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Evolution of the concept of terrorism in criminal legislation

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Abstract

This paper analyzes the trends in the criminal legislation of the Socialist Republic of Vietnam in terms of responsibility for terrorist crimes. As a method, the authors characterize the specific features of the development of the criminal law of the SRV and analyze the reasons for changing the legislative paradigm in the definition of terrorism in the Criminal Code of the SRV. In result, the norms of international conventions on combating terrorism have been implemented in the national legislation of the Socialist Republic of Vietnam. In conclusion, religious conflicts in modern Vietnam are virtually a nonsense.

Keywords: Terrorism, Terrorist Act, Financing, Vietnam.

Evolución del concepto de terrorismo en la legislación penal

Resumen

Este documento analiza las tendencias en la legislación penal de la República Socialista de Vietnam en términos de responsabilidad por delitos terroristas. Como método, los autores caracterizan las características específicas del desarrollo del derecho penal de la SRV y analizan las razones para cambiar el paradigma legislativo en la definición de terrorismo en el Código Penal de la SRV. En consecuencia, las normas de los convenios internacionales sobre la lucha contra el terrorismo se han aplicado en la legislación nacional de la República Socialista de Vietnam. En conclusión, los conflictos religiosos en el Vietnam moderno son prácticamente un sin sentido.

Palabras clave: terrorismo, ley terrorista, financiamiento, Vietnam.

1. INTRODUCTION

Vietnam has always occupied a special position among other states of Southeast Asia. The tragic events of the Vietnam War left a special imprint on the development of this state. Despite the fact that today Vietnam is a country with a rapidly growing economy, where tourism and the related service sector occupy a central place, it should be remembered that calling it a country of former builders of communism is not quite right. Analyzing the economic, political and legal features of modern Vietnam, it should be remembered that the Communist Party of Vietnam is currently the ruling and the only legal

party in the country that has managed to find the middle ground between the communist ideology and the need to develop a market economy. The result of such a policy is a confident stable growth of the economy and, as a result, the stability of the whole social development. Today, when Vietnam is called the new Asian tiger, the country's leadership is doing everything to avoid revolutionary political and economic changes in Vietnam, ensuring stability and an evolutionary path of development (DREMLUGA et al., 2017).

Stability in society and in the economy, undoubtedly, is also reflected in the structure of criminality in Vietnam, which, despite the current trend for the countries of South-East Asia, virtually does not face the problem of terrorism. Despite this, the leadership of the Democratic Republic of Vietnam is well aware of the danger posed by terrorism, especially international, and is taking a number of steps to combat this negative phenomenon, including at the level of criminal law. Since terrorism has international character, it is essential to ensure a unified approach to the definition of terrorism not only in international legal documents, but also in national legislation, since uniform approaches, criteria and concepts in the fight against terrorism are important guarantees for effectively countering terrorism in specific states and the international community in general. Undoubtedly, approaches to the definition of terrorism at the international level have changed, the content of this concept has been interpreted more widely. For example, in 1934, at the Madrid Conference on the Unification of Criminal Laws, terrorism was defined as the use of any means capable of terrorizing the population in

order to destroy any social organization. However, in our present International Convention for the Suppression of the Financing of Terrorism, adopted by resolution 54/109 of the UN General Assembly of December 9, 1999, terrorism is already defined as an act constituting a crime according to the scope of application of one of the treaties listed in the appendix, and its definition as well as any other acts designed to cause the death of a civilian or any other person not actively participating in hostilities in the case of an armed conflict, or to cause serious bodily injury, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or refrain from doing a certain action (COOPER, 2001).

Terrorism at the regional level is defined even more broadly. For example, the Islamic Conference in the Convention on Combating International Terrorism in Article 10 defines terrorism as any violent act or threat thereof, regardless of its motives or intentions, that is carried out to perform a personal or collective criminal plan to intimidate people or create a threat harming them or posing danger to their lives, dignity, freedoms, safety, rights or the creation of a risk to the environment, objects, public or private property, or to occupy the seizure of such, or to create a danger to national resources, international facilities, or to create a threat to the stability, territorial integrity, political unity and sovereignty of independent states. Undoubtedly, the changing international legal approach to the definition leaves its trace on the national laws of many countries. And Vietnam is not an exception. However, in the sphere of criminal

legislation aimed at combating terrorism in Vietnam, the legislator went in his own, very specific way, which was due to both the role of the communist ideology and the transition to a market economy. We believe that against this background it is extremely interesting to analyze the changes in the approach of the Vietnamese legislator regarding the definition of terrorism (KOROBEEV & DREMLIUGA, 2014).

2. METHODOLOGY

Almost immediately after the formation of the Democratic Republic of Vietnam on September 2, 1945, an active struggle was launched in the country against such crimes as the abduction and murder of people in order to fight the people's government. Regulation of responsibility for such crimes was carried out in the Decrees of the President of the Democratic Republic of Vietnam. Among them, it is necessary to mention the Decree No. 133/SL of January 20, 1953 on the punishment of traitors and reactionaries, which mentions actions related to terrorism. Thus, Article 4 of the Decree provided for liability for such types of crimes as sabotage, capture in captivity, murder, torture, terrorism, violence against state officials and citizens, oppression, robbery, illegal arrests, capture of soldiers and illegal taxation. An analysis of the Decree convincingly enough shows that at that time terrorism in Vietnam was associated primarily with counter-revolutionary activities (MCCULLOCH & PICKERING, 2009).

The Permanent Committee of the National Assembly later considered terrorism from this point of view in its Resolution of October 30, 1967 on the punishment of counter-revolutionary crimes and terrorist acts. In Article 10 of the said Resolution, terrorism was also defined as the most dangerous counter-revolutionary activity, which was described by such a subjective attribute as the presence of counter-revolutionary goals in the actions of a person, and on the objective side it could be expressed in the killing of officials, civil servants, soldiers, policemen or civilians, and also in the infliction of bodily harm, injury, unlawful deprivation of liberty of officials and civil servants, soldiers, policemen or civilians, as well as the threat of murder against officers, civil servants, soldiers and policemen while they are performing their duty (PANTAZIS & PEMBERTON, 2009).

At the same time, the laws of the Socialist Republic of Vietnam at that time did not know any other terrorist crimes. Like many criminal codes of the socialist states, the later versions of the criminal law of Vietnam provided no definition of terrorism. Terrorism was defined by the Criminal Code of the Socialist Republic of Vietnam in 1985 as a crime against national security. Article 78 of the 1985 CPR Criminal Code defined terrorism in Article 78 as an encroachment on the lives of civil servants, social employees or workers in order to combat the people's government. In addition, part three of the Article included in the concept of terrorism not only the actual acts mentioned above, but also the threat of their commission. These changes in the criminal law of the SRV for the first time unified terrorist crimes and clearly defined

the objective signs of acts recognized as terrorism (MITSILEGAS, 2003).

3. RESULTS AND DISCUSSION

It is important to draw attention to the fact that, in accordance with the laws of the Criminal Code of the SRV of 1985, terrorism was one of the crimes encroaching on national security; the legislator, describing a crime, as before, provided for a special goal in the construction of a crime - the struggle against the people's government of the CPV. The objective actions of terrorism consisted not only in encroachment, but in the threat of encroachment on life, health, or intimidation of people. At the same time, encroachment or the threat of encroachment on the life and health of people not related to anti-government goals could not be considered terrorism and were subject to qualification as other crimes, including as crimes against the person. Article 84 of the 1999 CPV Criminal Code, which included all the above-mentioned signs and also referred terrorism to crimes against national security, still identifies terrorism through a special goal - the struggle against the people's government.

This approach was not free from shortcomings. And these shortcomings manifested themselves primarily in foreign policy aspects: the international community considered individuals involved in terrorism in Vietnam as political criminals, as a result of which many countries refused to extradite terrorists at the request of Vietnam,

providing them with political asylum and believing motives. In addition, cases of terrorist financing, the provision of money or property to individuals or terrorist organizations did not entail criminal liability under Vietnamese law, despite the ratification of the SRV relevant conventions. The pivot point in the approach to combating terrorism occurred on June 19, 2009 during the fifteenth session of the 12th National Assembly, when Law No. 33/2009/QH12 was adopted, amending and supplementing a number of articles of the Criminal Code (Taylor et al., 2014).

The changes made have shown, on the one hand, a new approach to combating terrorism in criminal law, in line with international standards, and on the other hand, loyalty to established long-standing traditions. According to the above law, the construction of the regulation providing for responsibility for countering the people's government in order to counteract the people's power has not changed, however, cases of terrorist acts that do not carry the goal of opposing the people's government but causing panic among the population were subject to qualification according to Article 230a of the SRV Criminal Code. In addition, in 2009, in accordance with the requirements of international legal documents, a provision appeared in the SRV Criminal Code (Art. 230b of the SRV CC), which criminalized the financing of terrorism in the event that a person's act did not fall under the signs of complicity in one of the terrorist crimes: terrorism against the people's government (Article 84 of the Criminal Code of the SRV) and ordinary terrorism (Article 230a of the Criminal Code of the SRV) (Makarenko, 2004).

The beginning of the third millennium was characterized by the start of transition to a new economic policy and rapid economic growth in Vietnam. The 1999 criminal law quickly ceased to meet the requirements of the time, as it did not reflect the new views and guiding principles of the Vietnamese Communist Party regarding judicial reform. In addition, in a market economy, the Vietnamese legislator realized the need to protect new values in order to guarantee economic development - in construction, in ensuring the safety of the environment, in controlling the development of natural resources. These circumstances prompted the leadership of the Socialist Republic of Vietnam to initiate the revision of many legal norms, including in the criminal law, so that the new regulations would meet the requirements of society, the domestic and international situation. The new criminal code adopted in 2015 significantly expanded the list of acts related to terrorism and crimes of a terrorist nature. The Vietnamese legislator did not violate the established traditions, leaving, as in the previous versions of the Criminal Code, the provision criminalizing terrorism against the people's government (Article 113 of the SRV Criminal Code of 2015) in a group of crimes that encroach on national security. The rules providing for criminal liability for ordinary terrorism (Article 299 of the SRV Criminal Code of 2015) and for the financing of terrorism (Article 300 of the SRV Criminal Code of 2015) were classified as crimes that infringe on public safety.

In addition, the list of acts that could be qualified as terrorism was significantly expanded. The new law began to refer to terrorism, acts of encroachment on the life of another person, the destruction of

the property of institutions, organizations or individuals; encroachment on physical freedom, health; appropriation, damage to the property of the organization, an individual, or other acts of intimidation, in order to spread panic in the society; as well as financial or other property support in any form of terrorist organizations and persons engaged in terrorism. Thus, terrorism, which is not in opposition to the people's government, got a structure in the Vietnamese Penal Code, which provides for a special purpose - the goal of spreading panic in society. A similar purpose is used as a constituent sign of terrorism (an act of terrorism) in the criminal law of most countries that have ratified the relevant UN conventions.

It should be borne in mind that in the SRV Law on Combating Terrorism of 2013, terrorism is interpreted even more broadly, and its definition is more specific. In contrast to the regulations of the Criminal Code of the SRV, which establish responsibility only for individuals, the said law implies not only the terrorism of individuals, but also the actions of organizations directed against the people's government of Vietnam, forcing the people's government of Vietnam, foreign and international organizations to do something, as well as creating difficulties in international relations, Vietnam or spreading panic in society. The law identifies several groups of acts to be qualified as terrorism:

- (1) Encroachment on life, health, physical freedom, or the threat of encroachment on life or mental bullying of other people;

(2) Misappropriation, damage, destruction or threat of destruction of property; hacker attack, abuse, obstruction or disruption of computer, telecommunication networks and the Internet, digital devices of government agencies, organizations and individuals;

(3) Managing the creation, production and use of weapons or the creation, production, storage, transportation, trade in weapons, explosives, radioactive substances, toxins, flammable substances, tools and other devices for the purposes of performing the actions referred to in paragraphs 1 and 2;

(4) Promotion, attraction, incitement, coercion, recruitment or creation of conditions that assist in the implementation of the actions referred to in paragraphs 1, 2 and 3;

(5) Creation of, participation in the organization, recruitment, training and preparation of participants for performing the actions specified in paragraphs 1, 2, 3 and 4;

(6) Other acts considered as terrorism in accordance with the provisions of international treaties on the prevention and fight against terrorism to which the Socialist Republic of Vietnam is a party (Young, 2006).

Thus, at present, the norms of international conventions on combating terrorism have been implemented in the national legislation

of the Socialist Republic of Vietnam. However, the text of the Criminal Code of Vietnam still continues to define terrorism more narrowly than specialized laws. An analysis of the trends in the development of Vietnamese legislation in the areas of combating terrorism makes it possible to say with a high degree of confidence that the list of acts relating to terrorism will be expanded over time in the Criminal Code, which will incorporate new norms, since Vietnam is currently a member of 13 international treaties and conventions on the prevention of and struggle against terrorism.

4. CONCLUSIONS

As conclusion, we would like to express some thoughts about the Vietnamese anti-terrorism phenomenon: so far, no terrorist act has been registered in Vietnam committed by international terrorist organizations; the level of domestic terrorist activity is also extremely low: to date, we have only known about two convicts in 2011 under Article 230a of the 1999 Criminal Code of the Socialist Republic of Vietnam.

In our opinion, such a situation is determined not only by the efforts the authorities of the Socialist Republic of Vietnam put to prevent terrorist threats. Traditional tolerance of the Vietnamese population and willingness to compromise is very important, which is especially evident in the attitude to religion: today in Vietnam Buddhists make up 9.3% of the population, Catholics - 6.7%, followers

of HoaHao - 1.5%, Cao Dai - 1.1%, Protestants - 0.5%, /, atheists and followers of local animistic cults - 80.8%. At the same time, the main religion of the Vietnamese is the system of popular beliefs, which is based on the rituals of the ancestral cult, which are strictly carried out by the majority of the country's residents. It is important to note that, despite the diversity of religious beliefs, religious conflicts in modern Vietnam are virtually a nonsense.

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