



**Harm compensation  
issues after a terrorist  
act by Russian law**

## HARM COMPENSATION ISSUES AFTER A TERRORIST ACT BY RUSSIAN LAW

### PROBLEMAS DE COMPENSACIÓN DE DAÑOS DESPUÉS DE UN ACTO TERRORISTA POR LA LEY RUSA

#### ABSTRACT

The experience of international regulation of security issues almost forms the basis for the legal regulation of national law in the cases where the problems of the relationship between an individual and a state are characterized by critical problems arising from the spread of terrorism. States consider the problems of protection from terrorism as actually formed ones, that is, the availability of information about the actions of groups of terrorists, the facts and the criminal links related to terrorist acts, as well as direct terrorist attacks that occurred on the territory of countries. States apply various forms of combat with terrorism uniformly, including generally recognized models of proclaiming in constitutions or in other acts the legitimate duty of the state to respect and protect human rights, the inviolability of an individual, and the guarantee of life, health and freedom safety. In reality, the opportunities of a state are not realized fully on their own, as the authorities themselves recognize their inability to solve the problem of terrorism unilaterally, spreading additional "burden" on the introduction of specific actions on the part of citizens, public organizations, civil society institutions and local bodies for terrorist act prevention. Today we have to admit that the problem of terrorism will not be completely eradicated and in the short term it is necessary to have a comprehensive legal regulation to counteract terrorism, including the reparation to terrorist victims.

**KEYWORDS:** Terrorism, terrorism prevention, national security, human rights, compensation for harm.

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#### RESUMEN

La experiencia de la regulación internacional de temas de seguridad, casi forma la base para la regulación legal de la ley nacional en los casos en que los problemas de la relación entre un individuo y un estado se caracterizan por problemas críticos derivados de la propagación del terrorismo. Los Estados consideran los problemas de la protección contra el terrorismo uniformemente, es decir, la disponibilidad de información sobre las acciones de los grupos terroristas, los hechos y los vínculos criminales relacionados con los actos terroristas, así como los ataques terroristas directos que ocurrieron en el territorio. de los países. Los estados aplican de manera uniforme varias formas de combate contra el terrorismo, incluidos los modelos generalmente reconocidos de proclamación en las constituciones o en otros actos, el deber legítimo del estado de respetar y proteger los derechos humanos, la inviolabilidad de un individuo y la garantía de vida, salud y libertad. la seguridad. En realidad, las oportunidades de un estado no se aprovechan plenamente por sí mismas, ya que las propias autoridades reconocen su incapacidad para resolver el problema del terrorismo de manera unilateral, lo que genera una "carga" adicional sobre la introducción de acciones específicas por parte de los ciudadanos y las organizaciones públicas. Instituciones de la sociedad civil y organismos locales para la prevención de actos terroristas. Hoy tenemos que admitir que el problema del terrorismo no se erradicará completamente y, a corto plazo, es necesario contar con una regulación legal integral para contrarrestar el terrorismo, incluida la reparación a las víctimas terroristas.

**PALABRAS CLAVE:** terrorismo, prevención del terrorismo, seguridad nacional, derechos humanos, indemnización por daños.

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## 1. INTRODUCTION

Unfortunately, Russian Federation becomes an object of terrorists with a frightening frequency. Thousands of people died and suffered from terrorist attacks in Russia over the past 20 years (Fahmy, 2017).

Within the framework of countering terrorism, state bodies undertake various restrictions on rights, seeking to protect against the threats of terrorism, often violating personal human rights (protection of property, private life), thereby their actions lead to human rights violations in order to reduce risks in the event of threat occurrence.

Tragic events form the so-called zones of terrorist threats, the maps of terrain where terrorist acts were committed, which makes certain regions unsafe, unattractive and have economic risks in market relations.

Thus, terrorist activities bear real losses directly or indirectly for the state as a whole and for the economy of the country, and for a particular person.

The issue of compensation to the victims of a terrorist act is especially acute one.

## METHODS

In the process of the study conduct, first of all, the dialectical method of scientific cognition was used within the framework of philosophical comprehension of compensation for damage caused by a terrorist act. The system method allowed to study comprehensively the system of counteraction to terrorism in the aggregate and integrity of its elements, as well as the place of compensation for damage in this system. The functional method made it possible to identify the functions of compensation in the activities aimed at terrorism consequences elimination (minimization). In addition to these methods, the methods of analysis, synthesis, induction and deduction

were used, as well as the method of scientific modeling, which allowed to consider the model of compensation for harm received as the result of a terrorist act.

## RESULTS AND DISCUSSION

Nowadays, the issues of terrorism countering, in particular, the combat with the financing of terrorism, require the development of new approaches from international diplomacy (Avdeev et al, 2017).

Countering terrorism and human rights are deeply interrelated categories. Tougher resistance to terrorism can not but affect the rights and the freedoms of a man (Bonino, 2016).

The issues of compensation for damage from terrorist attacks should be risen, first and foremost, in the framework of the subjective right to security implementation. Such a right must be regarded as a certain value (Muskhanova et al, 2016). This approach is also found in the literature (Ladislav, 2012), or the Universal Declaration of Human Rights of 1948, in Art. 3, which refers to personal safety. However, the commentary to this document (The Universal Declaration of Human Rights, 1999) emphasizes that it should be interpreted in the context of the entire document, as well as the ideas that were originally laid down at its development. Security was perceived in it as a personal inviolability from the arbitrariness of state bodies, in case of detention, arrest and imprisonment of a person.

Nowadays, there are often the issues related to the compensation for harm caused by an act of terrorism as the result of other terrorist activities.

Thus, on 12.01.2006, the European Court of Human Rights examined İçyer's complaint against Turkey, in which the applicant complained that the Turkish authorities had forbidden him to return to his home in the village because of the terrorist threat. The essence of the complaint was in the analysis of the measures (the activity of the state commission for damage compensation) for an effective restoration of the violated rights of citizens through a reasonable compensation. The decision of the court determined the right to an indisputable return to his village, with the subsequent application of this decision in other cases. Therefore, when the issue of state compensation affects the legitimate interests of

citizens, it should be proportionate to the restrictions applied, the compensations for damage can not replace the vital values (homes, families) completely. The state is interested in the preservation of social institutions, but during their infringement in reality it applies only compensatory mechanisms (replacing them with the commodity-money relations) that can temporarily smooth out the damage caused.

The variety of solutions to this problem is seen in the revision of the essence and the role of the state in the compensatory format of public relation expression with the participation of citizens who suffered from terrorist activities.

Objectively, a legal relationship is conditioned by a legal fact, expressed in the form of violent actions of individuals with different goals, coupled with the erosion of national stability and dominantly expressed degree of public danger in relation to other forms of crimes against a person and a state. Revealing the essence of relation problem between a state and citizens in terms of terrorist activities, it should be borne in mind that the terrorists expect to discredit, disorient public authorities by the citizens. In such circumstances important positions of constitutional sovereignty are touched upon, and the loyalty to political ideals and values is checked (Akimzhanov et al, 2016).

The restoration of compromise relations after a terrorist attack is possible through the application of compensatory actions by the State to the party (victims) affected on the one hand from the criminal attacks of terrorists and from an effective state protection, on the other hand.

Thus, they determined objectively for law enforcement and justice authorities in respect of the injured persons that the presence of damages requires the restoration of violated rights and social justice, irrespective of a subject detection who has committed an act of terrorism.

Constitutional guarantees form only a general model of compensation for harm in Russian Federation, the main mechanisms are regulated by civil legislation. It is important to note that international law has formed a common position on the expression of state

guarantees for individuals who have been the victims of terrorist acts for several decades.

The Vth Congress of the United Nation General Assembly on the Prevention of Crime and the Treatment of Offenders (Geneva, September 1-12, 1975) formed a general approach to the participation of the state and society to meet the needs of the victims, namely, "symbolic compensation for harm can not compensate for the pain and suffering, suffered by the victims even partially". Thus, it is objectively determined for law enforcement and judicial bodies that the presence of harm caused requires social justice, restoration of violated rights, loss of income, treatment, burial costs, alimony payments, regardless of the subject detection who committed the terrorist act.

The European Convention on the Compensation for the Victims of Violent Crimes (Strasbourg, 24 November 1983) defines recommendations for the State to assume compensation for damages. First of all, the Convention regulated the issue of state support in the absence of other sources of funding; secondly, the principle of "territorial compensation" has been applied, namely, the state in whose territory the violent crime occurred, compensates the injured persons for the damage caused. The implementation of international norms in Russian legislation is expressed in the norms of constitutional and civil legislation. Constitutional guarantees form only a general model of compensation for damage and compensation for harm.

Compensation for harm is regulated by the rules of international law, which only establish the main sign of harm caused - its consequences resulting from the committed violent crime (death, damage to health, suffering, damage to property). The consequences for the citizens who have become its victims are not only personal, but also national and political. The persons who commit violent acts are aware of the degree of public danger, expect publicity of their actions evaluation, including by citizens and the state, this proves the existence of the problem outside of social control by society.

The art. 18 of the Federal Law "On Counteracting Terrorism" (Federal Law, 2006) is called "The compensation for harm caused as a result of a terrorist act" and regulates the

corresponding social relations. In accordance with this act, Russian Federation makes compensatory payments to individuals and legal entities that suffered damage as the result of the terrorist act.

At the same time, compensation for damage, including moral damage, is carried out at the expense of the person who committed the terrorist act, as well as at the expense of his close relatives and close people, if there are sufficient grounds to believe that money, values and other property were received by them as the result of terrorist activities and (or) are the income from such property.

The law establishes that claims are not valid for harm compensation demand if it was caused as a result of a terrorist act which damaged citizen life or health.

The reimbursement of the same harm caused during the suppression of a terrorist act by lawful actions is carried out at the expense of Russian Federation federal budget.

The practice of compensation for moral damage on the part of the state is formed on the basis of civil legislation and is a political and legal phenomenon *per se*.

The essence of compensation lies in its goal-setting, on the part of the state. It is the compensation for ineffective counter-terrorist operations, their high latency in the dissemination of information security, the lack of vigilance and a low level of training of personnel that implement these functions of the state. This issue is regulated by the Art. 1069 of Civil Code, it is possible to assume the guilt of law enforcement agencies, which were supposed to prevent the act of terrorism. However, as practice shows, it is not always possible to foresee or prevent an act of terrorism for the following reasons: the suddenness of the act, the high latency of the actions of persons preparing terrorist crimes.

Nevertheless, there is an opinion in the scientific literature that there are obligations to compensate for damage caused by the act of terrorism not only from the person who committed the terrorist crime, but also from the state (Kokoyeva et al, 2009).

The issue arises during the definition of rules and procedures determining the amount

of compensation for moral harm, but not only in this. The court independently determines from the standpoint of the law the proportionality of compensation for the property status before the tragic events. Thus, the main sign of compensation for harm is not the identification of a guilty person, but an immediate occurrence of negative consequences after a terrorist act. For the state, for the bodies of justice, the party that requires compensation should be evident, which should be rendered immediately, at the first moments after the unlawful actions. The identification of the perpetrator is important for social justice restoration, when it is possible to determine the extent of the suffering caused and to establish the amount of compensation for the deed. Therefore, it is necessary to search for the main argument to determine the essence of compensatory assistance to terrorist act victims precisely on the part of the state on behalf of public authorities. Primarily rendered compensation by state bodies can satisfy only momentary requirements of terrorist act victims (funeral, urgent medical aid and psychological and moral support, property and housing problems). As a rule, it is observed proceeding from the content of personal rights of citizens that is included in direct constitutional duties of the state guaranteeing the recognition and the observance of human rights and freedoms. However, in each specific case, it is necessary to correlate legally the established procedures with the real needs of the victims, and, thus, their objective need can only be established through the courts.

There is an opinion on the need to assign a special category of civil-law relations related to the compensation for the harm caused as a result of the act of terrorism. And it can't be correlated with tort obligations in any way. There is also a point of view according to which the compensation for harm to the terrorist act victims is not a private-legal but a public-legal compensation for harm (Sklovsky and Smirnova, 2003). But with a detailed analysis of the characteristics and properties, it can be argued that the damage caused by the act of terrorism is a characteristic feature of the legal concept - the obligations as a result of harm, therefore it should be asserted that the compensation for harm is a civil obligation that does not have specific mechanisms for legal regulation.

You can argue this statement on the basis of the art. 53 of RF Constitution, which stipulates that everyone has the right to compensation for damage from state caused by illegal actions (or inactions) of public authorities or their officials. This provision is a voluntary and a conscientious duty of the state for citizens, and for foreign citizens affected by the acts of terrorism. Therefore, the absence of a uniform policy which guarantees and organizes the compensation for persons, who are victims of terrorist acts, is not true.

In accordance with the Art. 16, 1069, 1070 of RF CC, the state that is the subject of private civil-law relations that suppresses its independence as a subject of public law. Thus, the state becomes an equal participant in civil-law relations, capable of taking responsibility for the harm caused as the result of the terrorist act, also in the absence of the of compensation for harm impossibility, and for the damage caused during the commission of an anti-terrorist operation at their expense.

The responsibility of the state to the victims, as well as the fact of making compensation payments to terrorism act victims, has very conditional links with the theory of guilt. The state as an independent subject of legal relations, is subject to erroneous actions, bears risks in ongoing state measures, including in the sphere of terrorism combat. Describing the cases of innocent state responsibility, it is necessary to take into account the restorative and financial-compensatory capabilities of the state that has a federal budget, as a subject of not only constitutional, but also civil-legal relations. At that, there are different theories about the confusion of the categories of responsibility on the part of the state, the first one is associated with the guilty responsibility, for example, the state bears sanctions in respect of the victims, but there is no direct fault in its actions. The second one assumes that in exceptional cases, in the event of negative consequences, for example, involving the state security functions, the state has the opportunity to apply the provisions of civil law, since the forms of liability without fault are regulated by RF Civil Code. Another opinion deserves attention: the state, using the measure of state coercion, can bring to justice itself. In this case, there are annoying questions: which authority is to be held accountable? What is the mechanism of justice restoration? The complexity of the

situation is expressed not in the absence of objective means for self-punishment problem solution, but in the existing self-protection measures of the state (parliamentary control, constitutional control, prosecutor's supervision). Thus, an indirect idea is formed about the correlation of the state guilt characteristic to the consequences that have come for the regulation in the sphere of civil law relations, and the direct protective obligation of the state arising from the infliction of harm by the act of terrorism is not questioned. Civil liability is the measure to restore, compensate and protect the rights of citizens affected by the act of terrorism, which characterizes it as an obligation because of harm. Civil liability acts as a public law measure applied to the persons who suffered from an act of terrorism, and this measure of liability extends to the persons who caused harm (to citizens, to the state) as a preventive measure, and involves the compensation of money paid to victims by state.

Taking all this into account, the compensation for damage caused as a result of the terrorist act, including moral harm, is carried out under the current legislation of Russia at the expense of the person who committed the terrorist act, as well as at the expense of his close relatives, relatives and close people.

#### SUMMARY

The mechanism of compensation for harm to the victims of a terrorist act is the most important legal means of countering terrorism within the framework of the state role in national security provision. Nowadays, there is a mechanism for such reimbursement in Russia, but it relies on the establishment of a duty for a terrorist to compensate a terrorist crime. At the same time, according to the authors, the state as the entity responsible for the activities of law enforcement bodies should also be the subject of compensation for harm. However, for such a statement of the issue, it is necessary to improve the practical mechanism for harm compensation to the victims of terrorist acts.

#### CONCLUSIONS

Nowadays, the issue of compensation for harm received as the result of the terrorist act is very complicated and requires a detailed scientific study and serious research. The conclusions made in this article should be the

basis for further scientific research in this direction.

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