



**The personal
protection from racial
discrimination in the
conditions of fight
against terrorism**

THE PERSONAL PROTECTION FROM RACIAL DISCRIMINATION IN THE CONDITIONS OF FIGHT AGAINST TERRORISM

LA PROTECCIÓN PERSONAL CONTRA LA DISCRIMINACIÓN RACIAL EN LAS CONDICIONES DE LUCHA CONTRA EL TERRORISMO.

ABSTRACT

In the context of economy globalization and the integration of interstate relations, as well as the short-sighted policies of the leaders of some countries, there is a serious danger of terrorist acts of various groups, arising on religious grounds. In such circumstances, the probability of racial discrimination is quite high. Racism needs neither explanation nor analysis. Its ineradicable slogans spread like a tide, which can flood society at any moment. The existence of racism does not require justification. This categorical statement, as absolute as the unprovable, means that racism has all the signs of an axiom. Racism is a concept, accessible to everyone, albeit not universally accepted. The more it is vague and seemingly obvious, the more effective and dynamic it is. The purpose of this work is to investigate the complex of criminally-legal and criminological problems of fighting against the incitement of national, racial or religious hatred in the conditions of terrorism. The article also proposes the scientific development of proposals and recommendations, aimed at improving of preventive activities, criminal legislation, as well as the practice of its application.

KEYWORDS: international legal acts, discrimination, terrorism, protection, law, people.

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RESUMEN

En el contexto de la globalización de la economía y la integración de las relaciones interestatales, así como las políticas miopes de los líderes de algunos países, existe un grave peligro de actos terroristas de varios grupos, que surgen por motivos religiosos. En tales circunstancias, la probabilidad de discriminación racial es bastante alta. El racismo no necesita explicación ni análisis. Sus consignas indecibles se propagan como una marea, que puede inundar la sociedad en cualquier momento. La existencia del racismo no requiere justificación. Esta afirmación categórica, tan absoluta como lo que no se puede demostrar, significa que el racismo tiene todos los signos de un axioma. El racismo es un concepto, accesible para todos, aunque no aceptado universalmente. Cuanto más vago y aparentemente obvio, más efectivo y dinámico es. El propósito de este trabajo es investigar el complejo de problemas criminales-legales y criminológicos de luchar contra la incitación al odio nacional, racial o religioso en las condiciones del terrorismo. El artículo también propone el desarrollo científico de propuestas y recomendaciones, destinadas a mejorar las actividades preventivas, la legislación penal y la práctica de su aplicación.

PALABRAS CLAVE: actos jurídicos internacionales, discriminación, terrorismo, protección, derecho, personas.

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EKATERINA A. KHUZINA



Kazan Federal University, Russian Federation



eka5551@rambler.ru



GABDRAKHMAN H. VALIEV



Kazan Federal University, Russian Federation

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INTRODUCTION

The Universal Declaration of Human Rights, being the basis for international human rights law, enshrined that “All human beings are born free and equal in dignity and rights” [1].

International legal acts, adopted within the framework of the United Nations (hereinafter UN), impose a number of obligations on states and set before them the task of eliminating the discrimination on the basis of nationality and race. However, the events, taking place in the world, such as: the terrorist attacks of September 11, 2001 in the United States, a series of terrorist acts in Paris, in Moscow metro, in Volgograd, St. Petersburg, Iran and other countries, as well as the current migration crisis in the countries of Europe, actualize this problem of racial discrimination and require its solution.

The fight against terrorism in the countries after the events of 11 September 2001 in some cases has led to the legislation or norms, which are directly or indirectly discriminatory, in particular on the grounds of citizenship, ethnic or religious affiliations, and even more, to discriminatory practices on the part of state bodies.

Unfortunately, the fight against terrorism supersedes the human rights norms, resulting in illegal arrests, extradition of criminals to foreign countries, discrimination and violation of human rights. The attempts to present some counter-terrorism strategies as complying with human rights, serve against these rights, and in fact, they are no so humanistic. All these tendencies discredit the true value of human rights.

At present, the general situation in the Russian legal system is characterized by the absence of a single terminology and a uniform approach to the formulation of legal prescrip-

tions and prohibitions, related to equality. A number of federal laws (the Criminal Code of the Russian Federation, the Code of Administrative Offenses of the Russian Federation) contain the concept of “discrimination”, but all these acts use the term “discrimination” without its definition, and in different contexts. The concept of “discrimination” is also used in Part 3 of Article 37 of the Constitution of the Russian Federation, and in Article 3 of the Labour Code of the Russian Federation, but without definition and explanation.

MATERIALS AND METHODS

This study was carried out on the basis of the general methodological provisions of the theory of knowledge. It is based on the concept and methods of the theory of criminal law and criminal policy, sociology and psychology, criminology and general theory of law.

Such methods as analysis, synthesis, historical legal, system-comparative, statistical, formal-logical, content analysis, questioning and interviewing were used for the preparation of the article.

The normative base of the research includes the Constitution of the Russian Federation, sources of domestic criminal law, criminal legislation of foreign countries, as well as other laws and by-laws.

The definition of racial discrimination is given in the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly on December 21, 1965, and entered into force on January 4, 1969 (art. 1, part 1): the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” [2].

There is also a case law of the European Court of Human Rights. The European Court defines the discrimination as the application of different rules in comparable situations, or the application of the same rules in different situations. In support of the foregoing positions, the practice of the European Court in-

dicates that discrimination can be evident or hidden, and direct or indirect [3].

The concept of discrimination has been captured in international acts more than half a century ago. It seems necessary to develop and enshrine in the Russian legislation the concept of discrimination, which allows to separate it from violation of rights and freedoms. The definition and the norms of civil and administrative law, formulated on its basis, should provide the opportunity to challenge discriminatory treatment, regardless of whether it entailed a violation of rights, and without the need to prove violations of rights.

In light of the events of modern history, related to the terrorist attacks of September 11, 2001 in the United States, the UN Security Council adopted resolution No. 1373. This resolution and subsequent UN Security Council resolutions initiated large-scale actions for fighting against terrorism and the adoption of national laws. These normative acts were aimed at tightening of border control, the movement of human and transport flows, but since they did not contain a clear definition of terrorism, the states began to disregard human rights in their "war on terror" for the sake of national security. To facilitate the implementation of measures for fighting against terrorism, the Counter-Terrorism Committee (CTC) was established. Its purpose was to carry out smart sanctions against the extremist groups and to identify cases of financing and preparation of terrorist acts.

RESULTS AND DISCUSSION

In these circumstances, the concept of inviolability of human rights, as well as the democratic values such as pluralism, freedom and respect for the opinion of other people and groups, the freedom of association, non-discrimination have been jeopardized.

We believe that today the key problem is the broad interpretation of terrorism, which enables national governments to abuse this concept, setting the limits of "ensuring national security" arbitrarily.

The lack of clear definition of terrorism in international law leads to serious violations of human rights, since not only those who were implicated in the preparation of terrorist acts, but also suspects, may fall under

the accusation of terrorism. Moreover, in the situation of military conflicts, the principle "rule of law" is significantly undermined by the formation of special trials of alleged terrorists.

Another problem is the ambiguous attitude towards persons, suspected as terrorists. Thus, some separatist organizations can be perceived as fighters for freedom and independence, and their actions, connected with the use of violence, are justified for the sake of great goals. In this context, within the framework of international law, it is necessary to consolidate the principle of preventing any acts, associated with the application of force, even for the most justified purposes.

Also, a significant blow, denting the idea of international protection of human rights, was the violation of humanitarian law, connected with the absolute prohibition of torture and other forms of violence.

One of the first achievements of international human rights was the recognition of the right to freedom from tortures and other torments, even during military conflicts. Beginning with the Hague Conventions of 1899 and 1907, and the Geneva Conventions of 1864 and 1949, the UN Convention against Torture 1984, the norms of humanitarian law, prohibiting tortures, are recognized as *jus cogens*, or *peremptory*.

So, torture, as well as other actions tantamount to them, causing physical or moral suffering to a person, can't be justified by any circumstances, be it a war or a threat of war, since they are crimes against humanity.

However, in the context of ongoing "war on terror", the states began to disregard this norm, using in the court the evidences, obtained under duress. There are new sophisticated types of tortures, such as stress, isolation, deprivation of sensitivity, "simulation of drowning." These torments are difficult to prove, because they do not leave visible signs of physical violence, but they cause such suffering to the person, as if he is tortured. The evidences, obtained as a result of torments, are formally invalid, but in practice the judiciary takes them into account, especially in cases, where is no certainty about the way of their obtaining.

A flagrant violation of human rights is the incidences of illegal detention and arrest, as well as a transfer to another country, which have become more frequent in the light of anti-terrorist operations. It is well known and normatively established that any detainee has the right to know the reasons for his detention, has the right to an attorney, the right to inform his family members about the place of his sojourn, he has the right to be questioned in accordance with the law, and not to be transferred to the jurisdiction of another state, where the person may be subjected to tortures. However, a broad interpretation of terrorism leads to the fact that persons, who are absolutely uninvolved in the actions imputed to them, may come under suspicion and detention.

Concern of international community regarding the widespread violation of human rights led to the adoption by the UN General Assembly of the Global Counter-Terrorism Strategy [4], where it was enshrined that the observance of human rights does not impede national security, but, on the contrary, is a fundamental basis in the fight against terrorism. The strategy emphasizes the need to coordinate efforts of states in the fight against terrorism, pointed out that terrorism as a phenomenon does not represent any religious, ethnic, national or civilizational interests.

SUMMARY

So, terrorism is identified as a purely violent act, which can't be justified, and political asylum in the territory of other states can't be granted to those persons, who were implicated in terrorist activities, and they are subjected to a criminal court [5]. At the same time, there was an appeal for civil society institutions, regional and subregional organizations to coordinate their efforts in order to prevent terrorist attacks. In these circumstances, the skill of "building bridges" between human rights and national security, both at the international level and at the level of individual states, is at the forefront in the fight against terrorism.

The importance of protection against discrimination in international human rights law can't be overestimated. This principle is applicable to any discrimination in conditions of detention, as well as to all other cases [6]. Different treatment, which can't be justified, can constitute unlawful discrimination in

such matters as collection of evidences, interrogation methods or conditions of detention. Strengthening of human rights standards means that any response to an unlawful act must be strictly targeted and carefully planned, in order to avoid the violation of human rights. Counter-terrorism measures do not have an advantage over human rights. On the contrary, in democratic societies, the plans for fighting against terrorism must be squared with human rights.

Terrorist acts, and in some cases the fight against terrorism, have led to the spread of racist prejudice and racial discrimination on the part of some individuals and organizations. [7]

There are also increasing difficulties, encountered by asylum seekers in the process of obtaining asylum in the member states of the Council of Europe, as well as the gradual weakening of refugees' protection, as a result of restrictive legislative measures and practices, related to the fight against terrorism.

To date, there is an urgent need for states to promote the integration of different groups of population as a common process, which can help to prevent racism or racial discrimination, as a public response to the atmosphere, caused by the fight against terrorism. [8]

Anti-discrimination legislation remains the main component of opposition to discrimination system. Constitutional norms, provisions of branch laws and special anti-discrimination laws create a system of legal means for standing up against the discrimination, that is, its suppression and prevention.

It should be noted that anti-discrimination legislation is not a means for correction of social inequalities or preventing conflicts [9]. Anti-discrimination legislation should be considered as a necessary, but not sufficient, condition for solving such problems, and as a first step in this direction.

At present, there is no special anti-discrimination legislation in Russia. Most of the legal norms, relating to equality and discrimination, are substantive rules, and the law lacks sufficient procedural guarantees against discrimination.

The question of the necessity of anti-discrimination legislation is connected with a more complex issue of its effectiveness. There are two ways to determine and assess this effectiveness - in terms of impact on discriminatory practices as a whole, and in terms of effectiveness of the means, presented to the person, having need of protection [10].

To date, the criteria for the effectiveness of antidiscrimination instruments have not been developed. To a large extent, this is due to the complexity of the task of standing up against discrimination, and from the fact, that it is inseparable from the broader agenda for ensuring of social equality, and the overcoming of spontaneous processes, leading to the marginalization of certain groups of the population. However, it can be argued that anti-discrimination mechanisms make a great contribution to the unity, internal consistency and stability of many modern societies.

In the Russian Constitution and legislation there are a number of terms and categories, relating to equality and equality. However, the absence of an entrenched categorical apparatus, i.e. clear definitions and established practice of using these terms, can be stated in the Russian Federation. In the legislation, there is an imbalance of material and procedural norms, related to ensuring equality. In addition, the sphere of legal regulation, relating to equality, is blurred, due to the existence of anti-extremist legislation [11].

In Russia, there are factors, which both facilitate and hinder the development, adoption and application of anti-discrimination legislation.

The positive factors include the following: the existence in the Constitution and legislation of substantive rules, which proclaim the equality of rights and prohibition of its violation; preceding attempts (albeit unsuccessful) to introduce into legislation a definition of discrimination; decisions of the Constitutional Court on the interpretation of Article 19 of the Constitution of the Russian Federation; the recognition of the norms of international law as an integral part of the legal system of Russia.

The number of negative factors is much more than positive. The social and political

background in the country, which is extremely unfavourable for the adoption and implementation of anti-discrimination legislation, should be placed first. The agenda for equality and non-discrimination is replaced by other issues, and the practice of standing up against discrimination and discussions about equality are absent. Professional communities have poor and distorted interpretations of the experience of fighting against discrimination abroad.

CONCLUSIONS

In Russia, the equality of citizens' rights on racial and national grounds is an object of administrative and criminal-legal protection. However, as already noted, it is extremely difficult to prove the fact of discrimination precisely on the grounds of nationality. Broadly speaking, judicial practice in the matter of cases involving discrimination in the country is absent. Racial discrimination was not the subject of court hearing and was not reflected in court decisions.

All of the above requires the state to implement policies and take specific measures, aimed at preventing discrimination and eliminating conditions, conducive to discrimination. It should be remembered, that responding to the threat of terrorism must not undermine the values of freedom, democracy, justice, the rule of law, human rights and humanitarian law, because such efforts are aimed at protecting these values; it should not upset the protection and development of these values.

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