing such an act becomes important for qualification of this crime: the crime was initiated outside the RF but was completed on the territory of Russia (united by a single intent to first commit a series of explosions abroad, and then in Russia); or vice versa (first in Russia, and then abroad); committing by some accomplices actions outside the RF,

and others in the RF; committing preparatory actions in one territory, and execution of the crime in another territory; remote initiation of an explosion by a perpetrator located outside the site of the explosion, etc. We believe that in such cases, the general rules of qualification of crimes apply: a) in the case of a continuing crime, it is considered completed at the time and place of the last episode (or the suppression of criminal activity); b) when the crime is committed in complex collaboration, the time and place of the crime are determined by the actions of the perpetrator; c) if the perpetrator is abroad from the place of explosion or arson (remote actuation of an explosive device) – the place of the crime is the place of detonation and arson; d) even if the victim's death occurred in another state (Part 3 of Article 361 of the CC RF), the place of the crime will be the place of detonation or arson, etc.

It is necessary to emphasize the specifics of the impact of this act on the crime object: intimidation of the population the spread of an atmosphere of terror, which is a factor in destabilizing relations of coexistence between different states. The disposition of Part 1 of Article 361 of the CC RF contains a description of several alternative actions:

- explosion (the act of the thermal decomposition of matter, coupled with the instantaneous release of energy);
- arson (the act of the thermal decomposition of matter, associated with a gradual energy release);
- commission of other actions (the legislator's use of the term “other” implies the commission, for the designated victims, of actions identical in their level of public danger to explosions and arsons – shots, spraying of chemical or bacteriological preparations, hostage-taking, etc.);
- threatening to commit an explosion, arson, or other actions (objectifying outside the intention to commit these actions).

The specific method of committing this crime is legally significant: implementing a method of intimidation, spreading an atmosphere of terror among the population.

The subject of the crime is general, and responsibility begins at the age of 14.

The subjective side of the crime is characterized by guilt in direct intent and a specific goal: to spread an atmosphere of terror among the population and thereby disrupt the peaceful coexistence of countries and nations or infringe upon the Russian Federation's interests.

The sanction of the first part of Article 361 of the CC RF provides for two alternative forms of punishment: either imprisonment for ten to twenty years or life imprisonment. This differs significantly from the sanctions of Part 1 of Article 205 of the CC RF, which regulates liability for “classic” terrorist (not international). A similar norm provides only for imprisonment for ten to fifteen years.

The sanction of Part 1 of Article 361 of the CC RF is one of the strictest sanctions of the basic corpus delicti, given the fact that this crime does not provide for real consequences.

Part 2 of Article 361 of the CC RF criminalizes the financing of acts of international terrorism, inducement, recruitment, or other involvement of a person in their commission, or arming or training a person to commit the above acts – the qualified corpus delicti.

Financing of an international terrorism act – providing terrorists with property, financial, logistical and other means to carry out such an act (or a series of acts), According to Clause 16 Resolution No. 1 of the Plenum of the Supreme Court of the RF of 09.02.2012 “On certain issues of judicial practice in criminal cases of terrorist crimes”: Financing of terrorism should be recognized, along with the provision of financial services, providing or collecting not only money (in cash or non-cash form), but also material means (for example, clothing, equipment, means of communication, medicines, residential or

non-residential premises, vehicles) with the knowledge that they are intended to finance the organization, preparation or commission of at least one of the acts provided for by Article 361 of the CC RF, or for financing or other material support of a person to commit at least one of these acts, or to provide an organized group, illegal armed formation, criminal community (criminal organization), created to commit at least one of these crimes (for example, systematic deductions or a single contribution to a common cash desk, purchase of real estate or payment of its rent, providing money intended for bribery of officials).

Involvement in an international terrorism act: persuasion, bribery, deception, blackmail, any inducement to induce the subject's intention to participate in an international terrorism act.

Since part two is an independent norm, not directly related to part one, this is reflected in its sanction. Financing an international terrorism act shall be punished by imprisonment of eight to twenty years with an optional fine of three hundred thousand to seven hundred thousand rubles, or in the amount of the wages or other income of the convicted person for a period of two to four years, or without it, or by life imprisonment.

Although this sanction also provides for a fine, on the whole, it is less strict since the minimum threshold of the main penalty (imprisonment) is lower – from eight years, as stated in Part 1 of Article 361 of the CC RF.

Part 3 of Article 361 of the CC RF establishes criminal responsibility for an international terrorism act resulting in the death of a person.

This corpus delicti is substantive by its legal construction. The corpus delicti is legally complete from the moment of the death of at least one person.

The sanction of Part 3 of Article 361 of the CC RF is the most severe of all the parts and provides for imprisonment for fifteen to twenty years with restriction of freedom for one to two years, or life imprisonment.

Part 3 of Article 361 of the CC RF does not provide for the death penalty, as determined by the Constitutional Court of the Russian Federation of November 19, 2009. No. 1344-O-R, the Russian Federation is bound by the requirement of Article 18 of the Vienna Convention on the Law of Treaties not to take action that would defeat the object and purpose of Protocol No. 6 until it has formally expressed its intention not to be a party to it. Since the main obligation under Protocol No. 6 is the total abolition of the death penalty, including its exclusion from the law for all crimes except “acts committed in time of war or of imminent threat of war”, and the abolition of its use with the same exception, in Russia since April 16, 1997, the death penalty cannot be applied, i.e., the death penalty must not be imposed or carried out and, therefore, cannot be established in new rules regulating criminal liability for committing new crimes for the CC RF.

Combination with other crimes. A literal interpretation of the text of Part 1 of Article 205.1 of the CC RF suggests that the involvement (including inducement and recruitment) to participate in a crime under Article 361 of the CC RF (international terrorism act) falls under this provision (Part 1 of Article 205.1 of the CC RF). Such a judgment is erroneous. In this case, there is a competition between the general and special norms. By virtue of the general rules of qualification of crimes in such a competition, a special norm prevails – Part 2 of Article 361 of the CC RF – financing of international terrorism acts and involvement in an international terrorism act. There are no cumulative crimes.

The commitment of actions falls under the elements of crimes enshrined in Article 205.2 of the CC RF (Public calls to terrorist activity or public justification of terrorism), Article 205.3. of the CC RF (Training to carry out terrorist activities), Article 205.4 CC RF (Organization and participation in a terrorist association), Article 205.5 CC RF (Organization and participation in the activities of a terrorist organization), Article 205.6

CC RF (Failure to report a crime) if they are combined with an international terrorism act or with the threat of committing such an act, form an aggregate with an international terrorism act (Article 361 CC RF); depending on the degree of completion of this crime with or without the application of Article 30 CC RF.

Distinction from related crimes. From sabotage (Article 281 of the CC RF). The purpose of the sabotage is to undermine the economic security and defense capabilities of the Russian Federation. This is undoubtedly an infringement of the interests of the Russian Federation, but the entire list of such interests is not exhaustive. Sabotage is against the peaceful coexistence of countries and nations. Thus, the object of the crime, the responsibility for committing, which is provided for in Article 361 of the CC RF, is significantly broader than the object of criminal law protection, enshrined in Article 281 of the CC RF. In addition, the international terrorism act involves a specific mechanism for striking an object: not directly by explosions and arson (as in sabotage), but by spreading a climate of terror (caused by explosions and arson) among the population. Also, the violation of the coexistence of states and peoples and the infringement of Russia's interests is a prolonged special purpose (through the phenomenon of the development of an intermediate goal – the spread of terror among the population) for such a crime as an international terrorism act. We should also note the specifics of the place where the crime was committed: an international terrorism act can only be committed outside of Russia.

From a terrorist act (Article 205 of the CC RF). A literal comparison of the text of these two norms gives rise to the idea that the legislator, in constructing the norm of responsibility for a terrorism act (Article 205 of the CC RF), uses the term “terrorizing the population”, while the text of Article 361 of the CC RF does not use such a term, so there may be a judgment on the different objectives of these two crimes: the purpose of terrorizing the population in terrorism and the purpose of violating the peaceful coexistence of countries and nations, as well as infringement of interests of the Russian Federation in an international terrorism act. However, this impression is deceptive. The notion of terrorism involves spreading a sense of terror among the population. There is a psychological phenomenon of the goal development of the perpetrator actions (the so-called prolonged goal): the spreading of a climate of terror is an intermediate goal in the commission of an international terrorism act, and the final goal is the violation of the peaceful coexistence of countries and nations. Thus, it is advisable to distinguish an international terrorism act from an act of terrorism not only by the place of commission of criminal actions – outside the territory of Russia but also by the development of the goal of the criminal action – in an international terrorism act spreading terror among the population is only an intermediate goal to achieve the final goal – the violation of peaceful coexistence of countries and nations and infringement of the interests of the Russian Federation. If the commission of explosions and arson outside of the Russian Federation described in Article 361 of the CC RF, which caused a danger to the lives and health of citizens of the Russian Federation, to spread panic and terror among them, but not to violate the peaceful coexistence of countries and nations and infringement of Russia's interests (for example, out of distorted patriotic feelings), then there is no international terrorism act; such actions must be qualified as a terrorism act under Article 205 of the CC RF.

From assistance to terrorist activity (Article 205.1 of the CC RF). In this case, it is required to distinguish between “financing” an international terrorism act and “involving persons” in committing an international terrorism act (Part 2 of Article 361 of the CC RF) and involvement in the commission of a terrorist act and financing of terrorism (Article 205.1 of the CC RF). It is advisable to distinguish according to the location of the planned

international terrorism act mentioned in the previous paragraph and the specific “prolonged” purpose.

Qualification of preliminary criminal activity. Since the legislator in constructing the commented criminal law norm used different concepts (elements of both quasi-material corpus delicti and elements of limited corpus delicti – as discussed earlier), the issue of qualification of preliminary criminal activity becomes particularly relevant.

The element of a limited corpus delicti is present only as establishing liability for the threat to commit an international terrorism act (the so-called objectification of intent); qualification of any other forms of preliminary activity involves the application of the provisions of Article 30 of the CC RF (preparation or attempt to commit a crime).

The specifics of the construction of the quasi-material corpus delicti (corpus delicti of threats) concerning the commented crime suggests that the corpus delicti acquires legal completeness only when explosions, arson, and other actions have created a real danger to the life, health, freedom, or inviolability of citizens of the Russian Federation. If such a danger did not arise (for example, due to a malfunction of the explosive mechanism, the explosion on the street did not occur during the planned daytime, when a large crowd of people was expected, but at night, when there was no one at the explosion site and even nearby), then an attempt to commit this crime takes place. The achievement of the ultimate goal – the violation of the peaceful coexistence of countries and nations or the infringement of other interests of the Russian Federation – does not influence the determination of the moment of legal completeness of the commented corpus delicti. Even if these goals were not achieved, the corpus delicti is complete; the main thing is that the criminal acts aimed to achieve these very goals.

Based on a literal interpretation of the text of Part 1 of Article 361 of the CC RF, which speaks of endangering the life, health, freedom, and inviolability of citizens of the Russian Federation (i.e., the plural is used in describing the alleged victims), one may think that creating such a danger only for one person constitutes an attempt to commit the commented crime. However, due to the regularities of system interpretation of legal norms, based on the constitutional axiom that even the life of one person is the highest value in our society, we consider it correct to qualify the considered actions as a completed crime even if they endangered the life, health, freedom or inviolability of just one person.

Peculiarities of criminal responsibility in Russia. The international terrorism act is specified in many norms of the General Part of the Criminal Law of the Russian Federation. Thus, the age of criminal responsibility for an international terrorism act was lowered to 14 years (Part 2, Article 20 of the CC RF), the maximum possible penalty in the form of imprisonment may be increased to 30 years for cumulative crimes and to 35 years for cumulative sentences (Articles 56, 69, 70 of the CC RF). The place of punishment for an international terrorism act may be chosen as a prison (Articles 58 of the CC RF). The exceptional circumstances do not apply to persons who have committed an international terrorism act. Their punishment may not be reduced by applying Article 64 of the CC RF. Preferential rules on the offset of punishment are not applied (Article 72 of the CC RF). No statute of limitations applies to persons who committed a crime under Article 361 of the CC RF (Articles 78, 83 of the CC RF). The right to release on parole is retained, but the guilty party must serve at least three-quarters of the sentence (Article 79 of the CC RF). The deferred sentence may not be applied to terrorists (Article 82 of the CC RF). They are subject to confiscation of property (Article 104.1 of the CC RF). Issues of criminal responsibility for the commission of an international terrorism act in collaboration, and responsibility for an incomplete act, are regulated by the general norms of criminal law.

3 Conclusion

The Russian experience in implementing the provisions of international legislation on criminal responsibility for an international terrorism act is comprehensive and complete, although it is debatable. The legislation considers both the criminal responsibility for committing an international terrorism act and its financing. Peculiarities of criminal responsibility and punishment for an international terrorism act are indicated that this crime is the most dangerous of those prohibited by the national legislation of the Russian Federation.

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