

# Criminal–Legal Means of Counterterrorism Need to be Improved

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**Abstract** - The work aim is to assess the anti-terrorist component of the Russian criminal legislation from the position of its suitability for countering modern terrorism, and above all its manifestations such as a terrorist act and an act of international terrorism. The research relevance is determined by the exceptional danger and scale of terrorism, the number of their human victims, changes in the qualitative parameters of criminological manifestations of terrorism and the need to find effective countering means this part of criminality. The general characteristic of terrorism crimes is given, the legislative constructions fixed in articles 205 and 361 of the Criminal Code of the Russian Federation are studied and estimated. Many general scientific methods of creative search, statistical techniques, as well as traditional methods of legal science were used to achieve the research goal. The work results are to identify the main failures of the regulation of the relevant legal norms and identify possible ways to overcome such defects. The connection between the unjustified complication of the legislative model of a terrorist act and the difficulties experienced by law enforcers in interpreting article 205 of the Criminal Code is shown. The author proves the inconsistency of the exclusion from the number of purposes of a terrorist act of the population intimidation and the insufficiency of the use for differentiation of responsibility for this crime, as well as the act of international terrorism of certain qualifying features. Proposals were made to improve the criminal-legal means of responding to the studied crimes, including recommendations to the legislator to clarify the normative description of the signs of terrorist crimes, to simplify the normative models of acts of terrorism, to optimize the differentiation of criminal liability for terrorism.

**Keywords:** *act of international terrorism, terrorist act, counterterrorism, criminal–legal means, differentiation of criminal liability*

## I. INTRODUCTION

Criminal displays of terrorism, unfortunately, have ceased to be exceptional cases [1]. So, only for five years (2013 – 2017) in the Russian Federation, 7417 facts of terrorist nature crimes were included in official statistics. Not become isolated, and examples of criminal infringement described using a basic construction, intended for counterterrorism - terrorist act components (art. 205 of the Criminal Code). For 20 years (1998 – 2017) in Russia, 2295

facts of acts of this type were registered [2]. The most alarming of these years was 2003 when 561 cases of terrorist acts were identified [2]. To cause panic among the population, terrorists often resort to the tactics of serial crimes. Three explosions organized in October (1) and December (2) 2013 in Volgograd and claimed dozens of human lives, it is possible to carry to serial crimes.

Today, the terrorist threat has acquired a qualitatively new content. "Modern terrorism, - it is noted in scientific works, - is characterized by the scale of committed terrorist acts, high level of organization and financing, sharply increased technological and technical equipment <...>, which causes the emergence of its new forms [3]. The emerging terrorism modifications have a much greater destructive power than its traditional displays. Thus, according to experts, "the destructive effect of the act of computer terrorism against telecommunication networks, electric power supply, oil refineries, etc. can be compared with the use of mass destruction weapons" [4]. It is noted that "the damage from the illegal activities of computer terrorists reaches 13.5 billion dollars a year" [4].

The scientific printing also emphasizes the exceptional danger of environmental terrorism, that is, "terrorism by causing harm to the environment" [5]. Special warnings are about terrorist acts involving an attack on environmentally hazardous objects or using environmentally hazardous means [5], as such are fraught with thousands of victims.

The increased danger of modern displays of terrorism is caused by its group component. It is no longer a secret that most terrorist acts are carried out in complicity. Relying on the support of other terrorists, sharing the criminal experience with them, uniting their efforts, the perpetrators of terrorist acts show greater determination to commit a crime and achieve greater results in achieving their goals. The concealment of group terrorist acts is more complex, and the risk of evading criminal liability of the terrorist act organizers increases. "The peculiarity of modern terrorism, "V. P. Alekhin writes irritably," is the involvement of women and children in terrorist activities. In the terrorist organizations (criminal organizations) there is their preparation and "zombification" for the commission of these crimes" [6, 7].

The qualitative peculiarity of "terrorism" of the late twentieth century and the present century also determines its [terrorism] transnational segment. According to research data, conducted by A. H.-A. Pikhov, "Transnational character is <...> 34 % of crimes of a terrorist nature" [8]. For this period, the emergence of the international terrorism phenomenon is also essential [9], the transformation of the terrorist underground into a threat to the peaceful coexistence of states, into a factor of destabilization of international law enforcement and international stability [10, 11]. Researchers are forced to state the transformation of Russia into a source and territory of the functioning of large terrorist international organizations [12, 13].

Against this background, the efforts of the Russian legislator aimed at optimizing the legal basis for countering displays of terrorism, including the reform of criminal-legal means designed for such confrontation, are quite understandable. For this purpose the Criminal Code of the Russian Federation is regularly amended (2004, 2006, 2008, 2009, 2010, 2013, 2014, 2016, 2017, 2018), introduced seven new articles of the Special part (art. 205<sup>1</sup>-205<sup>6</sup>, 361) [14, 15], some provisions of the General part (part 2 of article 20, art. 35, 57, 58, 63, 64, 70, 72, 73, 78, 79, 82, 92, 104<sup>1</sup>). However, even today, the anti-terrorist component of the Russian criminal legislation looks exceptionable. Shortcomings can be found both in the regulation and differentiation of the grounds for criminal liability for socially dangerous displays of terrorism and in the definition and ranking of the limits of such responsibility.

## II. MATERIALS AND METHODS (MODEL)

Many general scientific methods of creative search, statistical techniques, as well as traditional methods of legal science were used to achieve the research goal.

## III. RESULTS AND DISCUSSION

Few people today dispute the thesis of the urgent need to implement a set of measures to minimize the terrorist threat. About acts of a terrorist nature, it is also true, as about crime in general, that the role of criminal law in countering criminal acts is not decisive. The criminal-legal means for all their importance are not able to influence the main crime causes. "The main crime determinants - reasonably writes V. V. Luneev, - always were and remain socio-economic reasons. The socio-economic reasons are expressed in the social injustice, which is layered with many other circumstances" [16, 17]. But also to the support role of the neutralizer of some criminal factors, rightfully belonging to the criminal legislation, the state should treat with all due care and responsibility. Accordingly, the success of countering the terrorism displays with the help of criminal-legal means depends on the quality of the criminal law, on its "viability", if we operate with the words of N. S. Tagantsev [18].

Meanwhile, doubts about the livability of penal prohibitions of terrorist acts are caused by the legislative models of a terrorist act themselves, and the description of individual signs of the meet definition of *corpus delicti*.

The terrorist act components (art. 205 of the Criminal Code) and an international act of terrorism (art. 361 of the Criminal Code) by the way they are described by the legislator are complex. This complexity, determined by the

alternativeness of several signs of criminal infringements, characterized in these articles, on the one hand, raises doubts about the adequacy of the normative assessment of individual terrorism displays, and on the other, it makes difficulties for the correct understanding of the meaning of penal prohibitions.

So, in one part of the article 205 of the Criminal Code of the Russian Federation the description of different forms of the terrorist act reflecting both real commissions of socially dangerous acts, and the threat of their commission is given. At the same time, the characteristic of actions committed in a socially dangerous way is given by compiling an open list of them and limiting the generic concept with the help of such signs as creating a danger of serious consequences and intimidating the population. Alternatively, the terrorist act objectives are set out. As such is 1) destabilization of the activities of authorities or international organizations; 2) impact on the decision-making of these actors. However, such an alternative is provided only for a terrorist act carried out with the help of the actual commission of acts fraught with grave consequences (explosion, arson, etc.). As for the threat of a terrorist nature, its purpose is expressed without alternatives. It is only a question of influencing decision-making by authorities or international organizations.

The legal literature has already drawn attention to the invalidity of combining in one legislative structure significantly different from each other in terms of social danger of criminal acts: the actual commission of a terrorist act and the threat of its commission. In this regard, a proposal was made to separate these terrorism forms in different articles of the Criminal Code of the Russian Federation [19]. However, the legislator not only did not react to this proposal but also when designing a new composition of an international terrorist act, he laid the same defect in the normative model (article 361 of the Criminal Code), noted as such in scientific research [9]. It should be noted that this defect in the legislative model of the act of international terrorism is enhanced by the fact that the crime purpose is concretized only about the terrorist act forms associated with the said article - the actual implementation of actions of a terrorist nature. About the threat purposes of such actions, the law enforcement officer has to guess whether it is the same aspirations of the subject as in another form of an act of international terrorism, or in this case, the purpose is not a constructive *corpus delicti*. It appears that the separation into independent articles of the Criminal Code of the threat compositions of terrorist acts and terrorist threats would minimize problems of practical goal-setting crimes since in this case these could be fixed more definitely.

Let us return to the description of the terrorist act purposes in part 1 of article 205 of the Criminal Code.

Some scholars have praised the exclusion from the disposition of this part of the article of reference to such alternative purposes as the population intimidation and the public safety violation. For example, according to P. V. Agapov and K. V. Mikhailov, this disposition has acquired greater accuracy and conciseness [12]. Some researchers see the rationale for the analyzed change in the fact that "the population intimidation is a means of realizing the terrorist goal", and not their goal itself [19].

At the same time, the legislative description in the law of the terrorist act purposes by several Russian legislators causes critical remarks, which mainly concern the influence addresses. For example, according to V. P. Alekhin, not only authorities and international organizations should be considered as such, but also other legal individuals and companies capable of making independent decisions beneficial to terrorists [6]. A similar point of view has by D. A. Kovlagina [3]. Agreeing in general with such judgments, we note the following. The wording of the description in the disposition of part 1 of article 205 of the Criminal Code of the terrorist act purposes does not quite correspond to the essence of the crime prohibited by this article as an attack on public safety. This wording does not take into account the fact that the danger of encroachment of this kind does not become less if the subject, which is influenced by the commission of actions that violate public safety, becomes not a state structure, but the power source is the people. The aspirations of modern terrorists are not limited to subjugating only those in power. For them, it is no less desirable to establish domination over the entire population, for the sake of which actions of a terrorist nature are often committed [20]. Hence, the intimidation of the population can be not only an intermediate but also the ultimate goal of a terrorist act.

Taking into account all noted we offer to state the disposition of part 1 of article 205 of the Criminal Code in the following wording:

«1. The commission of an explosion, arson or other actions that violate public safety and create a real possibility of human death, causing significant property damage or other serious consequences, to intimidate of population or destabilize the activities of authorities or international organizations or influence their decision-making."

In turn, the disposition of part 1 of the newly drafted article of the Criminal Code, which proposes to isolate the threat components of a terrorist act, we recommend to formulate as follows:

«1. The threat of terrorist act committing carried out for the purposes specified in part 1 of article 205 of this Code."

The current version of article 205 of the Criminal Code allows us to state some successes in terms of the use of qualifying features by the legislator to determine the limits of criminal liability for terrorism displays. Such, in particular, no longer provides for such a qualified type of terrorist act as the commission of the latter with the fire-arm use, as it was in the original version of paragraph "a" of part 2 of this article. Such ranking of the liability scope was rightly recognized as unjustified by some representatives of criminal legal science. "It is obvious that the use of fire-arm - wrote, for example, P. V. Agapov and K. V. Mikhailov, - not a more dangerous form of terrorist displays, than, for example, the explosion which is made with the use of explosive devices and explosives and involves much more destructive consequences" [12]. More adequate to the requirements of the modern period was the edition of paragraph " a " part 3 of article 205 of the Criminal Code. The last edition version makes it possible to take into account the increased public danger of a terrorist act committed with the use of poisonous, toxic, dangerous chemical or biological substances. Previously, only the use

of nuclear substances or radioactive sources was recognized as a particularly qualifying circumstance.

At the same time, it is impossible not to say that there are reasons for a new "audit" of the differentiation results of criminal liability for a terrorist act made by the legislator.

Part 2 of article 205 of the Criminal Code still retains such a qualifying feature as "causing the act of carelessly of person death." However, despite the undoubted ability of such a circumstance to significantly increase the public danger level of a deliberate crime, the indication of circumstance is among the qualifying signs of a terrorist act that seems unfounded. It seems that T. Y. Oreshkina is absolutely right. claiming the following: "It should be noted that careless attitude to the consequences in the form of human death in the commission of general dangerous actions is almost not found, and theoretically it is difficult to justify. The very essence of a terrorist act indicates that a person who commits an explosion, arson or other actions that intimidate the population and create the danger of various grave consequences, foresees the inevitability or real possibility of causing death to a person" [21]. It is very difficult to imagine a situation in which a person who deliberately creates the danger of human death, resorting to a generally dangerous modus operandi, does not foresee the occurrence of such a consequence. This is possible only in rare cases (for example, when an unexpected for guilty for the expansion of the lesion range, in case of person death from the terrorist actions, committed for demonstration purposes for the execution of general dangerous actions). However, it is hardly necessary to create a special legislative structure for such rare situations. "The constituent element should be a typical characteristic of the prohibited behavior, and not its individual feature" [22].

Even more, complaints are the consolidation in paragraph "b" part 3 of article 205 of the Criminal Code of the Russian Federation sign, expressed by the words "caused intended infliction of person death." First, in this case, there is an unprecedented hitherto used by the legislator to strengthen the responsibility for one crime, indicating as his [crime] qualifying feature for another, more dangerous, based on the comparison of the sanctions established by law, criminal infringement. After all, the murder committed in the course of a terrorist act does not fit into the framework of the crime qualified under part 1 of article 105 of the Criminal Code, since it contains at least one qualifying circumstance – it is committed in a generally dangerous way. So such a murder must be classified as qualified. Meanwhile, the maximum limit of the sanction of part 2 of article 105 of the Criminal Code today is determined by the inclusion of an indication of the death penalty, while the most severe punishment for a terrorist act is established in the form of life imprisonment. From the position of the hierarchy of values protected by the criminal law established by the legislator, the considered integrated corpus delicti also looks flawed. The Constitution of the Russian Federation proclaims human life as the highest value. The Criminal Code protects human life as a priority object, as evidenced by the description of the tasks of the Criminal Code (part 1 of article 2) and the structure of the Particular Part of this legislative act (Chapter 16 "Crimes against Life and Health" opens the Particular Part), and the location of the article on liability for murder (posted at the very

beginning of the relevant chapter). It follows that even for political reasons, the recognition as an integral part of a crime that violates certain social relations, of intentional encroachment on an object, which occupies the most honorable place in the hierarchy of protected values, is fundamentally wrong. Such a defect in the legislative technique could be partially mitigated by a qualitative interpretation of the relevant provisions of the criminal law, aimed at competent application in the implementation of paragraph "b" of part 3 of article 205 of the Criminal Code on the classification of crimes in the aggregate of the articles. The following arguments by A. S. Gorelik seems quite reasonable to us in this regard. Differentiating situations of competition of part and whole, on the one hand, and set of crimes with another, the author writes: "Complex compositions are formulated to strengthen the responsibility for the whole range of actions in comparison with the punishment that could be imposed in the aggregate" [23]. Hence he makes the following conclusion: "Complex composition covers included simple only to the extent that the nature and degree of public danger of the latter do not exceed the danger of the acts specified complex composition, and the role of risk criteria perform sizes appropriate sanctions. Depending on the ratio of the most simple and complex compositions, it should be concluded whether we are talking about competition between them or about their totality" [23]. But these recommendations are not taken into account not only by the legislator, who does not provide for the terrorist act of the death penalty but also by the Plenum of Supreme Court of the Russian Federation. The highest judicial body of Russia in its Decision No.1 of January 9, 2012 "On some matter of practice in criminal cases of crimes of terrorist nature" explained to the courts that "if a terrorist act caused intended infliction person death (or two or more persons), offense is covered by paragraph "b" part 3 of article 205 of the Criminal Code and additional qualification under Article 105 of the Criminal Code does not require" (p. 9) [24].

For the reasons given above, the fallacy of this recommendation is evident even in cases where a terrorist act involves the killing of only one person. But about cases where in the process of the named crime two or more persons lost their lives, and even more so dozens or even hundreds of people, such an interpretation of the law and does look absurd. Indeed, in paragraph "b" of Part 3 of Art. 205 of the Criminal Code of the Russian Federation, the word "person" is used in the singular. And against the background of sanctions comparison of this norm with the sanction of part 2 of article 105 of the Criminal Code it is possible not without grounds to assume that application of part 3 of article 205 of the Criminal Code is not calculated on the facts of deliberate deprivation of life in the course of a terrorist act of several people. Therefore, such an explanation precludes a fair assessment of what those responsible have done. It does not allow to take into account the differentiation of criminal liability for murder made by the legislator, in particular, to take into account the exceptional increased public danger of this crime when it is committed in the presence of several qualifying signs. The inadequacy of the legal evaluation of these cases only under paragraph "b" of part 3 of article 205 of the Criminal Code is also connected with the impossibility of imposing a sentence of imprisonment for a certain period in aggregate,

and therefore, the inadmissibility of the implementation for this reason of the provisions of part 5 of article 56 of the Criminal Code. According to this article, in the case of committing, in particular, a terrorist act, the maximum term of imprisonment imposed on the cumulative crimes shall be increased to thirty years. Meanwhile, the need to apply this rule can become urgent in the commission of a terrorist act that has caused human losses, carried out by persons to whom the law can not apply life imprisonment, but can be punished by imprisonment for a term of more than 10 years (women, men who have reached the age of sixty-five years). Given the last remark, it can be argued that even toughen sanction of part 3 of article 205 of the Criminal Code by indicating the possibility of the death penalty does not completely solve the problem of fairness ensuring of the criminal law assessment of a terrorist act, during which intended infliction of person death. To the full extent, the above applies to art. 361 of the Criminal Code, in part three of which a particularly qualified composition of an act of international terrorism is fixed. However, about the latter corpus delicti, another problem may be highlighted. The fact is that part 3 of article 361 of the Criminal Code does not specify the form of guilt about the onset of human death. And since the last revision of part 2 of article 24 of the criminal code can no longer serve as an obstacle for admission to the corpus delicti of careless forms of guilt, the question inevitably arises about the fairness of sanctions article against the covered by the especially qualified act of international terrorism situation causing that act of person death against whom determined the careless form of guilt.

Thus, the goal of deepening the criminal liability differentiation for terrorist acts was not achieved, which was set by the legislator in the construction of a normative model of a terrorist act that intended infliction of person death. On the contrary, the effect was the opposite. To optimize the criminal-legal means of counter-terrorism, it is necessary to exclude from the Criminal Code the provisions of paragraph "b" of part 3 of article 205 and part 3 of article 361. It is irrational to leave in the named normative act and the qualified structure of the terrorist act which has entailed on imprudence person death (paragraph "b" part 2 of art. 205).

#### IV. CONCLUSION

In conclusion, we formulate some findings.

A. In the modern period, the terrorist threat has acquired the character of a permanent threat and at the same time has received qualitatively new content. Terrorist acts are becoming more destructive and terrorists are becoming more organized and technically equipped. Of particular concern are new modifications of this phenomenon – information and environmental terrorism, as well as the terrorism transformation into a factor of destabilization of international law enforcement and international stability. This implies the need to find effective means of counter-terrorism, including improving the legal framework for combating its [terrorism] criminal displays. However, despite the constant updating of Russian criminal legislation, the anti-terrorist component of the latter still looks flawed. There are shortcomings both in the regulation of the grounds for criminal liability for socially dangerous displays of terrorism and in determining the limits of such liability.

*B.* The legislative model of a terrorist act (part 1 of article 205 of the Criminal Code) is too complicated. Moreover, in these constructions unnecessarily combined with different degrees of social danger of encroachment: and the actual commission of publicly dangerous action, and the threat of such acts. On the one hand, this raises doubts about the adequacy of the normative assessment of terrorism displays, and on the other hand, creates difficulties for the correct understanding of the meaning of the penal prohibition. Also, the law imperfectly describes the objectives of terrorist acts, their characteristics do not fully correspond to the essence of the acts prohibited by the correlating articles, which are encroachments on public security. It is not taken into account, in particular, that the addressee of terrorist threats are not only the authorities but also the source of authority is the people. And therefore, the intimidation of the population can serve for terrorists not only intermediate but also the ultimate goal. To overcome these shortcomings it is proposed to state the disposition of part 1 of article 205 of the Criminal Code in the following edition: «1. The commission of an explosion, arson or other actions that violate public safety and create a real possibility of human death, causing significant property damage or other serious consequences, to intimidate of population or destabilize the activities of authorities or international organizations or influence their decision-making.»

And the disposition of the new article of the Criminal Code, which is supposed to isolate the threat composition of a terrorist act is recommended to formulate in this way: “1. The threat of terrorist act committing carried out for the purposes specified in part 1 of article 205 of this Code.”

*C.* The differentiation of criminal liability for a terrorist act and an act of international terrorism made by the legislator with the help of qualifying features does not seem to be fully justified. The purposes of counter-terrorism are not met by the construction of qualified structures provided for in paragraph "b" of part 3 of article 205 and part 3 of article 361 of the Criminal Code. From the standpoint of the hierarchy of values protected by criminal law and taking into account the comparative gravity of criminal acts, it would be incorrect to turn the sign of intended infliction of person death into a construction element of another crime. It was also imprudent to deprive the law enforcement officer of the opportunity not only to appoint a lawbreaker (terrorist and murderer) punishment in the form of the death penalty but also to determine the punishment taking into account the totality of crimes, which belongs to the category of criminal acts of special gravity. The created construction is unsuitable for counter-terrorism accompanied by mass human victims. To optimize the criminal legal means for such a confrontation, it is necessary to exclude from the Criminal Code the provisions enshrined in paragraph "b" of part 3 of article 205 and part 3 of article 361. It is irrational to leave in the mentioned normative act the qualified composition of the terrorist act, which inadvertently caused a person death (paragraph "b" of part 2 of article 205) since the creation of such a model did not have a serious criminological justification.

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