

## **SOCIO-JURIDICAL CHARACTERISTICS OF TERRORISM IN THE LAWS OF AZERBAIJAN**

### **SPOŁECZNO-PRAWNE CECHY TERRORYZMU W PRAWIE AZERBEJDŹAŃSKIM**

**Elnur Kazimli<sup>1</sup>**

FACULTY OF ECONOMIC AND ADMINISTRATIVE SCIENCES  
BAKU ENGINEERING UNIVERSITY

**Abstract:** The autor in this paper presents the phenomena of the present terrorism, determine it's forms and pictures it's scale. He also refers to issues such as principal causes generating terrorism and lawful aspect of combating terrorism in Azerbaijan, including normative regulation of the anti-terrorist activity and the criminal – lawful content of the terrorism and criminal responsibility for the terrorism.

**Streszczenie:** Autor w niniejszym artykule przedstawia zjawiska współczesnego terroryzmu, określa jego formy i obrazuje jego skalę. Odnosi się on również do takich kwestii, jak główne przyczyny terroryzmu i zgodne z prawem aspekty zwalczania terroryzmu w Azerbejdżanie, w tym normatywne uregulowanie działalności antyterrorystycznej oraz kryminalno-prawne treści terroryzmu i odpowiedzialność karna za terroryzm.

**Keywords:** terrorism, terror, anti-terrorism, criminal activity, law.

**Słowa kluczowe:** terroryzm, terror, antyterroryzm, działalność przestępcza, prawo.

## **Introduction**

Terrorism – constant satellite of humanity, which relates to the number of most dangerous phenomena of the present, which acquire ever more diverse forms

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<sup>1</sup> Elnur Kazimli (Ph.D.) – Deputy Head of Dean in Faculty of Economic and Administrative Sciences, Baku Engineering University, 120 Həsən Aliyev Absheron, Bakı 0101, Azerbaijan; e-mail: ekazimli@beu.edu.az.

Dr Elnur Kazimli – Zastępca dziekana na Wydziale Nauk Ekonomicznych i Administracyjnych Uniwersytetu Technicznego w Baku, 120 Həsən Aliyev Absheron, Bakı 0101, Azerbejdżan; e-mail: ekazimli@beu.edu.az.

and threatening scales. Mass human victims bring terrorist acts, they exert strong psychological pressure on the large masses of people, draw the destruction of the material and intellectual values, which are not yielded by time to restoration, they will sow the hostility between the states, provoke wars, distrust and hatred between the social and national groups, which sometimes cannot be overcome in the course of the life of entire generation.

Terrorism as the mass and politically significant phenomenon, when separate groups in the society begin to bring into question legality and rights of state and by these they justify its passage to the terror for achievement of its own purposes. Different criminal groups accomplish terrorist acts for the frightening and destruction of competitors, for the action on the power of the state in order to attain the best conditions for its criminal activity. The victim of terrorist act can become each - even the one who refers not least to the conflict, which gave birth to terrorist act.

The level of terrorism and the concrete forms of its manifestation are index, from one side, to public morals, and with another - the effectiveness of the efforts of society and state for the solution of the most acute problems, in particular, on preventive maintenance and suppression of terrorism itself.

Unfortunately, terrorism is the very efficient instrument of frightening and destruction in the age long and irreconcilable argument of different it is world, radically differing from each other in terms of its understanding of life, in terms of moral standards, culture. But for the latter several years the problem of terrorism acquired in entire peace global scales and has a tendency toward the steady increase<sup>2</sup>.

## 1. The Principal Causes Generating Terrorism

The terrorism appears, when the society experiences deep crisis, first of all crisis of ideology and state - legal system. In such society there are various oppositional groups - political, social, national, religious, - for which there is doubtful, a legality of existing authority. The terrorism tends to growth in transition periods and stages of a life of a society when in it the certain emotional atmosphere is created, and instability is the basic characteristic of base attitudes and social communications. It is a fertile field for cultivation of violence and aggression in a society.

The problem of terrorism gets a special acuteness during social conflicts which are the provoking factor of terrorist behaviour. In turn, the reason of occurrence of disputed situations is the transition period, a basic change of the socio-political and

<sup>2</sup> A. Feldman, *Ethnographic states of emergency*, Caroline Nordstrom & Antonious C.G.M. Robben (eds), *Fieldwork Under Fire: Contemporary Studies of Violence and Survival*, University of California Press, Berkeley/LA/London 1995, 224-253.

economic device of a society. Conflicts differ duration, a degree of an acuteness of contradictions, methods of the sanction<sup>3</sup>.

The transition period burdened by a heavy economic crisis, has created conditions of social opposition, has generated a special condition of mass consciousness for which the inadequate estimation of reality is characteristic, the wide circulation was received with moods of uncertainty, social fear, embitterment and aggression. In these conditions extremist appeals to protest actions are easily perceived. Poverty, unemployment, a hopelessness, extreme differentiation of the population on a level of incomes, weakness of the government, its inability to provide safety of the person and its property lead to the cult of violence starts to clear promptly for itself road, and the extremism in these conditions becomes an integral part of mentality of a society. Loss by people of confidence of the present and the future, destruction of all ideals former Soviet societies, an atmosphere of violence reigning everywhere and the cruelty, cultivated by mass media, create rather favourable conditions for growth of criminality, and the terrorism gets scales of national disaster<sup>4</sup>.

Economical crisis infringes upon interests of average layers of the population which thus can create the behaviour political instability as strikes, pickets, overlapping of transport highways. Unemployment of youth unites in groups, and presence of a plenty a free time leads for them participation in affairs of group becomes the basic form of activity. And depending on personal qualities of the person (absence of diligence, desire quickly to grow rich, draw to itself attention though for some time to become popular in the environment) can induce to active terrorist activity<sup>5</sup>.

Negative influence is rendered also with contradictions in political attitudes among which basic value get:

- contradictions between democratic constitutional principles and real practice;
- the contradictions following from proceeding process of political delimitation of a society, formation of social groups and layers with opposite political interests;
- the contradictions generated by estrangement between authority and the population;
- the contradictions caused by easing of social and economic and cultural communications between the centre and regions, and also between separate regions.

<sup>3</sup> P. Wilkinson, *Terrorism and the Liberal State*, The Macmillan Press Ltd., London 1977, 36.

<sup>4</sup> *Terrorism: Psychological Sources and Legal Assess*, "Authority and Law Journal, Moscow" 1995, No. 4, 25-26.

<sup>5</sup> B. Adam, U. Beck & J. van Loon (eds), *The Risk Society and beyond: Critical Issues in Social Theory*, Sage Publications, London 2000, p. 213.

All set of social, economic, political and other contradictions is supplemented with contradictions in the spiritual sphere, attracting for itself degradation of a spiritual life of a society, destruction of historical, cultural, moral traditions, humanistic values, the statement of a cult of individualism, egoism, cruelty and violence, disbelief in ability of the state to protect the citizens. At occurrence of such phenomena occur criminal authorities, gangsters and terrorists<sup>6</sup>.

The roots of terrorism lay not so much in psychology, how many in political, economic and other social attitudes. And people are engaged in terrorist activity not by virtue of psychological anomalies (though they as it was already marked, and can take place). The major reasons are nevertheless anomalies political, territorial, ideological, religious. Going deep social, economic, spiritual and political crisis, easing of the law and order generate new contradictions for which sanction separate persons and the organizations even more often resort to violence. Destroying and killing, terrorists pursue the remote purposes, and murders and explosions are considered by them only as means of achievement of the purposes. The terrorism in wide understanding combines the most different forms of terrorist activity – from political, ideological, religious up to single bloody actions, from the fair compelled struggle for the survival, existence or clearing before brutal destruction in anything not guilty people in narrowly mercenary and political interests<sup>7</sup>.

The considered preconditions and the reasons of terrorism, certainly, do not give a full picture of this complex phenomenon. There are many private, individual reasons and motives of the reference to terrorist activity, for example, personal insults, envy, sadistic bents, emotional affects, etc.

## 2. Lawful Aspect of Combating Terrorism in Azerbaijan

### 2.1. Normative Regulation of the Anti-Terrorist Activity

The lawful guarantee of anti-terrorist activity is the most important prerequisite of successful opposition both to domestic and international terrorism. Basic Azerbaijanian normative report is law “about the combating of terrorism” from June 18, 1999, which determines the lawful and organizational bases of combating of terrorism in the Azerbaijan Republic.

Generally acknowledge as the major principles of combating of terrorism: legality, the priority of the measures for warning terrorism, the inevitability of the punishment of the guilty, the priority of the protection of the human rights, undergo the danger as a result in terrorist action, the minimum concessions to terrorist and etc.

<sup>6</sup> W. Laqueur, *The Age of Terrorism*, Little Brown and Company, Boston 1987, p. 91.

<sup>7</sup> E. Erkal Mustafa, *Social Problems and Social Changes*, Istanbul 1984, p. 121.

By the essential condition, this could prevent an increase in the terrorism and contribute to more successful fight with it, this bringing of national legislation into the correspondence with the international standards. But since the discussion deals with the normative regulation of fight with this phenomenon in Azerbaijan, the first of all corresponding changes and additions must be introduced into the criminal legislation, in which there is a number of gaps and deficiencies.

According to the “law about the combating terrorism”, basic purposes of this activity: “1) the protection of personality, society and state from the terrorism; 2) warning, the suppression of terrorist activity and the minimization of its consequences; 3) development and the elimination of reasons and conditions, which facilitate the realization of terrorist activity”<sup>8</sup>.

There are some omissions in the chapter 2 of law “about the combating terrorism”, which regulates conducting anti-terrorist operation. The questions connected with the control of counter-terrorist operation, the invitation of forces and facilities for its conducting, the lawful regime in the zone of conducting operation, the organization of negotiating with the terrorists, the order of the propagation of information and the end of counter-terrorist operation. The law does not determine the maximum time interval of conducting counter-terrorist operation, nothing said about the fact that necessary to undertake with the pulling of operation and its overgrowing into the large-scale with the divisions and all primary of structures technique.

## **2.2. The Criminal – Lawful Content of the Terrorism and Criminal Responsibility for the Terrorism**

The specific object of the form of crime in question is public safety; the direct object of encroachment can be life and health of citizens, property, the normal functioning of the organs of authority.

According to the content article 214 of criminal codes of the Azerbaijan Republic:

1. Terrorism, that is, the perpetration of an explosion, arson, or any other action endangering the lives of people, causing sizable property damage, or entailing other socially dangerous consequences, if these actions have been committed for the purpose of violating public security, frightening the population, or exerting influence on decision-making by governmental bodies, and also the threat of committing said actions for the same ends, shall be punishable by deprivation of liberty for a term of five to eight years.
2. The same deeds committed:
  - by a group of persons in a preliminary conspiracy;
  - repeatedly;
  - with the use of firearms

<sup>8</sup> Azerbaijan Republic Law about the Combating Terrorism, from June 18, 1999.

shall be punishable by deprivation of liberty for a term of seven to ten years.

3. Deeds stipulated in the first or second part of this Article, if they have been committed by an organized group or have involved by negligence the death of a person, or any other grave consequences.

Note: A person who has taken part in the preparation of an act of terrorism shall be released from criminal responsibility if he facilitated the prevention of the act of terrorism by timely warning governmental bodies, or by any other method, unless the actions of this person contain a different composition of crime<sup>9</sup>.

The law “about the combating terrorism” the concept of this phenomenon is represented in a broader sense. Thus, to the crimes of terrorist nature, besides strictly the terrorism, law carries the seizure of hostage, deliberately false communication about the act of terrorism, organization of the illegal armed unit or participation in it, encroachment of the life of state or public worker and the attack on the persons or the establishments, which use the international protection.

There is also one shortage here. Concept of hostage this in the law coincides with the concept, given in article 215 of criminal code. Nevertheless, this concept is distorted, since in the law there is no indication of the threat of public safety, which determines the specific object of this crime. In criminal codes this indication is absent, since article 215 is located in chapter by the name “crimes against the public safety”.

Thus, the objective side of terrorism consists of the accomplishment of an explosion, arson or other actions, which create the danger in the loss of people, reason for the significant property damage to either the offensive of other publicly dangerous consequences, (for example, attempt on the objects of the subsistence of population by water, by heat, by electric power, seizure and the destruction of buildings, stations, the infection of the sources of water and food products, the radioactive, chemical, bacteriological contamination of locality) or in the threat of the accomplishment of the actions indicated. It is assumed that other “actions” imply only the active form of the behavior of man, although the terrorist act sometimes can be realized via inaction. For example, the nonfulfillment of responsibility on timely turning off of production processes in power engineering, in the field of transportation, in the depletion industry.

The objective side of terrorism can be encountered not only in the single, single actions (arson, explosion, the destruction of building, area contamination), but also in the continued acts, which consist of a number of the interconnected encroachments of the life, health, property, united under the general idea and the purpose to intimidate population. For example, the pogroms, accompanied by murders and violence among the population, the group armed attacks and mass murders with the application of such instruments, means and methods, which are clearly intended for eliminating of inhabitants and excitation of panic.

<sup>9</sup> Criminal Codes of the Azerbaijan Republic, from February 8, 2000.

It's no secret to anyone, what threat for entire humanity contains this comparatively new "variety" of terrorism as nuclear terrorism. Let us note that until 1999 the objective side of terrorism did not include such actions as encroachments of the objects of the use of atomic energy and the use of nuclear materials, radioactive materials or the sources of radioactive radiation. This gap was not removed by the criminal code Azerbaijan.

By the subject of terrorism can be any responsible person, who is citizen Azerbaijan, foreigner or by face without the citizenship and reached fourteen years old age. This position is extremely important, since in the national and religious terrorism sufficiently many adolescents, who in view of their age easily fall under the influence of adult, participate.

The composition of terrorism contains indications of the special purposes (disturbance of public safety, the frightening of population, the rendering of action on decision making by the organs of authority); therefore from the subjective side terrorist act can be accomplished only with the straight design: the guilty realizes the public danger of its behavior, will foresee possibility or inevitability of the offensive of publicly dangerous consequences it desires their offensive for achievement of its purposes. Emotions the experiences of the person, which accompany the preparation of crime and the process of its accomplishment, occupy special position in the subjective side of the crimes of terrorist directivity. Increasingly more frequent terrorist acts of steel to be accomplished when emotion prevail over the reason and they lead to the publicly dangerous manifestations of intolerance, extremism, political, nationalistic or religious fanaticism.

The second part article 214 of criminal code provides for responsibility for the accomplishment of the actions, with the presence of the qualifying circumstances, which testify about the larger public danger:

- by a group of persons in a preliminary conspiracy;
- repeatedly;
- with the use of firearms.

Article 34 of criminal code of Azerbaijan provides for responsibility for the accomplishment of crime with the group of the persons on the preliminary agreement, who previously agreed themselves about the joint accomplishment of crime.

This qualifying sign, as repeatedly, indicates repeatedly of the accomplishment of precisely terrorist, but not any other crimes. Repeatedly – this not into the first, but, as a minimum, second time.

The application of firearms during the accomplishment of terrorism is examined as one additional aggravating penal responsibility circumstance. This qualifying sign it will not be, if firearms adapted for the purpose to avoid detention after the accomplishment of act of terrorism. Such actions are qualified independently. Terrorist act can consider perfect the use of firearms, if it adapted for putting the solid damage or was demonstrated to others as the readiness of criminal to release him in

the course. However, it is not entirely understandable, why legislator did not include in the number of aggravating fault circumstances the application of ammunition, explosives and explosive devices, which according to the destructive properties considerably exceed the destructive properties of firearms. According to the sense of law it turns out that the device of collapses either floods with the application of a firearms or the shooting of it at the building of station is more dangerous crime than the accomplishment of the same actions with the application of explosive devices or explosion on the station.

The third part article 214 of criminal code Azerbaijan establishes penal responsibility for the acts, provided by the parts of the first and second present article, if they are perfected by the organized group either they entailed on carelessness death of man or other heavy consequences.

As the organized group the criminal code acknowledges the steady group of those, who were previously combined for the accomplishment of one or several crimes. It is important to note that the basic distinguishing features of criminal organization is the scale of its activity, the duration of functioning, the fixed mechanism of control, concealment, elusiveness, ability to influence the large social, political, economic solutions, close underground connection with the state, political, public, financial organizations.

In article 1 of the law “about the combating of terrorism” are revealed the concepts of terrorist group and terrorist organization. In the sense of the law indicated these concepts differ from each other only in terms of the fact that the organization assumes the presence of structural subdivisions and leading organs. It is necessary to correlate these determinations with the criminal- lawful concepts of the forms of participation, after refining that the terrorist group and terrorist organization – is the variety of criminal group and criminal organization in accordance with article 34 of criminal code of Azerbaijan.

The subjective side of the terrorism, which entailed on carelessness death of man or other heavy consequences, is characterized by the dual form of the fault: by straight design with respect to the terrorist actions and by carelessness (lightness or carelessness) with respect to the indicated in the third part article 214 of criminal codes Azerbaijan.

Financing terrorist activity from the private individuals, credit organizations and even states is vital problem. There are somewhat incomplete in the Azerbaijan criminal code from this point of view. From one side, law “about the combating terrorism” considers financing terrorism as one of the functions of terrorist activity (article 1). From other side, according to the sense of criminal code the person, who finances terrorism as the systematic accomplishment of the crimes of terrorist nature, it falls under not which of the forms of participants (214), since its action not they are directed on the accomplishment concrete crime. Therefore, in conclusion it would be desirable to again focus attention on the need for as soon as possible developing



the united concept of anti-terrorist activity under the contemporary conditions and bringing national legislation into correspondence with the international standards.

## Conclusion

There are numerous deficiencies and omissions in the Azerbaijanian criminal legislation as it was already stated in this work. Such gaps not only they allow for terrorists and their “sponsors” to avoid responsibility, but also weaken crime control as a whole. Lawful regulation – one of most important components of entire package of measures for combating of terrorism, it must have united clear concept, be clear and understood, capable of the effective application in practice, and also it must serve as guarantee from the arbitrariness of the subjects of anti-terrorist activity. It is moreover, necessary to bring national legislation into correspondence with the international, and also taking into account the tendencies of contemporary terrorism to modernize criminal and criminal procedure codes Azerbaijan, which will make it possible to enlarge the possibilities of law-enforcement agencies for development, intersection, disclosure and investigation of terrorist activity.

Important significance has an association of efforts in the opposition to the terrorism of all forces of state and society. This and the upper echelons of representative authority, legislators, special service, law-enforcement agencies, the media, religious and other public associations.

The combating of terrorism requires the integral approach, which must include the measures also of economic, and political, and social, and lawful nature. This is the long-range program, realization of which depends on many factors. But it's no secret to anyone, that decisive and effective measures are necessary already today.

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