

## On terrorism and legal response in Albania

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### Abstract

Legal Albanian doctrine encompasses different meanings in relation to terrorism. This paper aims to give a general overview on various definitions of terrorism, as one of the main threatening phenomenon of our society. The paper also treats the origin of the word 'terrorism', back to the French Revolution of 1789 as the label used by the establishment to describe the conduct of revolutionaries. In this paper will be treated the main factors that have affected over the creation and development of terrorism, the content, format and main characteristics of terrorism, the main forms of occurrence of terrorist acts and Albanian legal mechanisms in the fight against terrorism, including the International agreements of which Albania is part of. Special attention will be paid to the moment when terrorist activities started in Albania and which are the most common forms of terror in Albania. The study of terrorism is multi-disciplinary, spanning a number of fields including political science, psychology, criminology, sociologist, history and many others. There are not few criminal norms provided in the Albanian Criminal Code that condemn terrorism. The Albanian Criminal Code expresses in separated articles the punishment of everyone who finances terrorism, hides funds and other assets that finance terrorism, even collects funds for terrorism financing, recruits persons for committing acts of terrorism or for terrorist financing, trains for committing terrorism acts, or makes public calls with terrorist purposes. A key challenge of understanding terrorism is both acknowledging the moral outrage at terrorist acts, while at the same time trying to understand the rationale behind terrorism.

**Keywords:** *Terrorist, Terrorism, Violence, Security.*

### Introduction

Common law has operated for thousand years to arranging social relations in different life spheres (Elezi, 1983, 6). At the same time, a special interest shows even the arrangement of norms with penal nature.

Referring to Albanian common law we can say that terrorist acts have not been present in the Albanian reality (Selmani, 2005, 17).

Terrorist acts are provided from Albanian legislation before and after World War II, depending on political-social conditions and its development. In certain periods of time, the treatment of this problem has had even political nuance (Shegani, 2007, 136). However, terrorist acts are a new phenomenon referring to Albanian territory. They were born at the beginning of first years of political pluralism in Albania, as a result of immediate and deep changes of social, political and economic life (Selmani, 2005, 17).

## Various Definitions of Terrorism

Terrorism is frequently cited by world leaders as the greatest threat to Western democracies (Young, 2006, 1). The intensification of terrorist activity in the past few years has made terrorism one of today's most pressing problems (Young, 2006, 1). Understanding, explaining and studying terrorist phenomenon and the danger it represents about contemporaneous societies and democracy, it is one of the greatest favors that man can do to human society affirming the highest status of values (Selmani, 2005, 1).

Legal Albanian doctrine encompasses different meanings in relation to terrorism. Thus, terrorism is defined - by scholars of law - such as the use of violence and intimidation to subjugate people in achieving a certain purpose (Mëçalla, 2006, 227). Terrorism represents any action that evokes terror in a certain group of people (Mëçalla, 2006, 227). An action will be called a terrorist act when it is illegal, violence or force is directed against individuals or properties, it is planned as pressure on a government or society, and also it relies on the political, religious objectives, etc. (Mëçalla, 2006, 227).

For many Albanian authors terrorism means actions taken by a person through which he/she aims to create a state of panic, psychosis and fear induced to blackmail the governmental authorities with diverse violence methods for accomplishing the requirements that come and are legitimized by his/her special goals (Shegani, Xhafo, Yzeiri, & Ahmedi, 2009, 148). Whereas for another author speaking Albanian outside Albanian state territories, terrorism means: "The use of violence by a minority that operates in a secret form aiming to achieve certain objectives that cannot be achieved otherwise, only arising fear to public and disordering state balances (Selmani, 2005, 37). Contemporary international legal doctrine finds its place inside the nation, in terms of the terrorist phenomenon. Thus, the exact definition of terrorist phenomenon comes idealized from J. M. Sorel. International terrorism - he says - is an illegal act, whatever is the author or motives, act that disturbs public order by using heavy violence which may take various forms against persons or public and private buildings to create a terror climate (Karaj, 2005, 285). This definition frames terrorism and allows making the difference between terrorism and different terms broadly used, such as; guerrilla, killing or political violence. In this definition we clearly distinguish two elements of terrorism: the purpose to create terror through the committed act and the choice of indiscriminate victims (Karaj, 2005, 286).

The study of terrorism is multi-disciplinary, spanning a number of fields including political science, psychology, criminology, sociology, history and many others. Researchers from these fields have contributed to further developing our understanding of the phenomenon, yet it has generally raised more questions than provided answers (ISSCM, 2008). In this aspect we can say that the doctrine, jurisprudence and the international community has had a very difficult task to arrive at a single definition about what it would be qualified as terrorism.

However, international terrorism is not a new phenomenon. Indeed, the origin of the word 'terrorism' dates back to the French Revolution of 1789 as the label used by the establishment to describe the conduct of revolutionaries (Conte, 2010, 7-37). Terrorism has likewise been a subject of concern for the United Nations since the 1960s, following a series of aircraft hijackings. Some would argue that terrorism has entered a new phase at

around the time of 11 September 2001: an age where transnational activity has intensified and become easier, and where technology and the media can be taken advantage of by terrorist entities to further the impact of terrorist conduct and the delivery of messages or fear-inducing images (Conte, 2010, 7-37). In the United States, criminal prosecution of terrorists is a critical, if not the dominant, method of counter-terrorism. The effectiveness and fairness of such an approach turns on whether there is a clear definition of terrorism in the applicable laws (Young, 2006, 1). According to the US Penal Code, terrorism is defined as international and domestic. "International terrorism" means activities with the following three characteristics (FBI):

- Involving violent acts or acts dangerous to human life that violate federal or state law;
- Appearing to be intended (i) to intimidate or coerce a civilian population; (ii) influencing the policy of a government by intimidation or coercion; or (iii) affecting the conduct of a government by mass destruction, assassination, or kidnapping; and
- Occurring primarily outside the territorial jurisdiction of the U.S., or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locals in which their perpetrators operate or seek asylum.

"Domestic terrorism" means activities with the following three characteristics:

- Involve acts dangerous to human life that violate federal or state law;
- Appear intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- Occur primarily within the territorial jurisdiction of the U.S.

§ 2332 b of US Penal Code defines the term "federal crime of terrorism" as an offense that:

- Is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and
- Is a violation of one of several listed statutes, including § 930(c) (relating to killing or attempted killing during an attack on a federal facility with a dangerous weapon); and § 1114 (relating to killing or attempted killing of officers and employees of the U.S.).

Meanwhile, according to Federal Bureau Investigation, Terrorism is the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological (Steven & Nocella, 2004, 1-18).

In Great Britain terrorism means the systematic use of violence to change behavior of others for political purposes" (Selmani, 2005, 37).

Security Council resolution 1373 (2001), which established the CTC, makes one reference to human rights, calling upon States to:

*"take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts."*

The resolution's preamble also reaffirms the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts (United Nations).

### **The content, format and characteristics of terrorism**

The whole world today faces a dilemma, what is terrorism? Who is the terrorist? Even today, despite the numerous attempts to define terrorism, we do not have an accepted qualification recognized by the international community. The existence of a working definition about terrorism would help to study the issue of the legal response to the phenomenon of terrorism (Balla, 2006, 22). Terrorism is a phenomenon that has accompanied mankind for a long time. Pretending to avoid all its consequences is complacency. Most we can achieve is to limit these effects (Shegani, 2007, 36-37), or as Paul R. Pillar emphasizes: "Terrorism is a challenge that must be managed and not to be solved" (Balla, 2006, 19). Terrorism is controversial (Arowolo, 2013, 101). This is because it has definitional pluralism and perceptual ambiguity (Arowolo, 2013, 101). In fact, it is a nebulous concept (Arowolo, 2013, 101). What is terrorism to an individual or group may connote freedom to war; struggle for survival; liberation from socio-political slavery; and, economic emancipation (Arowolo, 2013, 101). The word "terrorism" is politically and emotionally charged, and this greatly compounds the difficulty of providing a precise definition (Arowolo, 2013, 101). The topic of terrorism is both complex and emotive (Institute of Peace, 2001, 21). It is complex because it combines so many different aspects of human experience, including subjects such as politics, psychology, philosophy, military strategy, and history, to name a few (Institute of Peace, 2001, 22). Terrorism is also emotive, because experiences of terrorist acts arouse tremendous feelings, and because those who see terrorists as justified often have strong feelings concerning the rightness of the use of violence (Institute of Peace, 2001, 22). Without a doubt, terrorism evokes strong feelings whenever it is discussed (Institute of Peace, 2001, 23). A key challenge of understanding terrorism is both acknowledging the moral outrage at terrorist acts, while at the same time trying to understand the rationale behind terrorism (Institute of Peace, 2001, 23). Although international jurisprudence takes no universally accepted definition on terrorism, to set an act of "terrorism" means to prove not only that it carries some features, but also it cannot be legitimated by any political consideration, philosophical, ideological, racial, ethnic or religious background (OCSE, 2014, 28). Terrorist actions represent one of the worst forms of criminal activity. They are sharp actions with high social danger to life and health of a person, public order and economy of a country (Selmani, 2005, 49). The object of terrorist actions is a legal relationship established to ensure life, health, personal freedom of the individual and the legal relationship established to guarantee without prejudicing the public order sanctioned by laws in the Republic of Albania (Selmani, 2005, 50).

The subject of terrorist criminal act should not embody any particular quality. It is enough to have criminal responsibility, to be 14 years old and be accountable (Selmani, 2005, 52). Terrorists choose the victim and the object of attack. The subjects of a terrorist act can be any person who has attained the age of criminal responsibility and is criminally

responsible (Selmani, 2005, 9). According to Albanian law, the perpetrator commits a terrorist act willfully and with intent to cause fear and sense of insecurity among others (Selmani, 2005, 11).

### Characteristics

Among the common characteristics of terrorism include (OSCE, 2014, 29):

- risk (for life, mutilation or property);
- a deliberate attempt to undermine the democratic government, primarily through efforts to influence policy and law makers;
- an indiscriminate approach to the selection of targets, to planting fear and terror in the population.

Also, another peculiarity of terrorism is high professionalism of the staff leaders and the fact that it is developed in times of crisis and against the civilian population (Selmani, 2005, 9-39). The main aim of terrorism is to achieve popular support through propaganda effects. Often it has a limited cost. In the context of the offense, terrorism is accompanied by the presence of the element of violence (Selmani, 2005, 9-39). Confidentiality of action and international sensation effects of terrorism, it is another peculiarity of terrorism (Mëçalla, 2006, 228). The success of terrorism is required to be very quick (Mëçalla, 2006, 228), unpredictable (Selmani, 2005, 9-39), otherwise it is bound to fail (Mëçalla, 2006, 227). Terrorist acts might be individual or organized (Mëçalla, 2006, 228).

According to some scholars, "there is demand for terrorists placed by greed or grievances (Arowolo, 2013, 105). Supply is driven by relative deprivation resulting in four deficits: developmental deficit, democratic deficit, dignity deficit, even existence deficit (Arowolo, 2013, 105). Acts of terrorism take place at the point of intersection between supply and demand (Arowolo, 2013, 105). Those placing the demand use religion and other denominators as vehicles to establish links with those on the supply side (Arowolo, 2013, 105).

### Factors

The main factors that have affected over the creation and development of terrorism are diversified. Among the most important we can mention (Shegani, Xhafo, Yzeiri & Ahmedi, 2009, 151-168):

- political factors such as: social conflicts over ethnicity, disputes on the ideological basis, radical doctrines;
- economic factors such as: poverty and inequality, globalization, migration;
- psychological factors including the psychology of terrorism as a complex phenomenon, the psychological effects of "digital era";
- religious factors, such as religion and religious discrimination.

### **Format**

According to author Richard Falk the main forms of occurrence of terrorist acts are: hostages taking and holding, hijacking massive travel vehicles, killing of civilians, torture and murder of political opponents, destruction of property, etc (Semani, 2005, 14). The main tools used for the commission of terrorist acts are firearms of all types, military poisonous substances, explosives (Semani, 2005, 42). Terrorist acts are committed driven by political, religious, racial, ethnic motives, etc (Semani, 2005, 43). Labyrinths of contemporary terrorism are very complicated. Currently it is operating the terrorism of "high tech", which appears indifferent forms as biological, chemical, food, nuclear and economic terrorism (Shegani, 2007, 31-34).

The most common forms of terror in Albania are:

- violent actions against the civilian population;
- bombings and assassinations against representatives of State and Justice (in 1996 the assassination attempt against the country's president at the time, remained at the stage of attempt, and such as the remaining act is attempted against the president's visit Italian Mr. Oscar Luigi Skalfaro in Tirana, in 1996);
- blasts at high voltage towers (Shegani, 2007, 142).

After 1990, the massive political and economic chaos, and shortcomings in law, were used by Islamist terrorist organizations to infiltrate their people under the guise of religious associations and charitable character. But under the doctrine of Albanian law, referring to this point of view, Albania has served as a logistics base for these organizations (Shegani, 2007, 161). In Albania, the only case when the subject of committing a terrorist act appeared in the form of a criminal organization was the organization "Revenge for justice" (Shegani, 2007, 157). This organization is accused of committing terrorist acts such bombing a supermarket or the murder of the General Director of Prisons (Shegani, 2007, 158). At that time, the prosecution office defined as the purpose of this organization's violent acts the overthrowing of the government through the creation of unstable political situation in country and raising insecurity to people (Shegani, 2007, 158).

### **Albanian legal mechanisms in the fight against terrorism** **International agreements**

Convention on the Prevention of Terrorism constitutes a solid base and a very important legal instrument in the fight against terrorism (Balla, 2006, 39). The purpose of the ratification of this Convention by the Albanian government is boosting efforts of the Albanian state in preventing terrorism and its negative effects on the full enjoyment of human rights, particularly the right to life, through measures taken both nationally and in the framework of international cooperation (Law 9641, 2006, 5157). With a view to prevent terrorist offenses and the arrival of their negative effects, Albanian state is engaged to take all necessary measures for the improvement and development of cooperation between national authorities in Albania. Also, by signing this Convention, it is aimed the promotion of tolerance through the further development and cross-religious dialogue (Law 9641, 2006, 5157). Another obligation that derives directly from the provisions of this Convention is the Albanian public awareness regarding the existence, causes and

gravity of the threat that comes from criminal acts with a terrorist nature (Law 9641, 2006, 5157). International Convention for Combating the Financing of Terrorism is another act adopted by Albania, through which it is aimed the prevention and counteraction through appropriate measures by the Albanian state toward financing of terrorists and terrorist organizations. From the ratification of this Convention, many other legal changes were made, including the Albanian Criminal Code.

### **Criminal Code**

Albanian Criminal Code of post - communism dates in 1995. This code had a special significance in view of strengthening the rule of law and protection of human rights and fundamental freedoms (Shegani, 2007, 136). A special role in combating this phenomenon had the drafting of criminal-legal norms consistent with the causes of terrorism (Shegani, 2007, 350). In Albanian legislation, the legislator did not give any specific provision of the full definition and meaning of international terrorism, as it is seen in codes of other countries such as Croatian Criminal Code which expressly provides international terrorism (Shegani, 2007, 136). Albanian criminal doctrine of terrorist offenses means those acts of unlawful violence against life or health of humans, their personal freedom, etc., performed by fault, in order to seriously disturb public social order, the resurrection of panic and massive fear (Elezi, 2009, 395). However, it should be emphasized that the Albanian criminal legislation provides for offenses of terrorism purposes in its article 230. According to this article, we will deal with the offenses with terrorist purposes when criminal action aim at the realization of one of the following objectives:

- spreading panic in the population;
- obligation of the state bodies, Albanian or foreign, to perform or not to perform a certain act;
- Intent to seriously destroy or destabilize the political structure, constitutional, economic or social position of Albanian state in another state, institution or international organization.

So, for the purposes of legal qualification under this provision it must exist the special purpose of which is described by the provisions as follows (Shegani, 2007, 146): "spreading panic ...."

Referring to the object protected from Albanian criminal norms, we can say it is wide, and it has been expanding continuously, and this has happened because of the forms of terrorist actions appeared. It includes protection of life, liberty, health, free movement of any person, the right of public and private property, environment, housing, water, land, rail, public and private transport, from criminal acts or omissions.

There are not few criminal norms provided in the Albanian Criminal Code that condemn terrorism. Thus, the Code expresses in separated articles the punishment of everyone who finances terrorism, hiding funds and other assets that finance terrorism, collects funds for terrorism financing, recruiting persons for committing acts of terrorism or terrorist financing, training for committing terrorism acts, public calls for committing criminal propaganda with terrorist purposes.

Changes and revisions of some articles of the Criminal Code dealing with terrorist acts, aim

the reflection not only to the present international approach in the fight against terrorism and money laundering, as crimes which affect states and the international community but also reflect to the obligations that Albania has from international conventions (Tomani, 2010). From this point of view, the Criminal Code punishes: calling, organizing and participating in hostilities in a foreign country provided in Articles 265/a, 265/b, and 265/c. At the same time according to the Code, it is punishable the recruitment and training for terrorism purposes. Through the recruitment for terrorism purposes it is meant the request to another person to commit or participate in the commission of a terrorist offense or join an association or group, to help in the commission of one or more terrorist offenses by the association or group (Law 9641, 2006, 5157).

### **Laws and bylaws**

Albania is an active country in the global anti-terror fight. The fight against terrorism is and remains one of the main priorities of Albanian government. Through the drafting of laws and bylaws, the lawmaker has aimed taking measures against the financing of terrorism, preventing and combating terrorist activities and those activities who support and finance terrorism (Law 157, 2013, 7518), but also money laundering and products derived from criminal offenses (Law 9917, 2008, 3645).

An Inter-Ministerial Committee is established for ensuring a Security Policy. Also, it adopted the National Counter-Terrorism Strategy and Action Plan for its implementation. Pursuant to their continued work for preventing terrorism through close cooperation with all law enforcement many agencies participate in the fight against terrorism, such as State Intelligence Service of Albania, the General Directorate for Money Laundering, as well as regional and international agencies like the United Nations Organization, SECI, EUROPOL, INTERPOL, etc. Also, a regulation is approved for the operation of the anti-terrorism structures (Decision of the Council of Ministers No. 663, 2013, 6035).

In Albania state bodies are created and function as antiterrorist branch near State Intelligence Service, service fight against terrorism and arms trafficking. These organizations serve as specialized institutions to the fight against terrorist acts, which through investigative work aim preventing, detecting and battling terrorist activity (Shegani, 2007, 159).

### **Conclusions**

Terrorism results as a strategy that has its roots in grievances, and it is used to serve different beliefs and doctrines to legitimize and support violence referring to studies and its chronological history (Shegani, Xhafo, Yzeiri & Ahmedi, 2009, 151). Terrorism threatens us all without distinction, and that is why it should be fought without distinction (Brozi, 1999). This fight should be seen more like a cooperation and coordination of national and international forces. The obligation not to support terrorism can be found in many areas of domestic laws and international laws as: the international treaties, international customary law, or international humanitarian law (Karaj, 2005, 288-290).

At the end of this paper, I would like to mention what the ex - Prime Minister of the UK Tony Blair emphasized in an interview on BBC: "[...] that all we need to understand that:

"[...] the terror must be uprooted by creating the conditions for a right understanding between people of different faiths" (Brozi, 1999).

Expressed through biblical language in Psalm 23: "Even though I walk through the valley of the shadow of death, I will fear no evil: for you are with me" (Bush, 2001).

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