

Розділ 1

Теорія та історія держави і права; історія політичних та правових учень. Конституційне право; муніципальне право. Філософія права

УДК 340.12:323.28

A. Frantsuz
*Hero of Ukraine, Honored Lawyer of Ukraine,
Doctor of Law, Professor,
Head of the Department of State and Legal Disciplines,
“KROK” University*

Prevention and Counteraction of Terrorism by State Authorities: Theoretical and Legal Aspects

Theoretical and legal aspects of preventing and counteraction of terrorism by state authorities are analyzed in the article.

Key words: prevention, counteraction, terrorism, authority.

А.Й. Француз
*Герой України, заслужений юрист України,
доктор юридичних наук, професор,
завідувач кафедри державно-правових дисциплін,
Університет економіки та права «КРОК»*

Запобігання і протидія тероризму з боку органів державної влади: теоретико-правові аспекти

У статті розглядаються теоретико-правові аспекти запобігання і протидії тероризму з боку органів державної влади.

Ключові слова: запобігання, протидія, тероризм, влада.

А.И. Француз

*Герой Украины, заслуженный юрист Украины,
доктор юридических наук, профессор,
заведующий кафедрой государственного-правовых дисциплин,
Университет экономики и права «КРОК»*

Предотвращение и противодействие терроризму со стороны органов государственной власти: теоретико-правовые аспекты

В статье рассматриваются теоретико-правовые аспекты предотвращения и противодействия терроризму со стороны органов государственной власти.

Ключевые слова: *предотвращение, противодействие, терроризм, власть.*

Challenge problem

Modern terrorism is the phenomenon, which is qualitatively and quantitatively different than extremist movements of the past. Public danger directly in infringement of values of a modern civilization, democratic institutes, stability and freedom of choice. There is direct link between escalation of terrorism and philosophy of violence, nihilism, destruction, is a priority of confession of extremist political national studies and doctrines. Today terrorism is result of criminal logic, violence philosophy, sarcoma of the 21st century.

In historiogenesis of terrorism, for each historical period terrorism is inherent different manifestations. Together with change of an era also the content of terrorist aggression changes in ways, the purposes, scales, geography and forms of manifestation. New ideologies are made and religious dogmas and postulates are made on the basis of which terrorists, or those who stand behind them make attempts to achieve political, ideological and other goals.

A review of recent studies and papers

In the 20th century has occurred global transfer and reconsideration of terrorism to the state level. The policy of terrorism was spread by certain secret experimental programs over society of misanthropes which were at the head such as Lenin V., Stalin I.,

Hitler A., Mussolini B., Mao Tse Tung, Pol Pot, Brezhnev L. and others.

The total fear is the major uniting factor of the communist and fascist regime which practically differed in nothing. In realities, separate dictatorial manners and criminal reflexes operate separate that want to seed total fear in the world and Ukraine. The terrorist policy is addressed to all society which from her moral and material harm, leads to extermination of innocent people.

Further questions should be a subject of the scientific-theoretical, legal analysis. The scientific basis the specified problem is work of the domestic and foreign scientists.

At the same time, considering realities the specified questions demanding need for further scientific-theoretical justification of prevention and counteraction of terrorism.

Remaining challenges

Relevance and the importance of this perspective caused by judgment and reconsideration of realities, events in the east of our state, difficulties and opportunities in the conditions of reforming of institutes of the government, local government, way of prevention and counteraction to terrorism.

Draw the objectives of research

Scientific-theoretical justification according to the prevention and counteraction to terrorism from public authorities.

Discussion

All-social prevention of crime is the past of the perspective social and economic and cultural and educational actions aimed at the further development and improvement of the public relations and elimination or neutralization of the reasons and conditions of crime [1].

Any public work can achieve a goal, if she properly is doctrinally defined, directed, organized and is optimum resource provided. These requirements fully concern activities for counteraction of terrorism which are a kind of public work.

At the organization of counteraction to terrorism in modern conditions it is also necessary to consider and that circumstance that the terrorist threat as a result of growth of scales and degree of public danger, expansion of geography, increase vulnerable action of means of commission of actions of terrorism, internationalization of subjects of terrorist activity, transparency of the Ukrainian borders and some other the reasons was beyond the certain states and has turned into a problem of the international character.

The nation-wide system of anti-terrorist measures should correspond to the system of ensuring state security of Ukraine which is available today in general and to be focused on practical coordination of all kinds of activity of the state and public institutes for the purpose of prevention, identification and elimination of obvious and potential internal and external terrorist threats. For this purpose, it demands scientific validity, an orientation on achievement of the operated process of counteraction to terrorism and decrease in growth of crimes of terrorist character.

It is possible to allocate three levels of the state system of anti-terrorist actions: international, nation-wide and interdepartmental. The international level is formed considering the universally recognized norms and the principles of international law, provides the directions, forms and mechanisms of interaction of the states and his competent authorities in the prevention to the general terrorist threats. Nation-wide definition of a role and the place in its performance of various links of government, including law enforcement agencies are inherent in the level of anti-

terrorist actions fixing of the concept of prevention of terrorism as nation-wide task. Departmental systems place emphasis on tasks, powers, anti-terrorist actions, forces and means, specific to the appropriate authorities of prevention of terrorism, which are used.

The solution of the specified tasks can be considered as definite purposes on the way to the general result – prevention of terrorism. But achievement of a definite purpose demands application of various means or as they are usually called, actions of political, social, economic, legal character. The question of a ratio of the purposes (tasks) and means is difficult as in political, organizational, and morally.

In the political field, there is a question of adequacy of the purposes and means of prevention of terrorism of the outlined purpose, won't result their application in the return result: deepening of social crisis, tightening or incitement of international, confessional, religious or other social conflict. Considering it need of an assessment of actions of the power and criminological consequences of the made decisions is resolved by the persons authorized to perform imperious functions.

In the organizational way, it is necessary to solve, possibility of practical way to carry out these or those measures whether will be enough for this time, the available forces and means which will be expenses. It is obvious that development and realization of effective strategy of prevention of terrorism demands not only the reasonable forecast of development of a criminogenic situation, but also accounting of real prospect of organizational and legal and resource providing subjects of counteraction to terrorism.

The moral aspect of a ratio of the purposes and means, tasks and methods of their decision is very important. On the one hand, the society wishing to live under democratic laws shell humanize the criminal and legal policy. Protection and ensuring human rights concerns not only respectable citizens, but also violators of the law. In democratic society arrests only on suspicion, application of measures of physical or mental pressure for compulsion of the person to recognition of fault, application of illegal methods of col-

lecting proofs which are inadmissible. On the other hand, acts of terrorism are acquired so dangerous character, the criminal justice isn't capable to fight against them by traditional means.

Recently the question of introduction of so-called extrajudicial (not procedural) ways of prevention of terrorism is actively discussed. So, according to Russian scientific S.F. Milyukov, "considering the progressing apathy of the investigators and judicial authorities which are bound "by hand and foot" by new, rather imperfect criminal procedural legislation is the most effective way of fight against many especially dangerous crimes of terrorist character (taking of hostages, armed rebellion, and also hitmen). It is, firstly, about liquidation of the armed criminal groups during beforehand planned operations (including military) or (and) selective extermination of leaders and the most active performers of acts of terrorism" [2, p. 12].

In this context, S.F. Milyukov and D. A. Koryaksky quite logically note that "not procedural coercion shouldn't be reduced only to physical extermination of criminals, is a last resort. It is about caused by emergency destruction of infrastructure of organized crime – any constructions, including inhabited and production rooms, mechanisms, roads, bridges, power lines, destruction of crops, afforestations which are followed by withdrawal from property or possession of land, water and forest territories, eviction of the persons living there with the ban of the subsequent them emergence there" [3, p. 113]. Unfortunately, so far in the east of Ukraine the reverse situation in which destruction of objects of property and destruction of local infrastructure happen from DPR and LPR terrorists.

Similar approaches are actively propagandized also by the American scientists. Alan Dershovits, professor of law of Law school of Harvard University, among the most effective methods of prevention of terrorism calls control over mass media, monitoring of all communication channels, the announcement beyond the law of "statements in protection of violence", restrictions of movements, collective punishment, "surgical strikes", pre-

cautionary blows, the packed-up retaliations, confidential military courts, tortures of suspects [4, p. 99-118]. It is difficult not to agree with the researcher regarding control of media, especially considering modern realities of information war which Ukraine will lose today.

The practical embodiment of such ideas is the modern anti-terrorist policy of Israel for the Palestinian fighters when by the so-called principle of "asymmetrical" reaction not those structures which commit armed attacks and explosions, and the known governments official representatives of the Palestinian administration and its law enforcement agencies which wine nobody even tries to prove are destroyed. Similar tactics of counteraction to terrorism is actively applied also by the USA in the Middle East. It is guided by the confidential decision of the President B. Clinton on a possibility of physical extermination of the most dangerous terrorists extrajudicially [5, p. 584]. A certain type of this strategy of prevention of terrorism can be considered "filtered" camps in Guantanamo (Cuba) where within several years Americans contain at 550 people suspected of accessory to Al-Qaeda and Taliban to which tortures, tough and humiliating addresses are applied.

The specified views of terrorism precautionary measures urge to return to system of punishments which was norm in 30-40 years of last century in the territory of Germany which is fairly condemned by history and recognized as crime against humanity. Such "nonconventional" ways of prevention of terrorism have undergone fair criticism from the world community and scientists.

The author agrees with a position of A. N. Popov who has declared that "such offer can't be regarded differently as full refusal of all legal principles and installations, of observance of conditions of legitimacy of necessary defense. In other words, it means a possibility of execution extrajudicially. Implementation of this offer will lead to consequences, more tragic, than a consequence of activity of the three of the thirtieth years" [5, p. 63-64].

Machiavelli principle "the end justifies the means" not only immoral, but also is impractical. As domestic authors of the system

research “Fight against terrorism” fairly note, “one of the purposes at commission of acts of terrorism is desire of terrorists to force the state to apply to them cruel measures of punishment that under certain circumstances can lead to human rights violations” [6, p. 210].

Prosecutions and applications of repressive methods by law enforcement agencies leads to radicalization of the opposition movements. At the same time lack of nonviolent channels for expression of the discontent and carrying out alternative policy can lead to the fact that separate groups will begin to resort to violent measures and terrorism. Separate examples from experience of carrying out anti-terrorist operation in Donbass indicate that use of excessive force but not selectivity of repressive measures within efforts on counteraction to terrorism, the ideology of terrorists became stronger support enough wide layers of local population. Such strategy, as a rule, provokes violence, undermines legitimacy of counter terrorist actions.

In this context, the opinion of I. M. Ryzhov who considers that “such strategy of fight against terrorism at the heart of which there are no signs of physical abuse are perspective is quite logical, and the main attention is paid reasonable a compromise, considering interests of conflicting parties. Their observance allows society or social system to define an optimum algorithm of social management at which terrorism it is impossible as at the present stage, and in the future” [7, p. 147].

The most perspective direction of modern state policy of prevention of terrorism as it is represented, his social prevention which, irrespective of complexity of the operated public relations should be based on previously conscious and definite purposes of public activity is and provide real and lawful ways of their achievement.

In public realities such activity has to be shown through relationship, in particular, in the form of the activity of public authorities confirmed with the authorities and legal powers, and also functioning of the political parties, public organizations, various associations and other institutes of civil society directed to timely identification and the

decision of the possible social and political conflicts by search of possible compromises concerning settlement of the existing controversial issues is collectively organized (first of all on the basis of subordination and role specialization) relationship, in particular, in the form of the activity of public authorities confirmed with the authorities and legal powers, and also functioning of the political parties, public organizations, various associations and other institutes of civil society directed to timely identification and the decision of the possible social and political conflicts by search of possible compromises concerning settlement of the existing controversial issues.

To such ways of achievement of goals of nation-wide anti-terrorist policy, it is possible to offer the following regulating actions of representatives of power and other institutes of civil society:

- political and administrative (elimination of gaps in the legislation; development of the state and regional programs providing strategy and tactics of social and economic development of the country (region) taking into account existence and sharpness in the state or the concrete region of social and economic, political, interfaith, interethnic problems, separatist sentiments which can become a basis for their decision by terrorist violence co-ordination of work of various structures and institutions directed to performance of these tasks; direct role in solving territorial, ethnic, religious, etc. conflicts; definition of the directions of cooperation and a measure of participation of Ukraine in the international anti-terrorist structures);

- economic and social (development of mechanisms of realization of approved economic programs; financing of special programs of fight with crime; increase in living standards of the population; the organization and control with implementation of measures on impossibility of terrorism financing)

- psychological, communication and educational projects (large-scale work on education of citizens; work activation from “socialization” and of increase in their cultural level; development and realization of effective strategy of prevention of distribution of

ideology of terrorism; correction of moral deformations of extremist consciousnesses with the help of individual and educational works (the psychologist pedagogical and right-restrictive actions); wide use of constructive opportunities of media for formation of moral consciousness of citizens on the basis of a positive image of social adequate member of society and new national and state ideology of patriotic education.

Conclusions

Thus, the fundamentals of nation-wide anti-terrorist policy shall be economic, social, political, legal, spiritual, moral and other actions. They shall define social nature of prevention of terrorism, but not special and the majority repressive.

References

1. The New Terrorism // The Economist. – 15 August 1998. – P. 17.
2. Милоков С.Ф. Место показания в системе мер государственного принуждения / С.Ф. Милоков // Проблемы борьбы с экономической преступностью и наркобизнесом при переходе к рынку. – СПб., 1994. – С.11-15.
3. Корецкий Д.А. Внесудебная репрессия, как законный способ борьбы с преступностью / Д.А. Корецкий, С.Ф. Милоков // Уголовное право. – 2004. – №1. – С. 112-114.
4. Дершовиц А. Почему терроризм действует / Аллан М. Дершовиц; [пер. с англ. А.И. Година]. – М.: «Российская политическая энциклопедия» (РОССПЭН), 2005. – 256 с.
5. Попов А.Н. Преступление, совершенное при превышении пределов необходимой обороны (ч.1 ст.108, ч.1 ст.114 УК РФ) / А.Н. Попов. – СПб., 2001. – 157 с.
6. Ліпкан В.А. Боротьба з тероризмом / В.А. Ліпкан, Д.Й. Никифорчук, М.М. Руденко. – К.: Знання України, 2002. – 254 с.
7. Рижов І.М. Щодо проблеми позиціонування стратегій боротьби з тероризмом / Ігор Рижов // Підприємство / І.М. Рижов. – 2008. – №10. – С. 144-147.

There are no doubts that the wide range of the specified means and methods of prevention of terrorism can't be realized with high efficiency without coordination and association in the uniform scientifically reasonable long-term program which has to be developed and approved at the highest state level. Such program of activity of specially authorized bodies of the power shall be based on volume comprehensive vision of essence of the studied problem. Only mutually agreed are also applied in a complex of means of policy and diplomacy, prospecting and counterprospecting support of anti-terrorist activity, active international cooperation in spheres of introduction of social programs, etc., are capable to resist to such dangerous threat as terrorism.