

TERRORISM OFFENCE

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Rezumat

Crimele și delictele de terorism reglementate prin înserarea lor specială în cadrul noului Cod penal în Titlul IV- partea specială, nu sunt posibil de realizat decât prin crime și delict de drept comun. De ce este necesară o abordare separată a acestora este o întrebare la care doctrina ne conduce spre specificul cu totul aparte a acestui tip de criminalitate. În vechiul Cod penal o abordare separată nu era posibilă ca urmare a concepției în care s-a realizat acest act normativ, precum și pentru că la nivelul anului 1969, când a intrat în vigoare, terorismul apăruse ca o reacție de extremă stângă, desprinsă din stânga leninistă, considerată ca păstrătoare a spiritului revoluționar împotriva capitalismului. În zilele noastre terorismul este nu numai un fenomen al criminalității celei mai periculoase, dar și o metodă de luptă asimetrică ori fundamentalistă, specifică unor entități care dețin forță, bani, oameni, organizare și chiar un management deosebit de eficient, raportat la dezastrele de care este capabil.

Două aspecte sunt esențiale pentru existența terorismului :

- a) folosirea pe o scară primejdios de largă a infracțiunilor de drept comun și a criminalității organizate în scopul de a produce teroarea în rândurile opiniei publice, și
- b) folosirea inconștienței mass-mediei, care prin difuzarea în întreaga lume a evenimentelor teroriste nu fac altceva decât să realizeze scopul terorismului și anume: propaganda terorii.

Fără cele două componente terorismul nu poate exista, faptele și actele infracționale intrând în domeniul penal de altă sorginte, în special de drept comun.

Abstract.

Terrorist Crimes and offences included in a special section of the new Criminal Code – Title IV-the special part, could not be committed but through common crimes and offences. Why a distinct approach is necessary for them, that is a question that could be answered only by treating this type of crime in a different way.

In the former Criminal Code there was not possible to have a distinct approach because of the conceptual ideas on which the law had been materialized. Another reason was the fact that in 1969, when it was released, the old Criminal Code, terrorism appeared as a reaction of the extreme left militants, separated from the leninist left, which was considered to preserve the revolutionary spirit against capitalism. Nowadays terrorism is not a phenomenon of the most dangerous forms of crime, but also a means of asymmetrical fight (or fundamentalist), specific to entities which detain force, money, people, an organized and effective system, if reported to the disasters that is produced.

Two aspects are essential in terrorism:

- a) the use on a dangerously large scale of common offences and of the organized crime in order to disseminate terror among public opinion, and
- b) the use of the unconscious mass – media, which, by broadcasting the terrorist events all over the world, do nothing but accomplish the terrorist goals that is: propaganda of terror.

Without these two components terrorism could not exist, facts and criminal acts being included in the Criminal code in the chapter for common offences.

Legal content, pre-existent circumstances, constitutive content, forms, manners and punitive sanctions

It might seem surprising for us to assert that one cannot formulate an exhaustive definition of terrorism. We could affirm that whatever the terrorist performs can be denominated as terrorism, but that would determine us to think about many other concepts which do not have the semantic power to define a terrorist. There are many attempts, in this respect, and that is why I shall try not to reiterate any definition from the doctrine, but to quote article no.1 from the text

of the law no.535 / 25th of November 2004 regarding the prevention of and the fighting against terrorism, text which displays the fact that: "Terrorism represents the sum of actions and / or threats which constitute public enemy and affects national security and has the following characteristics:

a) these actions are performed with malice prepense by terrorist entities, motivated by extremist attitudes and conceptions, hostile to other entitites, against which they act violently and destructively;

b) their goal is to achieve objectives of political nature;

c) they aim at human and / or material factors from public authorities and institutions, civil population and other parts appertaining to them;

d) they produce states of mind with powerful psychological impact against the population, a fact which is meant to emphasize the purposes the terrorists aim at."

Terrorism, as a phenomenon, can only be materialized with the help of acts of terrorism, which, accordind to the Penal Code, art.no.295, are defined as follows: "The following offences are considered acts of terrorism, if they are committed in order to gravely disturb public order, by creating intimidation, terror or states of panic"

We shall notice / observe that the list of the terrorist acts bares the shape of common offences such as:

-offences of manslaughter and premeditated manslaughter;

-hurting and grave corporal wounding;

-illegal loss of liberty;

-performing civil aerian operations without authorization or licence, if the deed endangers the safety of the flight, public health or the environmental protection;

-carrying on activities within the perimeter of the airport infrastructure, without authorization or licence, by artificial persons, if the deed endangers the safety of the flight;

-communicating information, knowing that it is false, if the deed endangers the safety of the flight or if it deviates the route of the flight;

-illegal use of any device, weapon or substance aiming at producing an act of violence against a person serving the civil aviation;

-committing any act of physical or pshychical violence against a person on a flying or ready to fly airship;

-placing or using any device, substance or weapon to destroy or badly deteriorate the endowments belonging to the airport or to an airship out of service which is on the airport;

-suspending the services of the airport, if he deed endangers its safety;

-destroying or badly deteriorating the instalations and the equipment destined to protect the aerian navigation or disturbing, in any manner, the functionability of the aerian navigation services, if the deed is meant to endanger the safety of the flight;

-destroying or deteriorating a functionable airship so that it can be made unable to fly or endanger its flight safety;

-placing or helping to place, by any means, a device, a weapon or a substance on the board of an airship so that it can be destroyed or one can produce damages to it, which makes it unable to fly or endangers the safety of the flight;

-destroying, degrading or rendering unemployment to a good belonging to other or preventing the taking of the measure to conserve or save such a good, and obviation of the measures taken previously as well as in the case when the good has a special artistic, scientific, historic, archivistic or a similar value;

-destroying, degrading or rendering unemployable of a petroleum or gas pipe, of a high tension cable, of the equipment or installations of telecommunication or of broadcasting radio or television programs, or of the water supply systems and the water main supplies;

-partial or total destruction of an authentic act or under private signature which does not belong or exclusively belong to the doer or hiding an act which does not belong to the doer with the purpose of provoking a damage to a person;

-destroying or degrading terminals, marks, level marks or geodesic signs of the national network, placed on soil or buildings, or destroying terminals, pillars, landmarks or other signs which mark the state frontiers or preventing the taking of the measures to conserve them;

-if the destruction, degradation or rendering unemployable is committed through setting fire, explosion or a similar means and if public danger is a result of this, even though the goods belong to the doer;

-if the destruction had severe consequences or provoked a disaster (disaster consists in the destruction or the degrading of public transportation, of human or material transportation, of some installations or works and which had as a consequence the death or the severe wounding of the corporal integrity or the health of many persons – art.264, alin.2. Penal Code);

-holding, bearing, manufacturing, transporting, as well as other operations regarding the circulation of weaponry and ammunition or functioning of workshops of repairing guns, without a licence;

-not returning the gun and the ammunition to the legal authority when one's licence expired and he was no longer granted the right to bear a gun;

-holding, alienating or illegal carrying of weapons / guns within the buildings of authorities or public institutions, on the occasion of public meetings or within election buildings;

-receiving, possessing, using, giving, altering, alienating, dispersing, exposing, transporting or misappropriating nuclear materials or other radioactive matters, as well as any other operation regarding their circulation, researching, projecting, placing, producing, building or assembling nuclear objects or installations, rendering employment, exploitation, altering, rendering unemployable, import or export of nuclear installations, illegally;

-purloining or destroying nuclear materials or other radioactive matter, as well as developing, manufacturing, possessing, importing, exporting or transiting nuclear weapons or other explosive nuclear devices, as well as if the deeds produced public danger or severe consequences, severe corporal wounding or strikes causing death;

-rendering unemployable, totally or partially, of the surveillance and control equipments, in the situation in which the deed cannot be justified by nuclear security or radioprotection;

-producing, experimenting, processing, possessing, transporting or using explosive matters or any other operations concerning these matters, without legal consent;

-purloining explosive matters;

-if the deeds of non-compliance with the regime of explosive matters produced public danger or severe consequences, severe body harming or strikes or harming causing death;

-when non-compliance with the regime of explosive matters regards a quantity larger than 1 kilogramme, trotyl equivalent, or when the explosive quantity is accompanied by initialization materials, or when the deeds had extremely severe consequences or if death of one or more persons occurred;

-introducing or dispersing into the atmosphere, on soil or underground or into water of products, substances, materials, microorganisms or toxins able to endanger human or animal health or the environment;

-threatening with bombs or explosive matters.

Certainly, although the terrorist acts emphasised in the above lines take the shape of a multitude of real aspects, within the frame of penal legislation they are completed by the provisions of the content of some distinct offences considered as crimes and misdemeanours of terrorism and are to be found within TITLE IV of the special part of THE PENAL CODE such as follows:

Association for committing terrorist acts, art.296, P.C.;

Financing terrorist acts, art.297. P.C., through:

-placing funds at one's disposal or collecting them indirectly or directly, knowing that they are used, totally or partially for committing terrorist acts, as well as funds producing;

-achieving funds for financing terrorist acts;

Threatening for terrorist purposes, art.298, P.C., as follows:

-threatening a person or a community by any means, with the help of spreading or using products, substances, materials, microorganisms or toxins able to endanger human and animal health or the environment;

-threatening a state, an international organization or a natural or an artificial person by using nuclear materials, other radioactive or explosive matters with the purpose of provoking death of a person or corporal or material damage;

-the deed can be conditioned by the fulfilment or the unfulfilment of an act when, by threat, under any form, one pretends to give or to give back nuclear materials, other radioactive or explosive matters.

Alerting for terrorist purposes, art.299, P.C. as follows:

-alerting without a good reason in order to create a state of panic to a person or to the public, to the authorities destined to intervene in case of danger or to the authorities destined to maintain public order, by correspondence, telephone or any other means of transmitting facts regarding the spreading or the use of products, substances, materials, microorganisms or toxins.

In dealing with pre-existent conditions of crimes and offences of terrorism we shall approach the subject and the object of these complex offences.

The generic juridical object is constituted by the social relationships regarding public order, the safety and the peace of the citizens, relationships which are not compatible with acts performed in order to provoke terror, intimidation or states of panic. In this respect, Resolution no.1373/2001 of ONU's Security Council dealing with fighting against international terrorism, EU's Action plan regarding the fight against terrorism adopted at Brussels on the 20th of October 2001, The European Convention regarding the suppression of terrorism, ratified by Romania by Law no.19/1997, Document no.14574/1/ENFOPOL dealing with fighting against european terrorism, dated on the 28th-29th of January, 2002 appreciate that, when facing with international terrorism, states need to protect public order, the safety and the peace of citizens against such acts, by using the most reliable instruments¹. **The special juridical object** of the offences of terrorism is constituted by the social relationships which protect public order, the safety and the peace of the citizens, and, in addition, the person's integrity, the goods and values threatened / endangered by the offences produced as such. **The material object** is formed of the body of the persons, as well as of the goods against which committing such acts has effect.

¹ Vasile Dobrinou et all, *Penal Right, The Special Part, vol II*, Luminalex, Bucharest, 2007. pg.5-8

The active subject of the offence can be any natural person, juridically responsible. The active subject can be an artificial person as well, according to art.300, P.C., person who will penally give account for if the deed was committed in its name according to art.45, line1, P.C. The participation is not only possible, but this offence is many a times committed by a group, under the form of aiding and abetting, instigation.

The active subject of the offence of acts of terrorism has been described by numerous authors of professional works, this description creating murmurs of terrors.² Thus:

- the kamikaze type warriors who struck World Trade Center in New York, on the 11th of September 2001;

- planetary networks of terrorists which are equipped with gun stores, places designed for training, information centers, bank deposits, units of production framed within a vast and complex multinational structure;

- organizations, groups or persons who have the possibility to get access to mass destruction nuclear weapons or who perform preparations or attacks against the nuclear bases of the countries that possess such means or that have chemical units, chemical or biological laboratories;

- members of the organized crime who seek revenge on those who initiated the anti-terrorism campaign or on the countries which are part of this campaign by using assassins or fanatic warriors of the kamikaze type from the world of drug and living flesh traffic, of illegal earnings/achievements;

- criminals who, by endowment and material possibilities, are able to prepare actions, operations and strikes capable of hitting any country;

- organizations which illegally produce biological, chemical warfare or viruses of great impact on peace and life itself on earth;

- warriors aiming at obtaining supremacy of fundamental religious doctrines/precepts as an anti-globalization reaction or with the intention to punish some populations of christians or jews;

- terrorist organizations created to punish the 'unbelieving ones' and their physical elimination off the land terrorists consider they desecrate;

- high class specialists with great intellectual abilities to use very modern material bases, laboratories working with radioactive or nuclear waste in order to completely prepare for some complex strikes, carried out by surprise when terrorist organizations detain strategic initiatives;

- cyberterrorists who can premeditatedly attack having a specific political motivation, informatic bases and the data bases of the combatant or non-combatant targets, in order to paralyse the inner systems of the Trojan horse type;

- non-bloody terrorists of the cybernetic, psychologic and media type, criminals who are part of the educated stratum with unfulfilled ambitions, unsatisfied with the way world evolves or with the role the systems of control and command plays in the future.

At a close analysis, we shall observe that the subjects of the offences of terrorism can be recruited from the subjects of common offences no matter of what type of offence we refer to. Terrorists, although they are not circumstanciated, according to the penal law, but must fulfill only the general conditions regarding penal responsibility and guilt, can, nevertheless, differ from other criminals by political aims/goals. These aims are of a great diversity, without justification in front of the international community, but possibly justifiable for a population,

² **Ionel Marin-Intelligence Community-the solution to the security problems**, A.N.I., 2004, p.16-24.

organization or for an ethnic or religious group. If some of the political goals can be justified, the methods used in order to reach the goals are clearly against international conventions, peace interests and life safety, of peace and good living in general.

As an active subject of the offence called acts of terrorism one also has to think about the stipulations of Law no.535 on the 25th of November 2004 which, when defining some terms, shows that:

-Terrorist Entity- a person, a group, a structured group or an organization which:

- a) commits or takes part to terrorist acts;
- b) is preparing to commit terrorist acts;
- c) promotes or encourages terrorist acts;
- d) supports, by any means, terrorism.

-Terrorist- the person who committed an offence stipulated by law or who intends to prepare, commit, facilitate or instigate to acts of terrorism;

-Organized group- a group which is not formed randomly in order to commit an immediate terrorist attack, which does not suppose a constant number of members and does not need to attribute a role to its members or create a hierarchical order;

-Terrorist group- a structured group formed of more than two persons, created for a certain period of time and which acts jointly in order to commit terrorist acts;

-Terrorist Organization- a structure hierarchically constituted, with own ideology of organization and action, being represented both nationally and internationally, and which, in order to achieve its specific aims, uses violent and destructive methods;

-The Leadership of a terrorist entity- guidance, surveillance, control or coordination of the activities of a structured group, of a group or terrorist organization;

-Specific human factors- persons who are directly included into the functional political mechanisms of the target entity, that is high officials, military personnel, office workers, as well as the representatives of some international organizations.

The main passive subject of the offence ‘acts of terrorism’ is represented by the **state**, as the owner of the protected social values. As a secondary passive subject one can mention any natural or artificial person against which the terrorist activity is producing.

It is very difficult for us to cover the whole area of the **objective side** of these offences, given the fact that this paper is limited to a certain amount of space. That is why we shall assert that the material elements of the terrorism offences are, in fact, the material elements of some common offences such as: **manslaughter, qualified manslaughter, severe corporal wounding, illegal loss of liberty, destruction, non-compliance with the regime of weapons and ammunition, non-compliance with the regime of nuclear materials and of other radioactive matters, non-compliance with the regime of explosive matters.** These material activities are performed with a high degree of gravity, especially in order to produce terror, fear and intimidation.

At the same time, within the objective side, we can also find the deed incriminated at art.no.295, line1, letter e, which consists of **the introduction or spreading into the atmosphere, on soil, underground or into water of products, substances, materials, microorganisms or toxins.**

Without intending to develop the concept of material element of this offence we shall try to define some notions:

-introduction- it signifies the penetrations of the atmosphere, of the soil, of the underground, of the water or the contamination with such products;

-spreading- it supposes transmitting, propagating such products, substances, materials, microorganisms or toxins into the atmosphere, soil, underground, or water;

-microorganisms- are defined as animal or vegetal organisms of microscopic dimensions (bacteria, fungi, viruses);

-toxin- a substance of proteic nature, polysaccharide, of microorganic animal or vegetal nature, which, once introduced into the human body, causes specific morbid symptoms such as: ricin, snake venom.

At the same time, among material acts one also includes those specified by art.295, line1, letter f, that is **threatening with bombs or with explosive matters**.

According to the manner specified in art.6 the deed can be committed by one's agreement, unison or convention between two or more persons in order to commit acts of terrorism.

The immediate consequence must be represented by the result of common offences to which one thinks about when trying to analyse them by coroboration or even by considering the real or ideal circumstances of offences.

The subjective side, as a manifestation of guilt, consists in **direct qualified intention**, by the followed purpose that is producing severe trouble to public order, by creating a state of panic, intimidation, terror able to lead to affecting the safety of the population or the persons and the institutions.

Forms, manners, sanctions. Terrorism offences can be achieved by a consumed criminal activity, by preparation acts, but also by attempt. According to art.295, line 5, P.C. the preparation acts lying in procuring the means or the instruments, as well as in taking measures in order to commit the offences are also possible.

It is high time we made known that **associating in order to commit acts of terrorism**, specified within art.296, P.C., as well as **financing the terrorist acts** (art.297, P.C.), although being pre-existent acts of the typical offence, they are incriminated as such as offences which consume and end as danger offences, when constituting the group, the illegal organization or when a person adhere to such activities. The consumation of the offence takes place when the social dangerous consequence occurs, that is manslaughter, qualified manslaughter, severe corporal wounding, illegal loss of liberty, destruction or non-compliance with the regime of the materials, substances or matters which lead to incrimination.

Sanctions/Penalties. The acts of terrorism suppose such a gravity that penalty is an exception to the general rules, art.295 specifying that the offences from line1, letter **a-d** are to be sanctioned with the special maxim specified by law for the common offence, which can be **increased to its general maxim, and if this is not enough, the penalty can be increased to the general maxim of the following offence**.

As far as the offence from line1, letter e is regarded, the penalty for the natural person is **severe imprisonment from 15 to 25 years and banning some rights**, and as far as the crime from line1, letter **f**, **the penalty is strict imprisonment from 3 to 10 years and banning some rights**.

As far as **the agreement of committing acts of terrorism** the penalty for the natural person is **strict imprisonment from 3 to 15 years and banning some rights**.

For the offences committed according to line1, letter e and line6, **the artificial person is sanctioned with fine from 25 millions to 7,5 billions lei**.

The attemptive is sanctioned. The penal action is initiated ex officio.

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