

Correlation of The Concepts of "Terrorism", "Terrorist Act", and "Act of Terrorism" in Obligations in The Law of Tort



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Abstract: *The article provides a comparative analysis of the terms "terrorism" and "terrorist act". In order to bring the harm-doers to civil liability, the authors suggest introducing a broader concept of an "act of terrorism". The current legislation provides for various types of liability for harm caused to victims of terrorism. However, civil liability offers a clear list of specific subjects of such liability. For victims to successfully exercise their right to compensation for harm, the authors suggest consistent use of the concepts of "damage", "loss", and "harm". In the research, the authors have answered the following basic question: when and on what grounds the person causing harm to the victims may be held liable for harm caused by a terrorist act. Another question answered was as follows: the existence of what conditions gives rise to such liability.*

Keywords: *terrorism, terrorist act, signs of a terrorist act, civil liability for damage caused by a terrorist act.*

I. INTRODUCTION

A significant amount of scientific research analyzing terrorism and a terrorist act as a legal and social phenomenon examine them in various aspects (social, political, psychological, economic, and legal). The subject of our attention will be a terrorist act as a phenomenon not only and not so much of a criminal-law nature, but as a basis for the emergence of civil-law relations.

The definition of terrorism and of a terrorist act is contained in the Federal Law No. 35-FZ "On Counteraction to Terrorism" dated March 6, 2006 (hereinafter – the Law). Article 3 of the Law defines terrorism as "an ideology of violence and the practice of influencing decision-making by state authorities, local governments or international organizations related to intimidation of the population or other forms of unlawful acts of violence". In the same article of the Law, the legislator

describes a terrorist act as "committing an explosion, arson or other actions that frighten the population and create the danger of killing a person, causing significant property damage or other serious consequences in order to influence the decision-making by authorities or international organizations, as well as the threat of committing these actions for the same purpose."

Immediately, attention is drawn to the fact that the definition of a terrorist act is very narrow compared to that of terrorism; it excludes the ideological and social aspect, which brings it completely into the realm of criminal law. As A. A. Ivanov notes, "expanding the concept of terrorism with "other forms of unlawful acts of violence" is a peculiarity of the current Russian legislation" [1]; whereas the definition of a terrorist act is clearly adapted only to qualification of criminal offenses but does not cover the full range of possible acts of terrorist nature. In particular, as V. E. Petrishchev notes, "The legislator wrongfully narrowed down the objectives of the subjects of terrorist activity, determining that their only intention is to coerce only structures with a certain status or vested with authority (state agencies, local governments or international organizations) to make certain decisions" [2]. As an example, the author gives "massacres, robberies, hostage and property taking, the use of other forms of intimidating and psychologically suppressive violence in the 1990s in Chechnya against representatives of the 'non-elite' population", which "were aimed at achieving a specific political goal – their ousting from 'Ichkeria'". At the same time, it is quite rightly noted that in this situation, the subjects of mass terror did not try to influence any authorities whatsoever but addressed the population directly, stimulating the existing inter-ethnic contradictions.

In addition, the definition does not provide for responsibility for the propaganda of violence (due to the fact that these actions are qualified under Article 282 of the Criminal Code of the Russian Federation), for the creation of organizations that lay the psychological foundations for future terrorist acts, that instill a certain terrorist ideology into their students [3]-[5]. A. A. Ivanov doubts that there is a need to include "violence ideology" in the concept of terrorism since such propaganda is covered by art. 282 of the Criminal Code of the Russian Federation [1]. However, from the point of view of civil-law qualification of a tort, we believe that it is necessary to extend the wording.

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II. PROPOSED METHODOLOGY

Methodologically the research was based on general theoretical and special scientific methods of cognition, which imply the comprehensiveness and interconnectedness of the phenomena studied: logical, dialectical, comparative, statistical, system-structural and other approaches. In particular, the system-structural and comparative methods revealed the lack of uniform legal and doctrinal approaches to the definition of "terrorism" and "terrorist act", highlighted criminal-law and civil-law signs of a terrorist act, etc.

III. RESULT ANALYSIS

The study of the term "terrorist act" allows us to single out a number of its characteristic features that correspond to the criminal law objectives:

- the commission of an unlawful act, which may be expressed in an encroachment on health and life, both in relation to a single person, and in relation to an indefinite number of persons;
- the focus of the act, that is, it is necessary to take into account the ideological aspect, the actions of terrorists are mainly focused on the intimidation of the whole society or its certain part;
- the psychological factor, that is, the desire of terrorists to acquire a wide public response not only within the region of the terrorist act but throughout the world, thereby creating an environment of fear;
- the goal pursued by the militants, namely, the influence on a certain decision making or abolition.

From the point of view of civil legislation, the indicated signs should be supplemented with the following:

- the subjects of the terrorist act may be not only the terrorists themselves but also their family members involved;
- a terrorist act, regardless of its form, always entails causing not only physical harm to life and health of citizens or property damage of legal entities and the state, but also moral injury, and the victims also have the right to claim its compensation in court.

It has been established that all grounds for the emergence of civil liability as a result of an act of terrorism can be divided into two groups: general and special. The common grounds include the composition of civil tort: harm, wrongfulness, causation, and guilt, as a mandatory feature of the subjective side of the crime. A special basis, regardless of the fault of the person, who caused the harm, is the circumstances characterizing the infliction of such harm as a kind of relationship that develops between an individual citizen and the state in accordance with art. 2 and art. 18 of the Constitution of the Russian Federation.

It is determined that real losses must be interpreted along with the concept of "damage", since it is precisely the damage that expresses the real existence of negative consequences that occur when the rights and legitimate interests of another subject are violated.

IV. DISCUSSION

The Civil Code of the Russian Federation (Chapter 59 of the Civil Code of the Russian Federation) does not provide for the need for such a detailed qualification of an act that entailed harm, so it seems to us expedient to expand the list of grounds

resulting in civil liability. In this regard, it is proposed to introduce into the Law the concept of an "act of terrorism", which should be understood as the actual commissioning or threat of a publicly dangerous act in relation to an indefinite range of persons, which by its subject and characteristics corresponds to the definition of terrorism [6]-[7].

It is necessary to introduce such a definition in the legislation due to the repeated proposals in the scientific community to expand the range of subjects of civil liability for acts of a terrorist nature, reflected in the changes made in 2013 to Article 18 of the Law. These changes impose joint and several liability for moral damage and property damage caused by a terrorist act not only onto terrorists but also onto their close relatives, family members and close persons, if there are sufficient grounds to believe that they received money, valuables, and other property as a result of terrorist activities and/or as an income from such property.

In our opinion, such a narrowing of the composition of the property, which may be seized for damage caused by a terrorist act, is unreasonable. Such a principle is characteristic of economic crimes but there is no way it can be taken as the basis of responsibility for terrorist activities – after all, terrorists do not aim to enrich themselves, and the income could be obtained by them on perfectly legal grounds. The fact that terrorists have received their property, for example, by inheritance, should in no way affect the possibility of its disposal in order to compensate for the damage caused by a terrorist act.

Thus, a terrorist act and an act of terrorism are quite often used in the writings of legal scholars and in legislation, in particular, either as identical concepts or as concepts that relate to each other as a part and the whole. However, we would like to draw attention to the fact that although these two concepts indeed share quite a few common characteristics, there are also distinctive features that distinguish them from each other [8].

And one of the main such features is that the act of terrorism, in contrast to the terrorist act, is characterized not only by the implementation of unlawful actions, but also by their threat, while the essence of a terrorist act lies only in the actually committed actions not implying their threat.

The next distinctive feature is that an act of terrorism is always aimed at an indefinite range of persons, whereas a terrorist act can be carried out not only in relation to an indefinite range of persons, but also in relation to a specific person, that is, when committing a terrorist act, there is a possibility that its victim is precisely personified.

The last distinguishing feature is characterized by the fact that an act of terrorism is performed only in a publicly dangerous manner, and a terrorist act can be not only of publicly dangerous nature, but also dangerous for a single individual.

There are various types of liability for acts of a terrorist nature, which are based on criminal law, administrative law, and civil law.

In our opinion, taking into account the peculiarity of this phenomenon, the combat against it must be carried out not within the limits of any particular branch of law but in conjunction with elements of other branches, which will lead to efficiency of legal protection against terrorism.

A significant part of the questions arising in resolving the problem of restoring the violated rights of persons affected by the terrorist act can be answered by relying solely on civil law.

In particular, these include such issues as what is meant by harm, who is entitled to its compensation, and what are the grounds for compensation for harm?

The definition of "obligation resulting from harm" is contained in Art. 1064 of the Civil Code of the Russian Federation, which states that the harm caused to a person or property of a citizen, as well as damage caused to the property of a legal entity, is subject to compensation in full by the person who caused the damage.

However, the main problem of such a wording, in our opinion, is that it does not affect the significant components of the obligations resulting from harm, and the act of terrorism in particular; namely, the main goal, which is connected with the direct restoration of the violated rights of the persons injured in a terrorist attack. Among other things, this approach does not allow to fully cover the entire subjective composition of this type of obligations.

Based on the imperfection of the legislative definition of obligations resulting from harm, the most accurate and complete definition was formulated. Thus, "an obligation resulting from harm caused should be understood as a legal relationship involving obligation designed to ensure the restoration of the violated rights of the victim, arising as a result of causing property damage, physical and moral injury to a citizen or property damage to a legal entity, by virtue of which the injurer (or another person obliged by the law to compensate harm) is obliged to compensate property damage and/or physical harm and/or compensate moral injury, and stop actions infringing the rights of a person, while the victim has the right to require the debtors to perform their duties" [9].

Continuing our study, we draw attention to the fact that the relationships involving obligations resulting from harm caused that arise from an act of terrorism are also regulated by cl. 1 art. 307 of the Civil Code of the Russian Federation. This provision discloses definitions of the concept of "obligation", by virtue of which one person, that is, the debtor, is obliged to perform a certain action in favor of another person, that is, a creditor, such as: transfer property, perform work, pay money, etc., or refrain from a certain action, and the creditor has the right to demand from the debtors to perform their duty.

It should be noted that the obligations resulting from harm due to a terrorist act contain a whole range of features and characteristics typical to the obligation in the law of tort.

So, firstly, the obligations resulting from harm caused are formed when there is an encroachment on the rights and legitimate interests of both a specific subject and an indefinite number of subjects of legal relations, and, therefore, have a non-contractual nature. As a rule, such obligations are based on the principle of "general tort", according to which no one can harm anyone, no matter what kind of harm it is – physical, property or moral, since such an act will be of illegal nature. When it comes to the obligation resulting from harm caused

by an act of terrorism, first of all such a crime encroaches on the life and health of a person, that is, on fundamental rights guaranteed by the Constitution of the Russian Federation. At the same time, not only a specific terrorist, or a terrorist group, but also a terrorist state or a country can be considered as an offender in a counter-terrorist act. In this case, such a country cannot be put on a par with a terrorist state, since the latter has as its main objective territorial dominance over its entire population and its intimidation; whereas state policy, on the contrary, is aimed at combating terrorism not only as a phenomenon, but also as an ideology that can evolve from small groups. However, as we note, this combat may also result in harm to the subjects of law.

Secondly, compensation for harm is always material in nature, and the area of its impact extends regardless of whether property or personal non-property rights are violated. Here, it is also necessary to pay attention to the fact that this sign contains a function related to compensation for the harm caused to persons affected by the act of terrorism. The implementation of this function to some extent helps to restore the property of the victim or mitigates the consequences caused by the violation of the category of rights that cannot be directly restored due to their non-property nature. Thus, in accordance with Art. 1082 of the Civil Code of the Russian Federation indemnification is carried out only by a court decision [10]. In addition, this legal norm defines two ways to compensate for harm: in kind, when it is necessary to provide a thing of the same kind and quality, or to repair the damaged thing, or when it is necessary to compensate for damages. However, when it comes to harm caused through an act of terrorism, then the indemnification itself is mainly of a monetary nature.

Thirdly, the obligation resulting from harm caused is concentrated for the most part not on the punishment of the injurer but on restoring the property status of the injured person that existed before such damage. Accordingly, the main goal pursued by the victim is the actual elimination of negative consequences caused by the crime. Hence, the obligations resulting from harm, as a type of civil liability, fulfill and resolve the primary and main task, namely the compensation and restoration of the situation that existed before the onset of adverse events. In addition, Russian civil law determines one of the ways to protect civil rights as the restoration of the situation that existed before the violation of the right; therefore, restoring the violated property right, which was mentioned earlier, acts as the implementation of this provision.

Fourthly, the obligation to compensate for harm can be imposed not only on the direct perpetrators of harm, but also on other persons. For instance, speaking about the obligation arising from causing harm by an act of terrorism, we draw attention to the fact that in these tort relations, a debtor can be a terrorist himself, a terrorist group, or a terrorist organization, whose fault and involvement are naturally subject to examination and proving in court, as well as the subjects of law, on whom such an obligation is imposed in accordance with the Russian legislation.

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First of all, we speak about a state that can, on the one hand, act as a harm-doer during a counter-terrorist operation, and, on the other hand, by virtue of Part 2, cl. 1, Art. 1064 of the Civil Code of the Russian Federation, a person, who has not caused harm, may be obliged to compensate for harm. This case should also include the close relatives of terrorists responsible for reimbursement of damage, for example, in succession [11].

In addition to the above, one more essential feature of obligations resulting from harm caused by an act of terrorism should be highlighted – measures of state protection and support expressed in compensation payments to persons, who suffered as a result of the terrorist attack, in order to protect their constitutional rights [12].

For the purpose of further study, it is necessary to answer questions that will help to further reveal the legal nature of obligations resulting from harm caused. Namely, when and on what grounds does the person causing harm becomes liable to the victim in relation to obligations resulting from harm caused by a terrorist act? Another question is what conditions give rise to such liability?

To begin with, we denote that the basis of civil liability for a terrorist act is a legal fact [13], which in turn always implies the existence of a specific circumstance, in our case it is an act of terrorism, with which the norms of civil legislation link the emergence of a relationship for reimbursement of tangible and intangible harm. Most importantly, we should mention that such legal relations are formed mainly between the direct participants of the obligation in the law of tort, which from an objective point of view is characterized as an offense containing socially dangerous consequences for another subject in the form of harm, as well as unlawfulness and cause-and-effect relationship between a deed and further consequences.

Despite the fact that there are many disputes among civil law specialists regarding the relationship between the grounds and conditions for the emergence of civil liability, we draw attention to the fact that there is a significant difference between these two concepts. It is characterized by the fact that the conditions of occurrence, from the point of view of the subjective side, primarily act as a sign of a terrorist act as a crime; this can be expressed both in determining the degree of guilt of the harm-doer and in defining the subject composition of the obligation in the law of tort. Based on this, we can conclude that not only a person, who is the cause of harm, can act on the side that is responsible for compensation for harm, but it can also be persons, who are legally liable for actions committed by the immediate harm-doer [14]. However, we will return to the consideration of this issue a little later.

A.T. Malsagov proposes to include the composition of civil tort, which contains a number of such elements and conditions as harm, wrongfulness, cause-effect relationship, and guilt, as a mandatory sign of the subjective side of the crime, into the list of general grounds. A special ground, regardless of the guilt of the person, who caused harm, from Malsagov's point of view, is the circumstances characterizing the infliction of such harm as a kind of relationship that develops between an individual citizen and the state in view of art. 2 and art. 18 of the Constitution of the Russian Federation. Such legal relations are mainly based on the constitutional legal

obligation of the state to compensate harm, depending on its size and the number of victims determined by the impossibility to implement compensation in the manner specified by civil, administrative, criminal and other sectoral legislation [15].

We also believe that in order for the process of compensation for harm to victims of a terrorist act to be uniform and systemic in nature, it is necessary that the participants of specific law relations used a harmonized interpretation of the following concepts: "harm", "damage", and "loss". However, as the study of scientific literature shows, in civil law there are two points of view regarding this issue.

A number of civil law specialists believe that the above three concepts are identical. For example, K. M. Varshavsky believed that "harm is uncompensated property damage" [16].

Other authors separate these concepts, using the harm as a generic notion in relation to damage and loss. For instance, the scientific work by V. A. Tarkhov proposes to understand damage as the damage of a material nature, and loss as a monetary expression of damage. For this scientist, harm means any derogation, namely, deterioration, defect, and destruction of the assets protected by law [17].

Attention should be paid to the fact that the harm resulting from the act of terrorism can be divided into five groups:

1. Harm caused to the state and municipalities:
 - destruction of buildings, damage to vehicles, communications, etc.;
 - costs associated with the restoration of damaged property.
2. Losses, in the form of real damage, imposed on the state due to its obligation to prevent terrorist acts, mainly they are related to the costs incurred by the state in organizing and further implementing of counter-terrorism procedures.
3. Harm, as well as losses, caused to third parties and associated with the conduct of counter-terrorism actions, the main purpose of which is to terminate the act of terrorism.
4. Harm caused to persons directly involved in the operation for terrorist activities suppression. Such harm can be expressed in their death, injury, and bodily harm of varying severity.
5. Moral and property damage that is caused to persons during the direct act of terrorism.

V. CONCLUSION

Therefore, we conclude that by its meaning the concept of "harm" also contains compensation for damages and compensation for moral injury. In this case, in turn, in accordance with Art. 15 of the Civil Code of the Russian Federation the losses include real damage and lost profit.

In fact, in practice, the determination of the following types of losses plays an important role: legal – a monetary assessment of the likely negative result from violation of rights and legitimate interests of parties to civil legal relations; and real, representing the specific results of the damaged material assets.

Based on the above definition of the concept of civil-law liability arising from harm caused by a terrorist act, and also taking into account the types of harm that we previously identified, we believe it will be correct to define the mechanism of its compensation as a special order of principles, grounds, conditions, subjects, as well as the content of compensation for harm caused. Here it should be noted that this procedure is established by the Russian legislator solely for the purposes of, firstly, the effective restoration of both the tangible and intangible rights of the person, who suffered during the terrorist act, and, secondly, to bring the person responsible for committing the crime to civil liability.

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