

Description of the “extremism” phenomenon as a forerunner of the terrorism and its legal treatment in Russia and USA

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Abstract. The current article considers extremism as a social phenomenon and criminally punishable act. There are different views provided on definition of the act in the law doctrine. Also, it has been mentioned the normative formalized definition of extremism in the Russian Federation, containing its characters. The significant attention is paid for the problem of human rights respect in the struggle with extremism in the example of the United States of America.

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Introduction

Terrorism and extremism – are pair categories. Those are two very close and along with that relatively independent negative social phenomenon. The extremist actions do often precede the terrorist actions, the future terrorists are quite often enlisted from the number of extremely inclined citizens. The extremism in that context can be considered as some forerunner of terrorism.

There are many definitions of terrorism and extremism concepts. However, taking into account multiple meaning and multidimensionality of the considered concepts, it does not work for no one to formulate their universal definition reflecting not only the essence but all the distinctive features and characters of the actions.

Nevertheless, it is accepted to consider that the terrorism as a social phenomenon is an ideology of violence and practice of influence on decision making by the governmental authority, local self-government or international organizations, related to frightening of the population and (or) other forms of illegal violent actions.

The extremism is often interpreted as commitment to extreme views and radical ways of one or another problems solving.

The forms of appearance of terrorism and extremism are extremely diversified: political, religious, interethnic, nationalistic and etc. Besides, in all the polyphony of the “terrorism” and “extremism” concepts, varieties of types and forms of their appearance in the reality both the considered categories in respect to law (and especially – criminal law) must be clearly formalized and restricted in its characteristic by the certain set of factors being necessary and enough for solving all the questions related to law enforcement. Nowadays, setting clear borders of criminal law restriction of terrorism and

extremism, description of corresponding components of crimes are serious problem as both for international and national criminal law.

The other problem is widening of proportion of terrorist and extremist activities, its transnationalization, growth of aftermath volume from such activity. In the modern global world, the problem of terrorism-extremism started to assume the global character. There is even a version, according to which the modern global financial and economic crisis is caused by intervention of “external power” – as so called “financial terrorists”.

Against the background of happening in the last years events (especially on 11th of September 2001) many countries (including Russia, USA and other countries of the Asia Pacific regions) assign terrorism and extremism to number of the main threats of the national security and the world in general.

It can be considered as reaction of world community countries on new challenges and threats the development, signing and ratification by many of them of the whole set of international conventions directed to struggle with terrorism and extremism.

The serious attention was paid for that problematic by XII UNO Congress on prevention of crime and criminal justice (Salvador, Brazil, 12-19 of April, 2010). The congress mentioned that today there are 16 international and law documents on the questions of prevention and struggle with terrorism. On 8 of September, 2006, the UN general assembly unanimously adopted the Global counter-terroristic strategy (resolution 60/288) [1]. Nevertheless, the participants of all 16 international and law documents have become only 3 out of 192 countries members, and members of not less than 12 out of those documents are only 120 countries members. Such circumstances substantially diminish the

effectiveness of efforts of international community in the opposition to terrorism. In connection with that, the Congress has formulated in the capacity of top priority task “provision of technical assistance for assistance of ratification and implementation of international documents, related to prevention and preclusion of terrorism” [2].

The special situation with terrorism and extremism is formed in Russia. The permanent acts of terrorism on the North Caucasus, periodical terrorism appearance in other regions of the country, tempests of xenophobia in some cities make the leaders of the country accept that the terrorism and extremism are one of the threats of national security.

In connection with that, law identification of extremism has significant meaning as precursor of terrorism, its evaluation from the point of view of state sovereignty security, rights and freedoms of citizens and observance of rights and freedoms by the country itself during the process of defense establishment.

The extremism phenomenon as negative fact can be considered from the position of different sciences: philosophy, sociology, political science, religion studies, psychology, criminology, criminal and administrative rights.

Each of the mentioned sciences in its way identifies the undefined concept of extremism. So, in the modern politics science under extremism it is accepted to understand deadly animosity toward constitutional system of democratic government, its rules and norms; the original way of social contradictions solving; the complex of extreme forms of political struggle [3]. In the philosophy and religion science, the extremism is connected to fundamentalism and radicalism [4]. In the criminal science the extremism is interpreted as commitment to extreme views and radical measures of one or another problem solving [5].

It was attempted to formulate the general scientific definition of extremism at the junction of psychology, politics science and criminal law. From E.P. Sergun’s point of view, “extremism – is commitment to certain system of views and ideas, based on intolerance toward fundamental principles of the constitutional system of the Russian Federation and democratic right and freedom of a person and a citizen secured by the government, characterized by the inner readiness for dynamic activity directed on turning such views into reality by penal way” [6].

That attempt is hardly accepted as successful one, because with the whole wordiness of the provided formula it does not disclose with exhaustiveness the concept of extremism as criminal legal phenomenon.

It was mentioned by some scientists, that extremism is a sociological but not psychological matter. Russel Hardin in the article *The Crippled Epistemology of Extremism* says that the extremism is less likely to be defined by its substantive content than by the way it is socially constructed. He also suggests that knowledge by authority is especially important element of such an economic epistemology for fanatical, group-based beliefs [7].

Extremism in that concept reveals its identity. Lehtsaar has described the extremism: “Differing from balance. Extremity does not indicate something different in principle but different in degree, intensity, frequency or importance. Extremity does not indicate qualitative but quantitative differences” [8].

In a lot of ways, extremism, especially “terroristic” demonstration of religious radicalism is considered as fundamentalism but it is not the right position: religious fundamentalism is not necessary extremism or eventually not necessary connected with terrorism.

So, what it is included in the ideology of religious fundamentalism and what is the link with terrorism? The concept “fundamentalism” is related to a number of special religious beliefs. It appears more or less in all world religions [9]. Nevertheless, extremism first of all arises from ideology but not religion [10].

In spite of the fact that American scientists paid considerable attention to the problem of extremism, there is no any normative formalized definition of the phenomenon in the USA. The Russian legislator being prevented from relying on strong theoretical base, in the field of extremism criminalization is forced to act mostly by “trial and error” method. But this is a half of a trouble. The trouble is in that in the result of excessive politicization of the lawmaking process, affected by almost undisguised political conjecture, the scopes of criminally liable extremism started to continuously widen. That found its expression not only in changing of the edition cl. 280 CC RF (public appeal for realization of extremism activity) but in accepting of new norms: cl. 282¹ CC RF (organization of extremist community). What stands out in the report is the fact that in the cl. 280 was emended three times, cl. 282¹ was reshaped four times, cl. 282² – two times.

However, it is not a record. By the current moment in the Criminal code of Russia in one or another view it has been already done about 1000 changes. That means, that in some articles of CC the changes have been done more than once, and in some – five or six times. Sometimes the changes in the CC were from Russian parliament in continuous chain.

Of course, such work of our law writers cannot help reflecting the quality of the Criminal code. From the primary whole and systematic act it has become something like a patchwork quilt, has become filled with inner antagonisms, started to include completely unnecessary for it norms [11].

Having struggling with the extreme forms of demonstration of displacing behavior, the legislator, as we can see, runs himself to extreme. As a result of original “norm creating extremism” in Russia we have such criminal law that we have: unsystematic, fragmentary, inside unbalanced, outwardly amorphous.

But what does the extreme represent from the point of view of its criminal and legal characteristic as it is presented in the criminal law and other normative acts?

The key concept for the whole group of crime such called extreme direction is “extreme activity” category (extremism).

According to the Federal law from 25 of June 2002 “About opposition to extreme activity” the extreme activities (extremism) are:

a) activities of public and religious communities, or other organizations, or mass media, or private person on planning, organization, preparation and commitment of activities, directed on: forced changes of the constitutional system and breaching the integrity of RF; disruption of security of RF; seizure and appropriation of powers and authority; creation of illegal armed formation; realization of terrorist activities; stimulation of racial, national or religious disagreement, as well social disagreement related to violence or appeals for violence; humiliation of national dignity; realization of mass confusion, vandalism and acts of vandalism by the motives of ideological, political, racial, national, religious or language belonging;

b) propaganda and public demonstration of nazi attributes or symbols similar to nazi attributes or symbols till the mixing level;

c) public appeals toward realization of mentioned activity or committing mentioned activities;

d) financing of mentioned activity or other contribution to its realization or committing mentioned activities, including by the way of providing financial resources, property, educational, printing and material and technical base, phone, facsimile and other types of connection, information services, other material and technical tools for realization of mentioned activity [12].

In 2006 that list was added by amendments to the law. The extreme activity mainly, started to be recognized:

- 1) Impeding the legal activity of government bodies’ power, election committee as well as legal activity of executives of mentioned bodies, committees, connected with violence or threat of its application;
- 2) Violent use in regard to representatives of state power or their relatives in connection with usage of his position obligations;
- 3) Public slander in regard to a person replacing the state position of Russian Federation or governmental position of RF subject while using his position obligations or in regard to its performance, combined with accusation of the mentioned person in doings provided by cl. 1 of the Federal law “About antagonism against extreme activities” in condition that the fact of slander has been established in judicially.

As it was absolutely fairly noticed by A.G. Khlebushkin on this subject, the mentioned doings do not bring obligatory direct threat to fundamentals of constitutional system or constitutional bases of interpersonal relationship, consequently their relation toward extremism cannot be accepted as a right one. In fact, they are pure and simple traditional crime against honor and dignity of a person, control procedure.

Such excessively expansive legislative solution makes extremism into some amorphous phenomenon with excessively diffused boards [13].

The essential changes, made in anti-extremism legislation in 2007, not only did not make the situation clear but made it more complicated. Nowadays, the crime of extremist direction it is suggested to be understood as being done by the motives of political, ideological, race, national or religious hate or enmity or by the motives hate or enmity toward any social group [14].

The mentioned motives being pretty often evaluative categories are not fully known and revealed even in the theory of criminal law. As it is fairly mentioned in the literature, it is required to start with the search of solution about optimal correlation of person and citizen’s rights and freedom protection (including freedom of discussion) with the requirements of the legislation about the struggle with extremism and provision of government security [15].

In the search of that correlation, let’s address to USA experience in the question of human rights observance in the process of struggle with extremist demonstration.

According to the Frist Amendment of US Constitution, “Congress should not issue any law which is related to establishment of religion or prohibition of its free confession, or abridging freedom of speech or printing or the right of the nation to peacefully get together and appeal to the government with petitions about redress of grievance” [16].

The critical declarations toward the government get under the first amendment and defended by it. The amendment even defends the actions on support (by the way of provision of expert opinion or consultation) of different groups, accepted by the government of foreign terroristic organization. However, the courts not always agree with the current opinion. The example of that can be the case of Tarek Mehanna, a citizen of Boston who was sentenced to 17 years imprisonment for that he was translating jihadist material and published it on internet. The arguments of his lawyers that the present actions were protected by the First Amendment were not accepted by the court [17].

It is noticeable that individuals are also liable to responsibility which “advocate” violence “as a means of accomplishing industrial or political reform” [18], which is consonant to Russian “forced changes of the bases of constitutional system and breaching of the Russian Federation integrity.

Nevertheless, the Supreme Court in *Brandenburg v. Ohio* (1969) mentioned that claims which one can be responsible for, must contain direct intense to commit a crime.

The American legislation verifies from state to state, but in many of the states it is provided the responsibility for as it called crime due to hate toward certain groups of people on race, religious, gender characteristics and etc. Even the present crime is similar by implication with the doing provided by cl. 282 CC RF, however even in USA among the scientists there is no single position on the question of referring the current type of crime to extremism [19].

It is worth mentioning that it is restricted by the Fourth Amendment to Constitution of USA applying sanctions for extremist activities, according to which “the right of the nation on security of personality, accommodation, documents and property from warrantless search and arrest should not be broken”. The current right can be restricted only “having enough reasons, proved by the oath or affirmance” [20].

USA PATRIOT Act came under substantial criticism from the sides of rights activists, which lets “make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an

investigation . . . to protect against international terrorism or clandestine intelligence activities” [21]. Giving the legal base for restriction of citizens’ right, the present clauses are perceived as threat to freedom and human rights [22].

Lately, the world faces with many challenges and threats coming both from outside and inside the country. One of those challenges has become extremism. That negative social phenomenon requires undoubtedly, adequate reaction on it from the government side before application of criminal responsibility measurements.

However, “the opposition to extremist activities and prevention from spreading of extremist ideology in Russia should not turn into struggle with politic and other types of ideological dissent that unfortunately in certain level has a place in reality and is absolutely unallowable in democratic regime” [23].

In this respect, the USA rich experience is especially attractive, giving opportunity to find out the border between respecting of human rights and struggle with extremism appearance. That border is impossible to set only under law making process, it is required real practical work in the field of struggle with extremism with extra attention to each certain case. Such practice of enforcement in aggregate with active doctrinal work on this question must contribute to substantial decrease of extremism appearance threat and establishment of civil society whose rights and liberty are observed implicitly.

Extremism even being closely connected with terrorism, nevertheless has quite many distinctive, inherent to it features and peculiarities, forms of demonstration. Out of that, there is a complex task to reveal extremist activity in the real demonstration such its variations which contain so high level of social dangerous, so they should be actually accepted as criminally punishable acts and form as penal prohibition. According to this, it is revealed a huge field for work of theoretic, law practitioners and legislators.

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