Legal mechanisms for countering the financing of terrorism

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Abstract. The financing of terrorism, as an illegal criminal act, was first proposed at the international level in the United Nations Declaration of 1994. The idea was further developed in United Nations Security Council Resolution No. 1373 adopted in 2001. This document obliged all member states of the UN Security Council to introduce into their criminal legislation norms governing prosecution for activities related to the provision or collection of funds to finance terrorism. This study aims to analyze the corpus delicti of terrorist financing and investigate the need to introduce this article into the legislation of the Russian Federation. Modern times are characterized by the high growth of terrorist crimes, involvement in terrorist groups, and financing this criminal activity. The problem of combating terrorism is international. Countering this phenomenon and strengthening international cooperation to maintain the rule of law and legal order has been relevant for the past few decades. The authors of the research work consider the obligations of the Russian Federation arising from the requirements of the international community and the international legal framework. International cooperation allowed to establish the official recognition of the financing of terrorism at the legislative level as criminal and punishable.

Keywords: financing of terrorism, criminal liability, crime, punishment, ratification, money

1 Introduction

In the Russian Federation, to implement this UN Security Council Convention, regulations aimed at a program of countering the organization of financial assistance to terrorism were adopted promptly at the legislative level [1, 2]. Accordingly, necessary amendments, additions, and changes were made to the legislation regulating social relations in the field of terrorism:

- Criminal Code of the Russian Federation [3];
- Federal Law “On combating the legalization (laundering) of proceeds of crime and the financing of terrorism” [4];
- Resolutions and Orders of the Government of the Russian Federation in the field of researched relations;

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- normative legal acts of the Bank of the Russian Federation and the Federal Financial Monitoring Service, etc.

2 Materials and methods

The legislator proposed the legal definition of terrorism financing in the Criminal Code of the Russian Federation in a note to Article 205.1 of the Criminal Code. According to it, "terrorism financing is the provision or collection of funds or the provision of financial services with the understanding that they are intended to finance the organization, preparation or commission of at least one of the crimes provided for in the Criminal Code ..." [3]. The essence of this provision is that the guilty person must be aware that these funds will be used to finance a terrorist activity or organization. In addition, this person may knowingly create conditions for the preparation or commission of at least one of the acts regulated by the disposition of Article 205.1 of the CC RF [3].

Speaking of terminology related to aiding and abetting terrorism, it is worth pointing out that they have been implemented from international law. Like many foreign states, the Russian Federation defined these acts as socially dangerous, unlawful, and criminally punishable. This is evidenced by the fact that international conventions are approved on the territory of Russia.

The procedures of ratification of international conventions on the Russian territory as a consequence led to the appearance of a new legal norm in the criminal legislation "Facilitation of terrorist activity", which included the commission of such an act as "financing of terrorism" [3].

Discussions regarding the advisability of introducing this article into criminal law in the criminal legal doctrine continue at present. Some authors note the positive aspects of the introduction of this norm. For example, it is noted that the existing article acts as an effective regulator in the law enforcement system as part of the fight against terrorist activity within the state. Other authors note that the previously existing norms, if fully implemented in practice, could act as legal methods of countering terrorism, and there was no need to introduce a new article. This position deserves its respect, for the modern world is subject to constant positive and negative change. Accordingly, approaches to the definition of the illegality of acts and their criminalization in society are changing, which indicates the need to adapt the already existing criminal legal tools to combat different types of crimes. According to the opponents of the adoption of Art. 205.1 of the CC RF, it would be quite sufficient to use Articles 30, 31, 32, 33 of the General Part of the CC RF. With their help, it seems quite possible to bring to justice those responsible for such acts as "recruitment" and "financing" of terrorist activities.

The purpose of our study is to establish the feasibility of introducing Article 250.1 of the CC RF and to study the existing positions of various researchers in this criminal area. In law enforcement practice, many times, there were problems associated with the qualification of such actions and with the involvement of a person accused of financing terrorist crimes. The legislator introduced the studied legal norm.

It is clear that in crimes related to terrorist activities, we are talking about committing illegal acts in complicity. In Article 32 of the CC RF, the criminal law defines complicity as "the joint participation of two or more persons in the commission of an intentional crime" [3]. In terrorist crimes, actions in complicity can be organization, incitement, aiding and abetting, and, concerning the studied issue, the financing of these activities. In this case, the financing of terrorism can be attributed to both the organization of the crime and complicity. What is notable here is that all of the co-conspirator's actions providing financial assistance are aimed at achieving a common result. Through the efforts of all

those involved in terrorist activities, the criminal goal is realized, and the criminal consequences desired by the accomplices occur.

As in many foreign countries, there were many terrorist organizations in Russia. Individuals participating in them or providing any assistance in the formation, development, and active operation of a terrorist organization posed a great danger to society as a whole and the state. Likewise, complicity in a terrorist organization consisted in creating favorable conditions for the commission of terrorist acts by organizing financial assistance to terrorist organizations in general. In our opinion, there are sufficient grounds for criminal liability regarding Part 3 of Article 35 of the CC RF. In criminal law doctrine, such situations are commonly referred to as "double prevention norms" [5].

D. S. Trofimov noted that "in Russia, there are various methods and means to prevent the commission of grave and especially grave crimes" [6]. For example, Article 222 of the CC RF, in this case, has the character of a deterrent to prevent criminogenic conditions conducive to the commission of grave crimes.

Article 205.1 of the CC RF establishes the requirements for bringing a guilty person engaged in financing terrorist activities to the deserved punishment. In this case, the so-called "financier" does not know for what purposes the finances allocated to his terrorist activities will be used. These funds are donated to an organization or group, or a certain person, for the effective use of funds used to implement future crimes of a terrorist nature. The peculiarity of such financing is that the person providing financial support does not know what crimes will be committed does not know the date and place of the crimes, accordingly, at first glance, he does not have a specific intent. Paradoxically, it seems difficult to prosecute this person for the crime of complicity, and the qualification of the deed will be carried out under Article 205.1 of the CC RF. The appearance of the studied article solved in practice the problems associated with the criminal-legal assessment of activities related to the financing of terrorism in the absence of the very intent to commit a specifically defined terrorist act.

3 Results

The adoption at the international level of a number of legal instruments aimed at preventing the financing of terrorism, and the ratification of these instruments by the Russian Federation, indicates the desire of the state and society to actively combat terrorist crimes. Terrorism is transnational and causes serious harm to legitimate human rights and interests. Therefore it is very important to outline the significance of the object violated in committing terrorist crimes.

4 Discussion

As rightly noted by V. N. Kudryavtsev, "a competently established object of criminal encroachment becomes the right algorithm for the selection of limiting crime components, among which it will be possible to search for a suitable norm" [7]. A. K. Traynin believes that "every crime, regardless of whether it is expressed in action or inaction, is always an attack on a particular object" [8]. The object of any criminal encroachment is the social relations violated by the commission of a crime. According to V. T. Batychko, the object of the criminal offense in question should include "public safety, life, health, freedom, and inviolability of the person" [9]. The crimes contained in Articles 205, 206, 208, 211 of the CC RF, etc., in most cases, cause harm both to public order and public safety of the population and to the life and health of people in general. More profound disputes arise in determining the direct object of terrorist financing. Scientists are divided into two scientific

circles on this issue. The first believes that the direct object is common and unified for all crimes of a terrorist nature, and it is "public safety" [10-12]. Others are more inclined to the judgment that activities related to the "financing" of terrorism are one of the components of the crime covering the commission of a terrorist act, and therefore the direct object, in this case, should be "specific public relations, which are a part of public security" [13]. V. S. Muradyan defines the direct object of terrorist financing as "the territorial integrity of specific states and their security" [14]. Expressing our author's understanding of the direct object, we shall say that we include public safety in the area of counter-terrorism as a specific social relation, which is under criminal-legal protection.

5 Conclusion

The criminal-legal assessment of terrorism financing depends to a large extent on the performance by the perpetrator of the objective side of the crime. Based on the legislator's position, the objective side of the criminal act under consideration consists of a set of actions aimed at collecting, attracting, using, and sending money. The International Convention for the suppression of the financing of terrorism defines "funds" raised for the financing of terrorism: "assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including, but not limited to, bank loans, traveler's checks, bank checks, money orders, stocks, securities, bonds, drafts, letters of credit" [15]. In other words, the "means" are those very conditions that create a favorable environment for the implementation of criminal activities associated with terrorist crimes, and in particular the crime under Article 205.1 of the CC RF. Funds aimed at financing terrorism constitute the very object of the criminal act.

To establish the correct qualification of the studied crime, it is necessary to determine whether the financing of an individual terrorist act, an individual action of a terrorist nature, or terrorist activity, in general, is involved. A person who provides money, for various needs, to the general treasury belonging to a terrorist organization, systematically or in the form of a single contribution, is the subject of a crime.

It is important to understand that assistance to terrorist activity in the form of financial aid is recognized as a committed crime from the moment the guilty person commits any of the acts described in the disposition of Article 205.1 of the CC RF. It turns out that it does not matter what socially dangerous consequences the perpetrator's actions will have on the object or objects of the crime that is violated in the financing of terrorism. Financing terrorism, providing a terrorist organization with weapons, training a person to commit crimes of a terrorist nature already contains the corpus delicti from the beginning of these activities.

There is one exception, "if for any reason the funds allocated by a person to finance terrorist activities were not received by a criminal element, then the act can be qualified as an attempt to commit this crime" [16].

According to most scholars, the subjective aspect of terrorist financing is defined as guilt in the form of direct intent. We believe that the crime in question is also committed with indirect intent. The direct intent in the financing of terrorism is defined as "the perpetrator's awareness of the social danger of the act being committed, including such actions as collecting funds, providing these funds, providing services, and the desire to commit these actions. With indirect intent, the perpetrator may not have known exactly for what purposes the funds intended for the financing of terrorism would be spent, but he was indifferent and wished to direct the funds to assist in implementing the criminal activity.

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