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TERRORIST CRIMINAL OFFENCES IN THE CRIMINAL CODE OF THE REPUBLIC OF SLOVENIA

The article deals with the Terrorist criminal offences in the Criminal Code of the Republic of Slovenia. The author states that terrorism is a worldwide phenomenon. Despite the fact that international organisations (the United Nations Organisation, the Council of Europe and the European Union) issued a number of international legal acts aimed at preventing and fighting terrorism, there is still no uniform definition of terrorism.

The Republic of Slovenia is a small country situated in the southern part of Central Europe, which has fortunately not yet been victim of a terrorist attack. Nevertheless, the competent authorities of the Republic of Slovenia are aware of the importance of the fight against terrorism, where the primary focus is on prevention and international cooperation.

The Criminal Code of the Republic of Slovenia (KZ-1) defines five criminal offences relating to terrorism. This is very important since, according to the principle of legality, a criminal offence and the corresponding sentences are defined by law before the criminal offence is committed. The legal definition of criminal offences relating to terrorism by an act is also important for international cooperation since such cooperation is more effective when there is identity of norms (double criminality).

The author believes that we have sufficient means to combat terrorism, but that the effectiveness of such efforts depends on the political will to implement them. Notwithstanding the above, we must be aware that fight against terrorism is not a short-term engagement but a long-term process.

Key words: Slovenia, terrorism, terrorist criminal offences, financing of terrorism, incitement and public glorification of terrorist activities, recruitment and training for terrorist activities

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1. INTRODUCTION

Terrorism is a worldwide phenomenon. Despite the fact that international organisations (the United Nations Organisation, the Council of Europe and the European Union) issued a number of international legal acts aimed at preventing and fighting terrorism,¹ there is still no uniform definition of terrorism.

The Republic of Slovenia is a small country situated in the southern part of Central Europe, which has fortunately not yet been victim of a terrorist attack. Nevertheless, the competent authorities of the Republic of Slovenia are aware of the importance of the fight against terrorism, where the primary focus is on prevention and international cooperation.

The Criminal Code of the Republic of Slovenia (KZ-1)² defines five criminal offences relating to terrorism. This is very important since, according to the principle of legality, a criminal offence and the corresponding sentence are defined by law before the criminal offence is committed. The legal definition of criminal offences relating to terrorism by an act is also important for international cooperation since such cooperation is more effective when there is identity of norms (double criminality).³

¹ See e.g. conventions of the United Nations:

- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, New York, 14 December 1973;
- International Convention against the Taking Hostages, New York 17.12.1979;
- International Convention for the Suppression of Terrorist Bombing, New York 15.12.1997;
- International Convention for the Suppression of the Financing of Terrorism, New York 9.12.1999;
- International Convention for the Suppression of Acts of Nuclear Terrorism, New York 13.4.2005;

Conventions of the European Union:

- Council of Europe Convention on the Prevention of Terrorism, Warsaw 16.5.2005, European Treaty Series No. 196;
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw 16.5.2005, European Treaty Series No. 198; and

Directive of the European Union:

- Directive (EU) 2017/541 of the European Parliament and the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, Official Journal of the European Union L 88/6.

² Kazenski zakonik – KZ-1, *Official Gazette of the Republic of Slovenia [Uradni list RS]* no. 55/2008; 66/2008 (amendment); 39/2009 (KZ-1A); 9/11 (KZ-1B); 54/15 (KZ-1C); 38/16 (KZ-1D); 27/17 (KZ-1E).

³ This means that an action is defined as a criminal offence both in the country in whose territory it has been committed and in the territory of the country from which extradition of the suspect is sought.

2. CRIMINAL OFFENCES CRIMINAL OFFENCES RELATING TO TERRORISM DEFINED BY THE CRIMINAL CODE OF THE REPUBLIC OF SLOVENIA (KZ-1)

2.1. Terrorism (Article 108 of the KZ-1)⁴

⁴ (1) Whoever with the intention to destroy or severely jeopardise the constitutional, social, or political foundations of the Republic of Slovenia or another country or international organisation, to arouse fright among the population or to force the Government of the Republic of Slovenia or another country or international organisation to perform or stop performing something, to perform or threaten to perform one or more of the following actions

- assault on life or body or human rights and freedoms;
- taking hostages;
- considerable destruction of state or public buildings or representations of foreign states, transport system, infrastructure, information system, secured platforms in the continental shelf, public place or private property;
- unjustified interference with the information system which means serious obstruction or interruption of its operation by entering, downloading, damaging, deleting or modifying data or by preventing or disabling access to data and which causes serious damage or has been done by using a computer program, passwords or access codes designed or adapted for the purpose of committing an offence, or unjustified interference with the critical infrastructure information system which constitutes serious obstruction or interruption of its operation by entering, transmitting, damaging, deleting or modifying data or preventing or disabling access to data;
- unjustified deletion, damage or modification of data in the critical infrastructure information system, or the prevention or denial of access to such data;
- the acquisition or takeover of control of a secured platform in the continental shelf with the use of force or a threat or any other form of intimidation, or violent behaviour towards a person on the platform, if such behaviour poses a threat to this person's safety, or the destruction of the secured platform in the continental shelf or causing any damage to it that may endanger safety on the platform, or the installation of a device in order to destroy the secured platform or endanger safety on it, or injuring or causing death to a person in connection with any of the aforementioned acts;
- hijacking of an aircraft, ship, means of freight transport or means of public transport;
- production, possession, purchase, transport, supply or use of weapons, explosives, nuclear, biological or chemical weapons;
- research and development of nuclear, biological or chemical weapons;
- endangering security by releasing hazardous substances or causing fires, floods or explosions;
- disturbance or termination of supply with water, electrical energy or other basic natural resources, which could endanger human life

shall be sentenced to imprisonment between three and fifteen years.

(2) Whoever wants to achieve the purpose referred to in the previous paragraph by using or threatening to use nuclear or other radioactive substance or device, by damaging a nuclear facility by releasing radioactive substance or enabling its release, or who by threatening or using force demands nuclear or other radioactive substance, device or facility shall be sentenced to imprisonment of up to fifteen years.

(3) Whoever prepares or helps to prepare criminal offences referred to in the previous paragraphs by illegally obtaining the required means to commit these criminal offences or by blackmailing prepares someone else to participate in these criminal offences, or whoever falsifies official or public documents required to commit these criminal offences or uses such documents shall be sentenced to imprisonment between one and eight years.

(4) If the act under paragraphs one or two of this Article results in death of one or more persons, the perpetrator shall be sentenced to imprisonment between eight and fifteen years.

The perpetrator of such a criminal offence may be any person. A legal person may also be held responsible for such a criminal offence. Due to the perpetrator's special intent, such a criminal offence can only be committed with direct intent (coloured intent).

The first paragraph defines the general form of terrorism. The perpetrator acts with the intention of destroying or severely jeopardising the constitutional, social, or political foundations of the Republic of Slovenia or another country or international organisation, seriously frightening the population or forcing the Government of the Republic of Slovenia or another country or international organisation to perform or stop performing an action. The action referred to in paragraph one is expressed as the commission or a threat of the acts of terrorism specified in the eleven indents of paragraph one.

Acts of terrorism may be targeted on individuals, facilities and other property, information systems, on the acquisition or takeover of control of a secured platform in the continental shelf, on the hijacking of an aircraft, ship, means of freight transport or means of public transport, on activities with all types of weapons and on endangering the population with fires, floods, explosions, and on disrupting the supplies of food and other necessities.

Paragraphs two, five and six of this Article define the qualified forms of criminal offences.

Paragraph three of this Article defines preparatory actions and assistance in preparatory actions for criminal offences referred to in paragraphs one and two of this Article.

Paragraph four of this Article defines a criminal offence qualified with a more serious consequence.

According to paragraph seven of this Article, the mere participation in a terrorist organisation or group whose intention is to commit criminal offences referred to in paragraphs one, two, four or five of this Article is qualified as a criminal offence.

(5) If the perpetrator, in the commission of a criminal offence under paragraphs one or two of this Article, deliberately takes the lives of one or more persons, he/she shall be punished by imprisonment of at least fifteen years.

(6) If the act under paragraphs one or two of this Article was committed by a criminal organisation or group, which has the intention to commit criminal offences (hereinafter, terrorist organisation or group) specified in these paragraphs, it shall be sentenced to imprisonment between eight and fifteen years.

(7) Whoever participates in a terrorist organisation or group, which has the intention to commit criminal offences under paragraphs one, two, four or five of this Article, shall be sentenced to imprisonment of no more than eight years.

(8) Any person who establishes or leads the organisation referred to in the previous paragraph shall be sentenced with imprisonment of at least fifteen years.

According to paragraph eight of this Article, the establishment or heading a terrorist organisation represents a criminal offence.⁵

2.2. Travelling abroad for the purpose of terrorism (Article 108a of the KZ-1)⁶

This is a general criminal offence that can be committed by anyone. A legal person may also be held responsible for such a criminal offence. Such a criminal offence can only be committed with direct intent.

Paragraph one defines the preparatory actions in the form of an independent criminal offence.

Paragraph two refers to the same form of criminal offence, except that the purpose of the perpetrator's travel is to train other persons to perform terrorist activities (paragraphs two and three of Article 111 of the KZ-1). Ambrož points out that the legislator went too far in its definition of the preparatory actions for a criminal offence since the definition of “training” is very broad (for instance, receiving or giving instructions for making or using explosive are considered to be sufficient). In Ambrož's opinion, it is the definition of “preparations for the preparations” as a criminal offence which was incriminated due to the insistence of the proponent of the Act (the Government) despite the comments and warnings of experts.

Paragraph three of this Article defines the criminal offence of organising and enabling journeys referred to in the preceding paragraph. This refers in fact to the assistance in the preparation of criminal offences.⁷

2.3. Financing of Terrorist Activities (Article 109 of the KZ-1)⁸

⁵ M. Deisinger, *Kazenski zakonik 2017, Posebni del s komentarjem, sodno prakso in literaturo*, Poslovna založba MB, založništvo d.o.o., Maribor 2017, 105–106.

⁶ (1) Whoever leaves the country of his/her nationality or the country of his/her actual residence with the intention of performing the acts referred to in Article 108 of this Code be sentenced to imprisonment between one and eight years.

(2) Whoever leaves the country of his/her nationality or the country of his/her actual residence with the intention of performing the acts referred to in paragraph three of Article 111 of this Code be sentenced to imprisonment up to eight years.

(3) Whoever, having knowledge of the purpose referred to in paragraphs one or two of this Article, organises or otherwise allows the travel referred to in paragraphs one or two of this Article, shall be sentenced to imprisonment from one to ten years.

⁷ M. Deisinger, 109; M. Ambrož, *Kazenski zakonik (KZ-1) z uvodnimi pojasnili k noveli KZ-1E*, Uradni list Republike Slovenije, Ljubljana 2017, 40–41.

⁸ (1) Whoever provides or collects money or property in order to partly or wholly finance the committing of offences under Article 108, 108.a, 110 and 111 of this Penal Code shall be sentenced to imprisonment between one and ten years.

Such a criminal offence may be committed by anyone. A legal person may also be held responsible for such a criminal offence. Such a criminal offence can only be committed with direct intent.

For the purpose of paragraph one of this Article, the financing of the criminal offences referred to in Articles 108, 108.a, 110 and 111 of the KZ-1 is considered to be a criminal offence.

Paragraph two of this Article also defines the punishability of the perpetrator in the cases where money or property was not actually used to finance the commission of the criminal offences referred to in paragraph one of this Article.

Paragraph three of this Article defines the qualified form of a criminal offence.

2.4. Incitement and Public Glorification of Terrorist Activities (Article 110 of the KZ-1)⁹

Such a criminal offence may be committed by anyone. A legal person may also be held responsible for such a criminal offence. Such a criminal offence can only be committed with direct intent.

Paragraph one of this Article defines the criminal offence of inciting terrorist acts pursuant to Article 108 of the KZ-1. The incitement by the perpetrator creates a risk that one or more criminal offences can actually be committed. The incitement is addressed to an open circle of individuals to whom the perpetrator sends messages or to other individuals to whom the perpetrator sends messages to be disseminated.

Paragraph two of this Article defines the criminal offence of public glorification and defence of terrorism. The glorification or defence of

(2) Whoever commits an offence from the preceding paragraph shall be subject to the same penalty even if the money or property provided or collected was not used for committing the criminal offences specified in the preceding paragraph.

If an offence from the preceding paragraphs was committed within a terrorist organisation or group to commit terrorist acts, the perpetrator shall be sentenced to imprisonment between three and fifteen years.

⁹ (1) Whoever incites commitment of criminal offences under Article 108 of this Penal Code and therefore propagates messages or makes them available to other persons in some other manner and thus causes danger that one or more such criminal offences would be committed, shall be sentenced to imprisonment between one and ten years.

(2) Whoever directly or indirectly publicly glorifies or advocates criminal offences under Article 108 or the criminal offence referred to in the preceding paragraph by, propagating messages or making them available to the public and therefore cause danger that one or more such criminal offences would be committed, shall be punished in the same manner.

(3) Persecution for criminal offences under preceding paragraphs shall be initiated with the permission by the Minister of Justice.

terrorism must be so intense as to give rise to a risk of one or more such terrorist actions.¹⁰

In the amending act KZ-1E, the words “with a view to promote terrorism offences” were deleted from paragraphs one and two of this Article. In this regard, Ambrož points out that an act committed without the perpetrator’s intention does not represent a terrorist offence in the strict sense of the word but a special form of hate speech.¹¹

2.5. Conscription and Training for Terrorist Activities (article 111 of the KZ-1)¹²

Such a criminal offence may be committed by anyone. A legal person may also be held responsible for such a criminal offence. Such a criminal offence can only be committed with direct intent.

Paragraph one of this Article defines the criminal offence of inciting terrorist acts pursuant to Article 108 of the KZ-1. Recruitment means various forms of promotion, the promise of benefits, the promotion of a particular ideology, etc.

Paragraph two of this Article defines the criminal offence of training other persons for various types of terrorism (such as training for the handling of weapons or explosives, instruction on the specific terrorist methods and techniques).

Paragraph three of this Article defines the criminal offence relating to an action of a person who is training him/herself for terrorist activities with the assistance of another person who may be the offender pursuant to paragraph two of this Article.¹³

In the same way as with regard to self-training for terrorist activities pursuant to paragraph two of Article 108.a of the KZ-1, Ambrož points out

¹⁰ M. Deisinger, 112.

¹¹ M. Ambrož, 41.

¹² (1) Whoever recruits for terrorist activities by encouraging another person to commit criminal offences under Article 108 of this Penal code, or participate in the order of such terrorist act, or joining a terrorist organisation or group to commit terrorist acts, which this criminal organisation or group commits, shall be sentenced to imprisonment between one and ten years.

(2) Whoever trains others for criminal offences under Article 108 of this Penal Code by providing instructions to manufacture and use explosives, firearms or other weapons, harmful or hazardous substances, trains them for other special methods or technology to perform or participate in a terrorist act, shall be punished in the same manner.

(3) Whoever is trained by receiving instructions to manufacture and use explosives, firearms or other weapons, harmful or hazardous substances, or instructions for other special methods or technology to perform or participate in a terrorist act, shall be punished in the same manner.

¹³ M. Deisinger, 113.

that the legislator went too far in its definition of a criminal offence by also defining prior preparation activity as a criminal offence.¹⁴

3. CONCLUSION

I firmly believe that we have sufficient means to combat terrorism, but that the effectiveness of such efforts depends on the political will to implement them. Notwithstanding the above, we must be aware that fight against terrorism is not a short-term engagement but a long-term process.

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¹⁴ M. Ambrož, 42.

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КРИВИЧНА ДЈЕЛА ТЕРОРИЗМА У КРИВИЧНОМ ЗАКОНИКУ РЕПУБЛИКЕ СЛОВЕНИЈЕ

Сажетак

Рад се бави кривичним дјелима тероризма у кривичном законнику Републике Словеније. Аутор је става да је тероризам феномен који је присутан у свему свијету. Упркос чињеници да су међународне организације (Уједињене нације, Савјет Европе и Европска унија) усвојиле мноштво правних аката чији је циљ превенција и борба против тероризма, још увијек не постоји усаглашена дефиниција тероризма. Република Словенија је мала земља у јужном дијелу централне Европе која, на срећу, до сада није била мета терористичких напада. Ипак, надлежне институције Републике Словеније су свјесне важности борбе против тероризма, при чему је примарни фокус на превенцији и на међународној сарадњи. Кривични законик Републике Словеније (КЗ-1) предвиђа пет кривичних дјела која се односе на тероризам. Ово је од изузетне важности имајући у виду да су, у складу са начелом законитости, кривично дјело и одговарајућа казна одређени законом прије него што би до чињења самог кривичног дјела дошло. Правно одређење кривичних дјела везаних за тероризам такође је битно са аспекта међународне сарадње с обзиром на то да таква сарадња даје боље резултате уколико постоји усаглашеност норми (двострука инкриминираност). Аутор вјерује да постоји довољно ресурса за борбу против тероризма али да успјех такве борбе зависи од политичке воље да се они ставе у функцију. Ипак, морамо бити свјесни да борба против тероризма није краткорочни задатак већ дуготрајан процес.

Кључне ријечи: *Словенија; Тероризам; Кривична дјела тероризма; Подстицање на терористичке активности и јавно величање терористичких активности.*