

Ensuring the legality of certain investigative actions in cases of terrorist offenses

**Zyufyar Shakirovich Gataullin, Vladimir Nikolaevich Zhadan, Saphiya Khamitova
Mukhametgaliyeva and Guliya Fagimovna Galeeva**

Kazan Federal University,
Kazanskaya Street 89, Yelabuga, The Republic of Tatarstan

Abstract

The operational environment on Russian Federation territory continues to be difficult, and in some regions the tendency to its worsening prevails. Thus, the study of the criminal prosecution concerning the cases of terrorist crimes is one of the urgent problems in modern Russian criminal procedure science.

A great part of those who committed terrorist offenses are in conflict, they do not contact with an investigator, show aggression, threaten with violence. In these circumstances, the problems concerning the assurance of investigative action legality appears. In order to solve this problem we based on the basic provisions of a systematic approach to the study. In addition to a general scientific knowledge method the special public-scientific methods of cognition were used: logical-legal; comparative legal, historical legal, specific sociological, systematic and structural, statistical method, the method of analysis, synthesis and legal simulation.

The article analyzes the theoretical and criminal procedural features concerning the legality of certain investigative actions provision in cases of terrorist crimes. Specific proposals are introduced to improve the techniques and tactics of various type of inspection and examination provision.

The necessity of citizen constitutional rights observance in the process of an investigation performance, especially in relation to the conflict suspected (accused ones), who tend to make false statements and mislead an investigator.

Specific measures were proposed to avoid a physical impact against an interrogated person. The results of practitioner interviewing were presented: investigators, prosecutors and judges, who expressed the support for the proposals aimed at the provision of the rule of law during the investigative actions in cases of terrorist crimes. Based on the study of judicial practice, the argued proposed measures in the article, excluding the physical impact of the suspects (defendants) are applied successfully in the remedial activity.

Thus, the studies conducted in the article make it possible to state that the practice of a number of foreign countries using the methods of physical influence in the production of an interrogation concerning foreign, in particular the Israeli secret services is not acceptable. It promotes the formation of permissiveness and will lead to lawlessness.

The article proposals may be introduced into the practice of investigative action performance, the compliance with the criminal procedure legislation will contribute to an effective implementation of criminal prosecution.

Keywords: Evidence, act of terrorism, crime, investigator, examination, interrogation.

Introduction

Terrorism as a separate type of crime was stated in the Russian criminal law on 1-st of July 1994 for the first time. The public awareness of this phenomenon danger as the threat to the Russian state security actualized the activity of Russian lawmakers concerning the development of a sufficiently complete regulatory framework aimed at the combat with this phenomenon. Russian Federation joined the International Convention for bombing terrorism suppression on 15-th December of 1997, the European Convention on the Suppression of Terrorism on 27 January 1997, the Agreement on Cooperation between the states - the participants of the Commonwealth of Independent States for terrorism prevention on 4-th of June 1999, the Shanghai Convention on prevention of terrorism, separatism and extremism on 15-th of June 2001. Besides, federal laws were adopted: 25.07.1998 - 130-FL "About terrorism prevention", 25.07.2002 - № 114-FL "The prevention of extremist activities", 06.03.2006 - № 35-FL "The prevention of terrorism". The Council of Europe Convention on the Prevention of Terrorism was ratified (Warsaw, 16 May 2005). This Convention stipulates the obligation for each of the joined parties to set criminal liability for such acts as public incitement to terrorist activities, the involvement in terrorist activities, a person's training in order to commit terrorist crimes.

The criminal law does not contain the concept of a terrorist crime. The first mention of it appeared in the article. 205.1 of the RF CC as amended by FL issued on July 24, 2002 № 103-FL, which included the responsibility for the involvement in the commission of terrorist offenses or in other assistance for the commission.

The Federal Law issued on March 6, 2006 № 35-FL "On Terrorism Prevention" which repealed the Act issued on 25.07.98, №130-FL "Combat with Terrorism" defines terrorism in Art. 3 as follows: "terrorism - the ideology of violence and the practice of influence on decision-making by governmental bodies, local authorities or by international organizations related to the intimidation of population and (or) other forms of illegal acts of violence".

Methods

The methodological bases of the study were the dialectical method of cognition and the system of general scientific and private scientific methods based on it: logical method (at the presentation of the whole material), system analysis method (at the consideration of investigative action peculiarities during the investigation of terrorist acts), a statistical method (at terrorism analysis, the level of investigative work organization in the process of terrorist act investigation), the simulation method (in the process of recommendation development related to organizational and legal mechanism of terrorist act investigation. The conclusions and proposals presented in the work are based on the Constitution, criminal law, criminal procedure laws, the decisions of the Constitutional Court and the Supreme Court of Russian Federation provisions, on the normative acts of ministries and departments..

Results

The research concerning the search of effective counter-terrorism measures, including the form of criminal prosecution, was performed by domestic [1], and by foreign experts of terrorism.

The main purpose of prosecution, in general and concerning the cases of terrorism offenses in particular, is in the establishment of the truth, i.e., in the determination of guilt or the absence of guilt concerning a person suspected of a crime committing, which is set in the process of investigation during a pre-trial stage, which requires the formation of an evidence base.

The rules of evidence concerning the case of terrorist offenses are regulated by the Act. The subject of the criminal jurisdiction, who performs an investigation is obliged to comply with these

rules. Thus, proving the guilt of a crime should be carried out strictly within the limits defined by criminal procedure law.

The production of investigative actions in cases of terrorist crimes, as a rule, begins with the place inspection where terrorist act was committed. The quality of inspection which determines the efficiency of prosecutorial evidence collection [12, pp. 29-32; 13, pp. 29-32] and a rapid disclosure of a crime. Therefore, immediately after the receiving of information about the discovery of a crime attributes an investigator should promptly begin an inspection, or increase the probability of an intentional and an accidental damage or destruction, the damage of traces and the impact of natural factors are not ruled out.

Unexploded bombs; the threat of a building structure destruction, a sufficiently long period of inspection usually lasts for a few days, hinders the attraction of people to participate in the inspection as witnesses.

It is no coincidence, that legal literature mentions a negative attitude to the institute of witnesses, especially by practicing employees. Our research shows the following results: among the surveyed respondents 80.34% of investigators advocate the abolition of witness institution, while at the same time 54.66% of prosecutors and 59.29% of judges voted against it. This position of investigators is explained by the emerging issues of person attraction as witnesses in the course of an inspection performance.

One of the ways out of this situation is to attract the internal troops of the RF Interior Affairs Ministry and the Ministry of Emergency Situations [14, pp. 129-130; 15, pp. 46-51] as witnesses who are directly involved in cordon creation within the terrorist attack zone, the organization of rescue operations and the liquidation of its consequences. There is a possibility of an examination without the participation of witnesses, the regulation of the ch. 3 of the art. 170 in RF CPC if an investigative action is associated with people risk to life and health, allows the performance of an inspection without witnesses, with the use of technical means of its progress fixation and the results with the obligatory participation of a forensic expert.

The consequence of terrorist crimes is not only the destruction of buildings, various designs, but also immense casualties. So, there is a need for a body examination at a scene.

In legal literature, the guidelines for a corpse examination are widely covered, the production of an autopsy on-site in the course of rescue operations is not always possible. There is a threat of structures and buildings destruction, and the threats of secondary explosions.

In this regard, FEMA employees carrying out the removal of blockages, are obliged to fix the location of each detected dead man, after which the bodies are retrieved from the destroyed objects and are moved into the designated places of deployment for an initial examination of a corpse.

The examination of a corpse can be roughly divided into the stage of examination on explosion area and an external examination.

During a body examination on the place of a terrorist attack an investigator will address the following tasks: 1) it is necessary to fix the position of a corpse very clearly as against fixed objects, so as in relation to an explosion epicenter; 2) in case of a large number of victims, the clothes of each victim is packed separately, which allows an investigator to determine the location of each body prior to a terrorist attack on the basis of explosion product determination; 3) the fragments of the bodies shall be sorted by forensic expert, then they must be packed separately; 4) documents, personal items found during the examination of a corpse should be packaged and sealed; 5) a body should be packed in a plastic bag for further investigation in order not to lose the traces of an explosion.

During an external examination of a corpse an investigator focuses on the detection and the fixation of an explosive device products and fragments, as on the body of a victim, as well as on clothing and footwear.

During the process of an evidence base development concerning terrorist offenses aimed at the determination of truth it occupies a special place is occupied by an interrogation procedure, as an investigator receives important testimonies first of all from a suspect (an accused one), as well as from a victim and a witness.

However, as practice shows, many suspects (accused ones) of terrorist offenses are in conflict, most of them avoid from the contacts with an investigator, show aggression, threaten with violence and provide false evidence making an investigator being astray.

Some authors see the way out of this situation, using the institute of extreme necessity, i.e., to set the priority of citizen constitutional rights observance versus the rights of the person who committed a terrorist act (our research showed that 52% of the investigators, 65% of prosecutors and 51% of judges support this proposal), others offer to use the methods of physical influence from foreign, in particular the Israeli secret services during an interrogation.

In essence, the last offer is aimed at the legalization of tortures to "knock out" the necessary evidence which we cannot agree in any way, because the resolution concerning a physical impact use against interrogated persons, certainly has a negative impact on the morality of the interrogators, will develop permissiveness and lawlessness.

According to practice, the cases of unlawful methods use during interrogation are met frequently. Let's remember the police activity at IAD "Dalny" in Kazan, where police officers tortured the detained person [16].

We believe that the measures which exclude the physical impact against a detained person are the following ones: a) the conduct of individual investigative actions according to the initiative of an investigator (e.g. questioning, identification, etc.) with the participation of a witness; b) with the participation of a defense counsel; c) with the participation of a health worker (in order to survey an interrogated person to detect the traces of physical restraint); g) the use of audio-video recording [17, pp. 356-361; 18, pp. 49-51].

If we demonstrate statistics, 87,58% of prosecutors, 25,64% of investigators and 24,78% of judges share our position.

According to the materials of judicial practice the specified measures which avoid the physical impact in respect of suspects (defendants) are applied successfully in the procedural activities of individual practitioners. So, the verdict of the Stavropol Regional Court dated on March 7, 2013 according to the p. 3 of the art. 205.1 of RF CC sentenced Akavov I.M., the criminal case materials against him indicate the presence of an interrogation video record, attached to its protocol [19].

Thus, it should be stated the following: as Russia declared itself a legal state, took the responsibilities to recognize, respect and protect the rule of international law, the subjects performing a prosecution in respect of terrorist offenses, especially the investigators conducting investigative activities must strictly comply with the requirements of the criminal procedure legislation.

Discussion

The study of the criminal proceedings concerning the cases of terrorism is one of the urgent problems of the modern Russian criminal procedure science. Terrorism is primarily an internal one, which made a profound impact on the political development and the psychology of Russian society

as a whole, remained weakly studied as a specific phenomenon until recently. The analysis of the scientific literature suggests that the study of the terrorism phenomenon is conducted for a long time, and the attempts to formulate the concept of terrorism were taken repeatedly by domestic and many foreign researchers. According to a prominent American expert in the field of terrorism struggle Mark Selmer, there are currently more than 100 definitions of this term. According to the domestic scientist prof. Y.S. Gorbunov there are more than 300 of such definitions in the world.

Most part of the scientific works is devoted mainly to the study of criminal law and the criminological aspects of struggle with this type of criminal activity, while the criminal procedural aspects of terrorism in general are studied weakly. First of all this is explained by the fact that most of the research is devoted mainly to an operatively-search aspect of such crimes disclosure and it has a limited distribution, accordingly. Secondly, law enforcement practice started to spread relatively recently. Earlier, the criminal acts within the symptoms of terrorism, were qualified in other similar articles of RF Criminal Code, which was explained by the difficulties of proof within the criminal cases considered as terrorism. Thus, the amount of solved crimes and specified criminals qualified in terrorism was a negligible one.

Conclusions

What tactics of investigative actions should be recommended to an investigator during the investigation of criminal cases concerning terrorist crimes when a suspect (an accused one) is in conflict, any attempts to establish a contact encounter aggression on the part of an interrogated person? Moreover the threats of violence in respect of an investigator, his family and loved ones take place.

It is futile to rely on the clarifying of persuasion methods, to appeal to mind, conscience and civic duty.

Of course, a suspect (an accused one) is the most valuable subject for an investigator. He has full information, knows better than others the circumstances of preparation, committing and concealing of a crime, its motives, aim. Moreover, the evidence contained in his testimony essential to complete an investigation, will speed up a case investigation.

There is the value of a suspect testimony (an accused one) that the information about an investigated crime comes from its immediate (real or perceived one) member who has original and most complete information about a crime event and all attendant circumstances.

That is why one of the tactical methods to overcome the problematic aspects during the production of certain investigative actions, in particular the refusal to testify during a suspect (an accused one) interrogation are the following ones: 1) to convince him in a false position which he occupies; 2) to use the evidence obtained from the partners, first and foremost from the ones who had hostile relations with him; 3) to disclose the testimonies of accomplices testifying about his role as a terrorist attack organizer; 4) The use of neurolinguistic programming techniques is the form of the psychological impact by the involvement of a psychologist to establish the distribution of functions and roles between the participants in the process of committing a terrorist attack; 5) the use of a cross-examination, a confrontation, the use of victim and witness testimonies; 6) the demonstration of compromising material in respect of any partner in the presence of other participants of a crime; 7) the demonstration of interrogation protocol content from an accomplice, who recognized the participation in a terrorist organization.

Summary

The professionalism and competence of an investigator throughout the criminal proceedings in the cases of terrorist nature crimes should be directed on the truth establishment, and the achievement of this goal becomes possible when the only correct version of this crime is selected,

which is the key to the successful detection and investigation of terrorist offenses.

The performance of criminal case investigation about terrorist crimes aimed on the established truth begins with the inspection of a crime scene, the quality of which determines an effective collection of evidence. To this end immediately after the receipt of information about the discovery of a crime an investigator should proceed with an examination. Otherwise an intentional or an accidental damage or the destruction of traces on the spot of a terrorist act is not excluded, and the damage of traces is caused by natural factors.

The implementation of a crime scene inspection requires a precise organization (planning), a strict sequence, competence and professionalism of all investigation group participants (without any exception), whose skilled actions determine the success of a terrorist crime investigation.

In order to research fully the circumstances of a terrorist act, the detection, fixation and the removal of traces and objects an in-depth examination of a crime scene is performed by the implementation of the following actions: 1) having divided the inspection area into sectors start looking for the traces and the subjects of a crime; 2) a thorough collection of an explosive device parts and fragments is performed, followed by the packing in separate containers; 3) a careful collection of objects with the traces of soot and melting. To perform the removal of a sample by flushing if it is impossible to collect and transport it because of bulkiness; 4) the screening of the resulting debris, found items are packed in polyethylene bags and boxes; 5) Large items are moved to the designated places for storage and subsequent studies.

The proposals to adopt an international experience, in particular, the Israeli secret service interrogation practice by untraceable techniques: sleep deprivation, leaving in the cold or in the heat aimed at saving the lives of innocent civilians are unacceptable when the persons committed terrorist crimes during the process of investigatory action performance come into conflicting relationship with an investigator, refuse to testify on the merits or provide false testimony, thus, mislead an investigator.

In essence, these proposals are aimed at the legalization of torture to "knock out" the necessary evidence with which one cannot agree in any way on the following reasons: firstly, Russia declared itself a state ruled by law (Part 1 of the Article 1 of the Constitution), took over the following obligations: to recognize, respect and protect the rule of international law prohibiting the use of torture. Secondly, if such a right is institutionalized the rights a suspect recognizes the crimes he did not commit under torture and an offender (a real terrorist) will continue on to commit the acts of terrorism. Thirdly, the most dangerous one, the permission of a physical impact use in respect of a suspect (an accused one) certainly affects negatively on morals of interrogators, cultivating the sense of permissiveness and developing double standards.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

References

1. Zufyar S.Gataullin, Timur A. Gumerov, Vladimir N. Zhadan and Iskandar G. Mukhametgaliev. Importance of the Operational and Search Activity in Investigation of Terrorism-Related Crimes. *Research Journal of Applied Sciences* 10 (12): 871-875, 2015/ ISSN 1815-932X.Medwell Journals, 2015.
2. Banks W., Wallerstein M., de Nevers R. *Combating Terrorism, Strategies and Approaches*. Washington:CQ Press, 2007.
3. Ganor B. *The Counter-Terrorism Puzzle: A Guide for Decision Makers*. Transaction Publishers, 2007.
4. Hewitt S. *The British War on Terror: Terrorism and Counter-Terrorism on the Home Front Since 9/11* L.: Continuum, 2008.
5. Hocking J., Lewis C. (eds.) *Counter-Terrorism and the Post-Democratic State*. Edward Elgar Publishing, 2008.
6. Howell J., Lind J. *Counter-Terrorism, Aid and Civil Society: Before and After the War on Terror*. L.: Palgrave Macmillan. 2009.
7. Miller S. *Terrorism and Counter-Terrorism: Ethics and Liberal Democracy*. L.: Blackwell, 2008.
8. Nacos B. *Terrorism and Counterterrorism: Understanding Threats and Responses in the Post 9/11 World*. L.:Longman, 2009.
9. Polaine M., Sambei A., du Plessis A. *Counter-Terrorism Law and Practice: An International Handbook*. Oxford University Press, USA 2009.
10. Sheehan M. *Crush the Cell: How to Defeat Terrorism Without Terrorizing Ourselves* Three Rivers Press, 2009.
11. Silke A. *The Psychology of Counter-terrorism*. L.: Routledge, 2009.
- Whittaker D. *Counter-Terrorism and Human Rights*. L.: Longman 2009.
12. Gataullin Z. Sh. The submission and the examination of evidence of indictments by a prosecutor // *Russian justice*. 2008. №4. pp. 57-61.
13. Borulenkoy Y.P. Limits of proof as a category // *Criminal proceedings*. 2014. № 3. pp. 29-32.
14. A.V. Kurdyukova. The features of the criminal proceedings in cases of a terrorist attack. M., 2010. pp. 129-130.
15. Gataullin Z. Sh. The performance of individual investigative actions concerning the cases of terrorism, with the participation of law-enforcement bodies // *Bulletin* № 1 (29) 2014. All-Russian Institute for the qualification increase among MIA employees. A quarterly scientific-journalistic magazine. pp. 46-51.
16. Russian newspaper. 2013. 23-rd of July.
17. Gataullin Z. Sh. An interrogation as the means of evidence obtaining in cases of terrorism // *In the world of scientific discoveries*. Krasnoyarsk: Research and Innovation Center, 2014. №1 (49) (Social and Human Sciences). pp. 356-361.
18. Gataullin Z. Sh. Inspection of a terrorist act scene: forensic and procedural aspects // *Historical, philosophical, political and juridical sciences, culturology and art history. The issues of theory and practice*. Tambov: Diploma, 2014. № 6 (44): in 2 parts, part II. pp. 49-51.
19. Appeal definition of judicial board concerning the criminal cases of the Supreme Court issued on June 24, 2013 N 19-APU13-10 according to the appeals of the convicted I.M. Akavov and the lawyer Aksenov G.V. in respect of the Stavropol Regional Court verdict issued on March 7, 2013 // *SPS Consultant Plus*.