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Terminological Description of Extremism in International Acts and National Criminal Laws

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Abstract--Based on a meaningful analysis of international legal act provisions and criminal legislation of foreign states, the article presents the approaches to the terminological characterization of the concept of "extremism" and its legislative regulation. The conclusion is made about the lack of a united strategy to the definition of the studied theory, which complicates international relations and collaboration in the realm of countering extremist crimes. A comparative analysis of the legislative regulation of extremist crimes in foreign countries allows us to identify common features and trends in the development of legal responsibility for extremism in foreign countries, to establish differences in the legal regulation of this problem, and to develop approaches to the unification of this concept at the level of international legislation.

Keywords--criminal responsibility, extremism, extremist activity, international legal, punishment, regulation extremism.

Introduction

Among the most important problems of our time are the problems of countering extremist activity (extremism), since without social, national, interreligious consent in the country it is impossible to ensure the rule of law, peace and confidence of citizens that the state is able to provide their liberties, legitimate interests regardless of gender, human rights, race, origin (Zhornik et al., 2016). There are some differing opinions in science about the meanings of the term "extremism". Some scholars equate extremism with terrorism and violence (Bjelopera, 2013; Hlebushkin, 2007; Korshunova, 2006; McCauley & Moskalenko, 2008; Nasser-Eddine et al., 2011; Sotlar, 2004; Striegner, 2015), others consider it as a way of radical denial of social norms based on adherence to extreme views and actions (Anderson et al., 2002), someone considers extremism as illegal activity that causes or may cause significant harm to the foundations of the constitutional order or the constitutional foundations of interpersonal relations (Verkhovsky, 2016). The study of extremist crime legislative regulation in the criminal legislation of foreign countries is a necessary tool for improving modern and effective forms, methods and means of countering extremism (Hyseni, 2014; Fuger et al., 2014).

Methodology

The work used the provisions of dialectics, general scientific, special and particular methods. Furthermore, particular scientific methods were utilized in the study: formal-logical, historical-legal, formal-legal, systemic, as well as comparative methods.

Results and Discussion

At present, the fight against extremism is any state policy's priority in any state, since the strengthening of extremism in various forms of its manifestation is a significant peril to the state's national security, the constitutional order, as well as the rights and liberties of residents. For the first time, the term "extremism" was mentioned in the "Declaration on Measures to Eliminate International Terrorism" chosen by the U.N. General Assembly Resolution dated back in 1994, where it was remarked that "acts of terrorism, on the basis of extremism or intolerance, are committed more and more often in many regions of the world" (<https://legal.un.org>). At the same time, the content of the concept "extremism" is not disclosed in the Declaration (Plyth & Craham, 2020; Ramadani et al., 2021).

In 2003, the General Assembly Resolution "Human Rights and Terrorism" 58/174 recognized extremism as one of the threats to international law and order and legality, but the terminological characteristics of extremism are considered through its types (religious and ethnic) and do not reveal the essence of the concept itself. In subsequent international acts adopted by the U.N., the concept of "extremism" was not provided with a specific definition. As a synonym it was "racism" (Resolution adopted by the General Assembly 55/2, 2000), "xenophobia" (Resolution adopted by the General Assembly 55/59, 2000), and "Nazism" (U.N. General Assembly Resolution, 1967) in some acts. The analysis of international legislation in the area under study led to the conclusion that extremism is viewed

in them from racial, nationalist and religious points of view exclusively. At the same time, the political motives of extremism remain outside the boundaries (Chang, 2017; Markhgeym et al., 2016).

An important normative act in the area under study is the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001) (Goncharova et al., 2021; Nyandra et al., 2018). In accordance with its rules, terrorism is "any act aimed at causing the loss of any resident or any other individual who does not take an actual part in resentments during a state of an armed dispute, or at causing him serious harm, as well as inflict consequential harm to any physical object, as well as organizing, preparing such acts, incitement to it, while the goal of such acts is to threaten the people, break public security or make the authorities to take any measure or to refrain from performing it." In this case, extremism will be "any act targeted at the violent capture of control, and the violent transformation of the state's constitutional system, and a violent encroachment on public safety" (Shanhajskaja konvencija o bor'be s terorizmom, separatizmom i jekstremizmom, 2001).

At the regional level, a number of documents have also been adopted in which extremist crimes are recognized as a threat to the international community: the Council of Europe Convention on the Prevention of Terrorism (16.05.2005) E.T.S. No. 196 (<https://www.coe.int>), the Council of Europe Convention on Laundering, Identification, Seizure, Confiscation of the Proceeds from Crime activities and financing of terrorism (16.05.2005) No. 198, the European Convention on the Suppression of Terrorism (27.01.1977) ETS 090 and additional protocol to it (15.05.2003) E.T.S. No. 190 (<https://rm.coe.int>). However, the listed documents also do not contain a uniform understanding of the term "extremism."

Thus, the international community has not developed yet a generally accepted definition of "extremism," which allowed states to develop uniform criteria for qualifying certain phenomena and actions as extremist in their national criminal legislation. The criminal legislation of foreign countries has its own national characteristics in the normative consolidation and terminological characteristics of the concept of "extremism" (Simeon, 2019). The Criminal Code of the Federal Republic of Germany does not disclose the very concept of "extremism", however, it includes a whole set of compounds containing its features. Such crimes include the dissemination of propaganda materials of anti-constitutional organizations (§ 86 of the Criminal Code of the Federal Republic of Germany), the use of symbols of anti-constitutional organizations (§ 86a of the Criminal Code of the Federal Republic of Germany), etc. § 130 "Incitement against peoples" is of interest, and it states the following:

"(1) A man who, in a way able to disturb public order,
 1. stimulates hostility against part of the population or calls for violence or arbitrary acts against it, or
 2. encroaches on the human dignity of another in such a way that part of the population is subjected to desecration, disdainfully presented or denigrated, will be punished with imprisonment for a term of three months to five years ..."
 (Strafgesetzbuch(StGB), 1871).

The Criminal Code of the French Republic, the Section II "On Terrorism", Chapter I "On Acts of Terrorism", describes the crimes containing the signs of increased public danger. Unlike Russian legislation in France, "the following acts of terrorism are aimed at significant disruption of public order by intimidation or terror, if they are deliberately associated with any individual or collective operation ..." (Art. 421-1) (Code pénal de France, 1992). Crimes with the signs of extremism are fixed by the legislator in section III "About encroachments on state power", chapter I "About encroachments on public peace". For example, the article 431-6 of the French Penal Code provides for sanctions for the direct provocation of an armed gathering, expressed either in public speeches or shouts, or in posted or distributed leaflets, or committed in any other way of text, speech or image provision; Art. R-624-3 is provided for non-public defamation aimed against any character or group of personalities due to their origin or actual or perceived affiliation or non-affiliation with a particular ethnic group, nationality, culture, or religion; the Art. R 625-7 sanctions non-public incitement to discrimination, hatred or violence against any person or group of persons because of their origin or affiliation or non-affiliation, real or perceived, to a distinct ethnic group, nationality, culture, or religion (Code pénal de France, 1992).

A feature of British legislation is the lack of specialized legislation in the field of countering extremism. In U.K. law, extremist crimes are treason, incitement to racial or religious hatred, support of banned organizations, financing of terrorist activities, as well as all of the above acts committed on the Internet (The U.K. Prevention of Terrorism Bill, adopted on the 24th of March, 2006).

The description of terrorism is supplied in the initial segment of the Law on Terrorism:

"1. (1) In this Act, "terrorism" implies the exercise or the intimidation of use of measures when

(a) the act is subject to the subsection

(2), (b) the use or threat is intended to influence the government or intimidate the public or part of it, and

(c) the use or threat is committed to promote political, religious or ideological goals ..." (Terrorism Act, 2000).

Thus, in the legislation of Great Britain, the concept of terrorism is considered as an extreme form of extremism manifestation, which is based on political, religious or ideological motives.

The criminal legislation of the United States of America (U.S.A.) calls countering extremism and terrorism one of the priority tasks, but the very terminological definition of the concept of "extremism" is also not contained in U.S. regulations. In this regard, at the doctrinal level, this concept is considered both as terrorism and the propaganda of violence based on hatred towards various categories of persons (Kapinus & Dodonov, 2007). There are several definitions of terrorism in U.S. law. Thus, the Federal Code (U.S.C., Section 22, § 2656f) defines terrorism as "deliberate, politically motivated violence used against non-military targets by subnational groups or secret agents" (<https://www.law.cornell.edu>). And the U.S. Code of Federal Regulations defines terrorism as "the unlawful use of force and violence against persons or property in order to intimidate or coerce the government, civilian population, or any part of it to gain political or social goals."

Based on the analysis of regulatory legal acts, it can be concluded that there is no codified legislation in the United States that fixes and regulates responsibility for extremist crimes. But laws are envisaged that assume liability for possible manifestations of extremism. We believe that the peculiarity of U.S. legislation is in the organization of the fight against extremism through the prism of the fight against terrorism. The National Anti-Terrorism Strategy is the part of Spain national security system, as terrorism and violent extremism in all its forms constitute one of the main threats to national security and democratic order (Morse, 2011; Wilson, 2009; Meynen, 2013).

Having studied the legislation of Spain, we will conclude that the current legislation does not contain fundamental differences and distinctions between extremism and terrorism, but, on the contrary, considers these crimes as identical encroachments. The Article 572 of the Spanish Penal Code states that "Anyone who, being in a composition, acting for hire or collaborating with the armed gangs, formations or terrorist groups described in the previous article, commits an offense against a person, is subject to criminal liability" (El Código Penal en España, 1995). A special feature of Spanish legislation is that the norms on terrorism are moved outside the framework of the Criminal Code in order to become the object of a special law that regrouped them in a set of criminal and procedural provisions used to fight against terrorism (Fischer et al., 2007; Adjorlolo et al., 2016).

Russian legislation, like international legislation, is focused on the protection of individual rights, ensuring the stability of state structures. At present, Russia has a number of normative legal acts containing the norms that ensure the fight against the spread of extremism and terrorism (the Criminal Code of the Russian Federation (Ugolovnyj kodeks Rossijskoj Federacii, 1996), the Code of the Russian Federation on Administrative Offenses (Kodeks Rossijskoj Federacii ob administrativnyh pravonarushenijah, 2001), the federal law "On Counteracting Extremist Activity" (Federal'nyj zakon «O protivodejstvii jekstremistskoj dejatel'nosti», 2002), "On countering terrorism" (Federal'nyj zakon «O protivodejstvii terrorizmu», 2006) and others).

Thus, according to the Federal Law No. 114-FL "On Countering Extremist Activity," extremist activity (extremism) should be understood as "a violent change in the foundations of the constitutional order and (or) violation of the territorial integrity of the Russian Federation (including the alienation of a part of the territory of the Russian Federation), except for delimitation, demarcation, redemarcation of the State Border of the Russian Federation with neighboring states; public justification of terrorism and other terrorist activities; incitement of social, racial, national or religious hatred ..." (Federal'nyj zakon «O protivodejstvii jekstremistskoj dejatel'nosti», 2002). Thus, terrorism is one of the manifestations of extremism, a form of political struggle associated with the use of ideologically motivated violence (Nahak, 2017; Atkin, 1989; Yasmin, 2016).

Having studied the legislative experience of the definition of "extremism" in foreign countries, we can conclude that terrorism is considered as an extreme form of the emergence of extremism at the legislative level. At the same time, oddly enough, there are still no broadly recognized international legal definitions of extremism

and terrorism (Neumann, 2017). A well-known legal scholar who studies the issues of terrorism and extremism, Professor P. Neumann explains this by “political motives, the speculative attitude of states towards these concepts. The same people or groups of people for some states can be unconditional terrorists, and ideological fighters for democracy, self-determination or gender equality for others” (Neumann, 2017), i.e. the interpretation of the category content depends mainly on the specific political, social and historical context.

Conclusion

A comparative analysis of the legislative regulation of extremist crimes in foreign countries allows us to identify common features and trends in the development of legal responsibility for extremism in foreign countries, to establish differences in the legal regulation of this problem, and to develop approaches to the unification of this concept at the level of international legislation. As interconnected negative factors that impede the achievement of a high level of efficiency in countering extremism, the following should be singled out: systemic breaks in the “anti-extremist” legislation, weak linkage of its individual elements with the normative legal acts of related sectors; the actual absence of a legal definition concerning "extremism" basic concept (Loza, 2007; Nathan et al., 2018).

In our opinion, the development of a universal definition of "extremism" concept will be facilitated by unification of criteria for qualifying certain phenomena and actions as extremist; legislative regulation of the motives and goals of extremist crimes; systematization of crimes containing the signs of extremism and terrorism; concretization of extremist crime qualifying signs. In the modern world, extremism and terrorism are a global problem that poses a threat to world security. The effectiveness of the international community efforts to find the ways to counter this threat depends, inter alia, on a uniform understanding and development of this phenomenon universal formulation in regulations.

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