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STATE AS SUBJECT OF COMPENSATION FOR HARM TO VICTIMS OF TERRORIST CRIMES

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Abstract

The study analyzed theoretical and law enforcement aspects of state participation in compensation for harm to victims of terrorist acts in Russia. Based on a comparative analysis of correlating provisions of the international and foreign legislation with legal provisions of the anti-terror and civil legislation of the Russian Federation, we identified existing problems of legal regulation of restoration of violated rights of victims of terrorist crimes and identified ways to solve them within the legal framework. First of all, attention was drawn to the inadmissibility of artificially contrasting the provisions of civil and anti-terror legislation. Views were made on the issue of the responsibility of the state in causing harm as a result of the activity of the armed forces during the anti-terror operation. Attention is also drawn to the inadmissibility of excluding compensation for moral harm from the number of compensation payments. The authors critically analyze the positions presented in the modern domestic doctrine regarding changes to the Criminal Code, to the FL “Concerning the Combating of Terrorism”. The article presents the authors' arguments in favor of adopting a law in the Russian Federation “On Compensation for Harm to Victims of Crime”, on the creation of specialized funds for the compensation of harm to victims of crime, on the development of a system of compulsory insurance against terrorist acts. The authors also speak in favor of forming a unified system of health rating according to the severity with the installation of a clear correlation of its valuation.

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1. Introduction

Victimologic prevention is an integral part of the modern concept of social control over crime. According to its content, it is interdisciplinary in nature, since it must be complex and systemic. The latter includes the need for legal regulation of constitutional, civil law, criminal law and administrative law aspects of victimologic prevention. Recommendations of the IX United Nations Congress on the Crime Prevention and the Treatment of Offenders (Cairo, April 29 - May 8, 1995) in Section IV, specifically devoted to crime victims, secured a new vector of restorative justice - the need to shift the focus from the priority protection of the rights of the offender to the priority protection of victims of offense. In accordance with the provisions of international law, victims of crime have four types of rights: right of access to the courts; right to compensation for harm from the harm doer (or in third person); right to financial compensation for caused harm by publicly-funded and the right to receive social assistance. Therefore, the most important direction of victimologic prevention is reparation of harm caused by a crime.

2. Problem Statement

Referring directly to the problem of protecting victims of terrorism in the Russian Federation, it should be noted that its legal foundations are formed in Art. 52 of the Constitution of the Russian Federation, in art. 18 of the FL “Concerning the Combating of Terrorism”. The question of the legal regulation of this issue is in the domestic legislation only at the beginning of its path. About this, in particular, repeated changes in art. 18 of the FL “Concerning the Combating of Terrorism”, and the ambiguity of the language used by the legislator in it. In addition, some authors consider it necessary to strengthen the regulatory framework for the protection of victims of crime by including the corresponding instruction in the Criminal Code of the Russian Federation. So, in particular, in the opinion of Trofimov (2007), it is necessary to supplement the Criminal Code with the norm on the obligation of the person who committed the crime to compensate the victim. It seems that such a proposal cannot be supported, since the criminal law regulation is not aimed at resolving the issues of compensation for harm caused by a crime. This question has practical significance in the implementation of the institution of criminal liability (for example, exemption from punishment, in the process of its individualization, etc.). At the same time, domestic regulatory enforcement clearly demonstrates the insufficient material compensation for physical and material damage caused by terrorist acts, as well as the complete absence of examples of compensation for moral harm.

3. Research Questions

In the Russian Federation, a three-tier system for the restoration of violated rights operates in relation to harm to victims of terrorism: 1) compensation (part 1 of Article 18 of the FL “Concerning the Combating of Terrorism”); 2) compensation of harm by the state (part 2 of article 18); 3) compensation for harm at the expense of the person who committed the terrorist act, as well as at the expense of his close relatives, relatives and close persons, if there are sufficient grounds to believe that they received money, valuables and other property as a result of terrorist activities and / or income from such property (part 1.1 of article 18).

So, in art. 18 of the FL “Concerning the Combating of Terrorism” enshrines provisions on state compensation payments to victims of an act of terrorism. So Russian norms consider this problem in a single plane with international standards in the field of compensation for harm to victims of terrorist crimes, since international stress focuses specifically on compensation payments to victims of crime. Thus, the Declaration of Basic Principles of Course of Justice of Crime Victim and Abuse of Authority of November 29, 1985 mentions compensation for material and non-material harm. In Art. 4 of The European Convention on Compensation of Damage of Violent Crimes Victims (Strasbourg, November 24, 1983) also uses the category of compensation. The European Court of Human Rights follows the same path, resolving cases on complaints of Russian citizens. In his decisions, he repeatedly made decisions on the payment of compensation and the full or partial refusal to satisfy claims for damages (the Isayev, Yusupov and Bazayeva v. Russia case (complaints No. 57947 - 57949/00)). However, one should pay attention to that compensation in these sources is used as a wider category than in the sense in which it is mentioned by the domestic legislator, since in the norms of international law it applies to compensation for both material and moral damage. Nevertheless, in Russia, the category of compensation within the framework of compensation for harm to victims of terrorism is understood purely as payment of monetary compensation for organizing a funeral, transporting the bodies of the dead, providing lost housing or funds for its purchase, issuing vouchers to sanatoriums, etc. There is no talk about compensation for moral harm in the framework of compensation payments.

4. Purpose of the Study

The purpose of the study was a systematic interdisciplinary analysis of the issue of compensation for physical, material damage, compensation for moral harm in the Russian Federation; the establishment of the main legal conflicts in the regulation of this issue; identifying ways to optimize and modernize domestic anti-terror and civil legislation.

5. Research Methods

In the course of the study, the authors relied on a system of general scientific methods of cognition (methods of formal logic and philosophy). First, the study was based on such laws of philosophy as the negation of negation, determinism, historical variability, etc.). In their work, the authors used private-scientific methods of cognition: comparative, the study of documents, statistical and mathematical.

6. Findings

In the domestic doctrine, a discussion on the legal nature of these payments to victims of terrorism is relevant. The main disputes are based around the question of whether these compensation payments are the implementation of charity by the state within the framework of the social paternalistic function or, they are the legal obligation of the state towards citizens. It seems that the second of the presented positions is more correct. Compensation of harm of the crime victim, including a terrorist act is the constitutional duty of the state, enshrined in art. 52 of the Constitution of the Russian Federation: "The state provides victims access to justice and compensation for damage." In the Definition of December 27, 2005, the Constitutional

Court of the Russian Federation notes: “In organizing a compensation system, the state acts not as the harm-doer (which would require full compensation of harm caused) and not as a debtor for a tort liability, but as a public body expressing common interests and as the manager of the budget created and spent in the common interest”. This provision is valid in the situation of relations by type of state - the victim of a terrorist crime, as the addressee established in Part 1 of art. 18 of the FL “Concerning the Combating of Terrorism” compensation payments. At the level of by-laws, the issue of compensation payments in order to provide social assistance to victims was also resolved in the Russian Federation. However, the compensation does not cover the damage caused. Especially important is the above definition of the Constitutional Court in connection with the factual circumstances in respect of which it was rendered, namely, the appeal of the victims of the Dubrovka terrorist act about the state's compensation for moral harm. Thus, the court unreasonably limited the scope of state participation in reparation of harm to victims of terrorist crimes. Because, in addition to compensation payments, excluding from the responsibility of the state the issue of compensation for property damage and compensation for moral damage. Thus, the problem of weak protection of victims of terrorist acts is obvious.

Remains beyond the law and the question of compensation for moral damage under Part 3 of art. 18 of the FL “Concerning the Combating of Terrorism”, since it only explicitly stipulates compensation of harm, which means only material damage and physical harm.

At the same time, there is another important issue related to the fact that payments are made from the state budget, whose possibilities for compensation payments are limited due to objective reasons. In this regard, it is necessary to put on an agenda of the need for the formation of funds to compensate for harm the victims of crime. This practice has already been tested in a number of foreign countries. In addition, in the Russian Federation, beyond the legal settlement, the question of a terrorist act remains as an insurance case. It seems that the great potential is fraught with a system of compulsory insurance at sites with high terrorism. Insurance payments in the United States after the events of September 11, 2001, in total, reached more than 4 billion dollars (Kuznetsova, 2001).

Responsibility arising for harm caused by crimes of a terrorist nature is considered in the framework of both private and public legal relations. However, it is a type of civil (tort) liability (Trushin, 2007). As a rule, for the occurrence of civil liability requires a set of conditions (the presence of harm, the wrongful conduct of the harm-doer, the causal relationship between the harm and wrongful conduct and guilt). The absence of at least one of them excludes the very question of civil liability. However, in relation to the problem of compensation for harm to victims of terrorist crimes, one of the most pressing issues is the problem of restoring their violated rights in the implementation of counter-terror actions.

Even though the modern counter-terrorism policy in Russia has the priority to prevent this negative social phenomenon, the role of the Armed Forces of RF in the counter-terrorism system is still important. Thus, in accordance with paragraph 31 of the Military Doctrine in peacetime, the main tasks of the Armed Forces of the Russian Federation include, among others, the fight against terrorism in the territory of the Russian Federation. Direct reference to the use of the Armed Forces to suppress flights of aircraft used to carry out a terrorist act or captured by terrorists; the suppression of terrorist acts in internal waters and in the territorial sea of the Russian Federation, on the objects of maritime industrial activity located on the continental shelf of the Russian Federation, and also to ensure the safety of national maritime navigation;

participation in the counter-terrorist operation; The suppression of international terrorist activities outside the territory of the Russian Federation is also contained in Art. 6 of the Federal Law of March 6, 2006 No. 35-FL “Concerning the Combating of Terrorism”. There are a number of by-laws in the Russian Federation, specifically aimed at regulating the use of weapons and military equipment to counter terrorism on the territory of the Russian Federation. These include: 1) Regulations on the use of weapons and military equipment to eliminate the threat of an act of terrorism in the air or prevent such a terrorist act; 2) Regulations on the use of weapons and military equipment to eliminate the threat of a terrorist act in internal waters, in the territorial sea, on the continental shelf of the Russian Federation and while ensuring the safety of national maritime navigation, including in the underwater environment, or for suppressing such a terrorist act; 3) Regulations on the use of weapons, military equipment and special means when participating in the counter-terror operation.

Forceful opposition inevitably leads to destruction and casualties, both among the participants of the counter-terrorist operation, and the participants of illegal armed groups, and, unfortunately, among civilians. All these put on an agenda of the question of compensation for harm to victims of antiterrorism activities. At the same time, in the Russian Federation there is no integral legal regulation of the procedure for compensation for harm to life and health (physical), as well as property, compensation for moral harm caused in the course of antiterrorism activities.

7. Conclusion

First, the question of in what cases such harm is to be reimbursed needs to be resolved. In domestic doctrinal literature (Vinokurov, 2012) and regulatory enforcement, it is rightly pointed out that harm is often caused for objective reasons (difficulties in navigation when flying in mountainous terrain, difficult weather conditions, etc.). For these reasons, for example, in August 1999, the Su-25 attack aircraft, while mining the possible routes of movement of participants in illegal military formations, mistakenly struck at the village of Zelo Omalo. By virtue of the argument, some domestic authors believe that the harm caused by the Armed Forces during the counter-terror operation should not be recoverable (Manov, 1998). So, Sokolova (2015) considers expedient in paragraph 2 of Art. 18 of the FL “Concerning the Combating of Terrorism” to establish that the harm caused by military organizations within the Armed Forces of the Russian Federation to lawful actions in suppressing a terrorist act, as well as during counter-terror operations, is not subject to compensation. Judicial practice follows the same path. In support of their position, supporters of such an approach rely on the fact that the provisions of paragraph 1, art. 1064 of the Civil Code of the Russian Federation (Sokolova, 2015) cannot be applied to the obligations arising from harm caused by the actions of the Armed Forces since by themselves these actions are legitimate. Indeed, these arguments are quite reasonable. However, in the theory of civil liability, a concept of special grounds (conditions) for compensation of material damage was developed. These include the above elements of the composition of a civil offense, with the exception of the fault of the person causing the harm, and such circumstances as: 1) the official nature of the activity of the harm-doer; 2) office character of authority and administrative activities; 3) the procedural nature of the activity of the harm-doer; 4) a special subject composition (official or an official endowed with authority and administration or procedural powers) (Dontsov & Marinina, 1986). According to this, it seems that the question of civil liability in a situation of

causing harm by lawful actions of the Armed Forces of the Russian Federation also falls under the regulation of the Civil Code of the Russian Federation. However, the domestic legislator chose a different path. According to Part 2 of Art. 18 of the FL “Concerning the Combating of Terrorism” in such a situation, compensation for harm is carried out at the expense of the federal budget. At the same time, the question of compensation for non-pecuniary damage cannot be missed. At best, only material damage and damage to life or health are subject to compensation. So, compensation for harm is not fully implemented, which violates the rights of victims of terrorist crimes. In this regard, it seems that the solution to the indicated problem should lie in the creation of specialized state funds for the compensation of harm to the victims of crimes.

When it is established that the actions of the Armed Forces of the Russian Federation are unlawful, to suppress a terrorist act and to conduct counter-terror operations, compensation for the damage caused by them should be carried out according to the rules of ch. 59 of the Civil Code. At the same time, the scale of the damage caused in the course of antiterrorist activities can be significant, and it is also quite difficult to establish in such conditions a particular subject of civil liability. It is coming to their senses that since the Armed Forces act on behalf of the state, it must fully reimburse the damage in full. In this regard, the position of Dubynina (2012), according to which “in the conduct of hostilities in the territory of the Chechen Republic, Afghanistan, Dagestan and in other cases ... the harm was done not by the military organization (military unit), but by the circumstances of the martial law or the state of emergency ... civil liability should be assigned to the state (1069 of the Civil Code of the Russian Federation)” (p. 7).

Key issues of compensation for harm to victims of crimes, including terrorist ones, such as the “cost of living” remain unresolved for domestic regulatory enforcement. “The problem of determining the value of human life really exists; it is interdisciplinary and legislative. As its baseline estimate, taking into account domestic and international experience, the cost of living can be determined at 300 thousand dollars (which is about 9 million in rubles)” (Trunov, 2007, p. 90). Also, there is no regulation in the national legislation for the calculation algorithm when the determination of the amount of physical and material damage subject to compensation. In this connection, positive foreign experience in developing a uniform tariff classification of harm according to the severity and its cost correlation should be perceived (UK, USA).

Summarizing the above, it should be noted that for domestic law the issue of effective protection of victims of crimes remains open. The regulation of this issue, in relation to the victims of terrorist crimes, is the only and quite a conflictive example of such experience in the legislation of the Russian Federation. It seems that the main problem relates to the unreasonable opposition of the regulation of compensation for harm to the victims of terrorist crimes in the FL “Concerning the Combating of Terrorism” with the provisions of civil law. This ultimately led to the disregard of the issue of compensation for moral damage, to the declaration of compensation for harm caused by a terrorist act, to a violation of the principle of responsibility for guilt, etc. At the same time, it is necessary to recognize the need to adopt a specialized law “On the protection of crime victims in the Russian Federation”. The experience of creating specialized funds for compensation for harm to victims of crimes acting on the principles of state co-financing and private donations also seems promising. Increasing terrorist threats in modern society also put on the agenda about introducing compulsory insurance for an object with high terrorism, and an act of terrorism will be an insured event.

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