

THE RIGHTS AND GUARANTEES OF PERSONS SUSPECTED AS TERRORISTS ACCORDING TO INTERNATIONAL LAW

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ABSTRACT

Terrorism presents a serious threat for all democratic states in the world. There have been many discussion and various designations regarding the definition of terrorism, but one definition may be considered as a more comprehensive one. From the sociological point of view the definition terrorism shall usually mean every violent act conducted towards persons as well as things, carried out through terrorist methods with the closely political purposes. Taking into consideration all this, there have been done and are continuously being done attempts on creation of mechanisms for prevention of this phenomenon that is very disturbing for all democratic states in the whole world, even that such a thing is very difficult. It is important to note that there have been done, are being and should be done attempts at national and international level on creation of legal framework which should impact in prevention of terrorism. When we talk about his framework which determines the terms and methods for prevention of terrorism, it is important to mention that beside the mechanisms on prevention of terrorism, there have been established even normative acts which shall guarantee the rights to persons who are suspected as terrorists. From this fact there has derived the creation of a normative stability regarding the training of persons suspected as terrorists by guaranteeing them the fundamental rights. Initially, within the rights which shall be guaranteed to persons suspected as terrorists there shall be the right of living, where no one has the right to deprive someone else from life. In case that there begins a judicial procedure towards such persons, then there shall be taken into consideration the presumption of innocence upon which these persons shall be considered innocent until there is taken a final decision by the competent bodies. Regarding this, a fair trial shall be guaranteed to these persons. Moreover, the opportunity of using a legal mean in such judicial processes has influenced in the quality and fairness of judgement of such cases that are related to terrorism and persons suspected as terrorists. Furthermore, in case of arrest, these persons shall be guaranteed with the rights that are defined in many international conventions; the rights that will be presented and treated generally in this paper.

Keywords: The rights, Guarantee, Persons, Terrorist, International Law.

INTRODUCTION

Terrorism and the threat presented by it nowadays are the most serious preoccupations in the whole world, so, continuously there have been done attempts by all world countries for protection from terrorism. In this paper there shall be treated the rights and guarantees of persons suspected as terrorists according to International Law. Treatment of the terrorism phenomenon shall be done with the purpose of identifying the rights and guarantees dedicated to these persons that are suspected as terrorists. It is important to mention that there have been created various norms of national and international character which expressively determine the rights and guarantees that will be treated in this paper. These determinations have been done with the purpose of creation of legal security of persons that are suspected as terrorists. Hence, taking into account all these facts i consider as noticeably important the

treatment of this phenomenon and identification of the rights and guarantees entitled to such persons.

MEANING OF THE DEFINITION OF TERRORISM

Today, terrorism presents a serious threat for the security of all democratic states in the world. Taking into consideration the fact that this threat is becoming more actual, there have been and are being done continuous attempts for creation of mechanisms that shall have impact in prevention of acts with a terrorism character. Regarding this, there have been done continuous attempts to draft norms of national and international character through which there shall be created mechanisms that will fight terrorism with the purpose of establishing national and international security.

Regarding the meaning of the definition of terrorism, in the theory there have been various discussion and designations among which the sociological definition can be considered as the most accurate and comprehensive. The definition terrorism from the sociological point of view shall usually mean any violent act, committed against persons as well as against things (as an example, homicide, injury, sequestration or imprisonment of persons or damages or attempted attack with explosives or other means against buildings, roads of communication) committed by terrorist methods with closely political purposes (Del Prete, 2007,210). Taking into consideration this definition there may be ascertained that the fight on prevention of this phenomenon is very difficult either in establishment of the framework as well as in its implementation. Even there are many difficulties, there have been done attempts at international and national level as well in order to fight this negative and very dangerous phenomenon from which the fundamental human rights and freedom are violated. Furthermore, with the purpose that the attempts to be more effective in prevention of terrorism there have been established international rules that determine the obligation of states to cooperate in fighting, prevention as well as arresting the perpetrators of criminal offences of terrorism by respecting the rights guaranteed to these persons.

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Facing the terrorism requires a sophisticated and comprehensive reaction (OSCE, 2014, 20). Taking into consideration the need that is presented in combating and protection from terrorism as the most disturbing phenomenon in the recent centuries in the whole worlds, there have been established rules and mechanisms that in various manners to impact in the fight and protection from terrorism. However, there shall be taken into consideration that persons that are considered or suspected as terrorists should enjoy the fundamental rights and guarantees. In this aspect, international and national societies have adopted normative acts based on which such persons shall be guaranteed with legal rights and guarantees. These determinations have been done with the purpose of the establishment of legal security regarding the treatment and behaviour with the persons that are suspected as terrorists.

With the purpose that the combat and protection from terrorism to be more effective and sustainable there is required that the national legislation to be harmonized with the international legislation on human rights focusing in the prevention and combat against extremism and violent radicalism that favour terrorism, by protecting the human rights and legal state (OSCE, 2014, 19). Regarding this, it is important to mention that the UNO Security Council Resolution No.1456 and other following resolutions have obliged the states to guarantee that each of their measures undertaken in the fight against terrorism to be in

compliance with the international jurisprudence on human rights, Law on Refugees and Humanitarian Law (OSCE, 2014, 32). This obligation derives with the purpose of protection of fundamental rights of such persons and regarding this the states are obliged to act according to international rules by respecting the international jurisprudence on human rights. Prevention of terrorism should be based on a legal framework that guarantees the exact incrimination of previous crimes (The Rabat Memorandum, 2012, OSCE 2014, 42).

In fighting against terrorism, the states should have into consideration the fact that there are some absolute rights that cannot be violated and even cannot be limited. Regarding this, it is worthy to mention that the right of living is an absolute right and it is guaranteed by all international and national normative acts (UDHR, 1948, 3, Commentary UDHR, 2008, 23, ECHR, 2 and 3), where it is meant that even the persons suspected as terrorists shall be guaranteed with the right of living as well as protection from torture.

In another hand, when there is being developed a judicial procedure against persons suspected as terrorists, they shall have the right to be considered as innocent until, based on Law, there is ascertained their guiltiness in a regular public process in which there are provided all the necessary guarantees for his/her protection (UDHR, 1948, 11). In such cases, even that the acts may be serious and with consequences in punishment, there shall be developed a criminal process towards perpetrators, by respecting a minimum of rules determines in Article 11 of UDHR (Commentary UDHR, 2008, 56).

Taking into consideration this, we should mention that every person shall be guaranteed with the right for a fair trial that will set his rights and obligations as well as for the basis of every criminal persecution against him (UDHR, 1948, 10, ECHR, 6). Regarding this, the court besides that it should be independent in the development of the procedure, it should be impartial in order to guarantee the principle of equality of parties in a judicial process (Commentary UDHR, 2008, 53).

We can notice that based on such rules there has been created the possibility of a fair judgement in the exact identification of perpetrators of criminal offences including the criminal offence specified as terrorism. Moreover, the international framework has foreseen the possibility of using the legal mean by the suspected persons and this rule has impacted positively in the fair and impartial trial since by using of legal means they may defeat the court decision if they consider it as unfair (UDHR, 1948, 8). In such cases UDHR shall oblige each country that by Constitution, Law and national court to protect each person until that level where there is not violated his life and personality (Commentary UDHR, 2008, 48). In judicial procedure developed against such persons, it is prohibited the torture as act by which there is caused physical pain and spiritual sorrow with the purpose of acquiring a certain information, as well as to frighten or make pressure over the person to be convicted for a certain act, while it is realized by official person or other person acting officially (UNCT, 1984, Stojkovska & Boshkovski, 2011, 38).

Regarding the cases of arresting the persons suspected as terrorists we should emphasize that international law-givers have foreseen, in international conventions, the rights and guarantees entitled to these persons in order to guarantee the fundamental rights and guarantees to them until there is not taken any final decision by competent bodies. In those cases when the persons suspected as terrorists have been arrested, then the states shall be obliged to guarantee to them the rights and legal guarantees which are foreseen with international conventions. The states shall be obliged to provide the persons suspected as terrorists with the

right that he without delay to contact the closest representative of the state he is a citizen of, or the representative of the state given with the right to protect his rights or in case that person has no citizenship, then with the state in the territory of which there is his permanent residence (CECPT, 15.3 a). This right shall be guaranteed to the arrested person in order that he shall have the possibility to contact any person of the state he belongs to or in foreseen cases in order that he shall present his opinions regarding the concrete case. Moreover, the right that shall be guaranteed is the right to be visited by a representative of that state as well as the right to be informed with the rights entitled to the arrested person (CECPT, 15.3 b and c). Hence, we can find that the international law-giver has taken into consideration the circumstances that are created at the moment of the arrest and has determined these rights enjoyed by each person suspected as terrorist. In this aspect, a special importance shall be the provision of information to the person suspected as terrorist regarding the rights entitled to him in order that it shall be clear to him what he may act and what he may not. Taking into consideration the great importance of the combat against terrorism and in order that this combat to be more effective, there is determined the international cooperation between states in common attempts in fight against terrorism (CECPT, 17, CPGASV, 12 and 13).

From the all that was mentioned above we can ascertain that the terrorism represents a very complex phenomenon and very dangerous for the security and protection of the human fundamental rights; it also presents the need for common international attempts on creating an authentic framework and mechanisms for preventing the terrorism as well as perpetrators of criminal offences qualified as terrorism. Based on the obligations for national attempt on creation of legal framework and mechanisms for combating and prevention of terrorism we should mention that even Kosovo has made attempts in the creation of a legal framework as well as creation of mechanisms for implementing this framework. It is worthy to notice that Kosovo has, based on Constitution, foreseen the opportunity of direct implementation of international conventions as well as approximation of national legislation with international legislation regarding certain matters including even the cases related to criminal offences specified as terrorism (CRK, 22). Kosovo, in its Criminal Code, has determined the criminal offences against mankind and values protected according to international law that may be ascertained that they are in full compliance with the international framework (CCRK, 148 – 166). Hence, we can notice that Kosovo has taken progressive steps regarding the approximation of the national legislation with the international one including the attempt against criminal offences specified as terrorism since beside the normative acts it has adopted the National Strategy of the Republic of Kosovo against Terrorism for the period 2009 – 2012 where there have been foreseen the prevention, prosecution, protection as well as preparation and reaction against terrorism (NSRKAT, 2009 – 2012, 5), all this in compliance with the international criteria on obligation to national activities in the fight against terrorism and perpetrators of such acts as violators of human rights.

CONCLUSION

Based on the research made in this paper we have found that terrorism presents a serious threat for the security of democratic states in the world. It is important to emphasize that based on the analysis we can say that the international society has made and is making continuous attempts in combating this negative and very dangerous phenomenon through establishing many rules of international character which shall precise which of the acts shall be considered terrorist acts and the manners of acting in those cases, with the purpose of better protection from such acts. Moreover, by the international framework there have been determined the obligations for cooperation and support between states in combating and

catching the perpetrators of criminal offences of terrorism with the purpose of a greater efficiency in this direction. We should mention that the Member States are obliged to harmonize their national legislation with the international legislation by including here even the rules of combating and preventing the terrorism. From this research we can ascertain that through the international framework there have been foreseen the rights and legal guarantees towards persons suspected as terrorists by which it is understood that through these rules there has been established a greater legal security regarding the prevention and combating the terrorism as well as settling the judicial cases related to the persons suspected as terrorists. It is worthy to emphasize that the rights and guarantees have been determined with the purpose of protecting human freedom and rights during the attempts to combat and prevent terrorism. During the analysis made in this paper there has been ascertained that there are some unviolated and unlimited rights which cannot be violated by anyone. In such cases, the persons suspected as terrorists shall be guaranteed with the right of living as a fundamental human right. Moreover these persons shall be protected from the torture and causing of physical suffering with the purpose of obtaining information by official persons or those acting officially.

Researches made in this paper have showed that these persons are provided with the right of a regular judicial process as well as presumption of innocence until a final decision issued by the court. They shall be provided even with the right for regular legal means during the judicial process, which has influenced positively in the regularity and accuracy of judicial processes on such cases. International framework shall guarantee the persons suspected as terrorists that without delay to notify the representative of the state they belong to or the representative of the state that will protect their rights if such persons have no citizenship. From the analysis we can also find that these persons shall be provided with the right to be visited by a representative of the state they belong to or the representative of the state that will protect their rights if such persons have no citizenship. Moreover, these persons shall be guaranteed with the right that they shall be notified with the rights they are entitled to. This is of a great importance since through the notification, such persons shall be able to know that which actions and rights may be and which may be no used by them.

It is important to emphasize that even Kosovo has marked a progress regarding the drafting of legal framework related to the combat and prevention of terrorism. Kosovo has, in its Constitution, foreseen the possibility of harmonization of national legislation with the international one as well as in its Criminal Code it has foreseen criminal offences specified as terrorism. Besides, Kosovo has adopted National Strategy against terrorism with the purpose that the attempts on combating and preventing the terrorism to be more effective. From the above mentions we can say that only common attempts may be successful in combating and preventing the terrorism as the greatest danger of human freedom and rights in the whole world.

ABBREVIATIONS

- UDHR** – Universal Declaration of Human Rights,
- ECHR** – European Convention on Human Rights,
- UNCT** - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- NMPHR**- National Mechanisms on Protection of Human Rights
- CECPT** - Council of Europe Convention on the Prevention of Terrorism,
- CPGASV**– Convention on Prohibition of General Acts of Sea Voyage,

CRK - Constitution of the Republic of Kosovo,
CCRK - Criminal Code of the Republic of Kosovo,
NSRKAT - National Strategy of the Republic of Kosovo against Terrorism

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- ❖ Universal Declaration on Human Rights, approved by the General Assembly, on 1948.
- ❖ European Convention on Human Rights, approved in Rome, in 1950.
- ❖ International Pact on Civil and Political Rights, 1966.
- ❖ Council of Europe Convention on the Prevention of Terrorism.
- ❖ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- ❖ Convention on Prohibition of General Acts of Sea Voyage,
- ❖ International Convention for the Suppression of the Financing of Terrorism
- ❖ International Convention for the Physical Protection of Nuclear Material.
- ❖ International Convention for the Suppression of Terrorist Bombings.
- ❖ Resolution No. 1456 of Security Council of UNO, 2003
- ❖ Constitution of the Republic of Kosovo
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