

TERRORISM FROM A RUSSIAN LEGAL PERSPECTIVE

The implementation of the Council of Europe Convention on the
Prevention of Terrorism into the Russian legislation



Candidate number:

Supervisor: Cecilie Hellestveit

Deadline for submission: 09/01/2008

Number of words: 16,500

08.09.2008

UNIVERSITY OF OSLO

Faculty of Law

Content

ACKNOWLEDGEMENT	1
1 INTRODUCTION	2
2 RUSSIAN LEGAL SYSTEM	5
3 COUNCIL OF EUROPE CONVENTION ON THE PREVENTION OF TERRORISM	7
3.1 Overview	7
3.2 Ratification by Russia	10
4 FEDERAL LAWS	16
5 NATIONAL PREVENTION POLICIES	19
6 INTERNATIONAL CO-OPERATION ON PREVENTION	33
7 CORPUS DELICTI UNDER THE CONVENTION	35
8 ANCILLARY OFFENCES	46
9 LIABILITY OF LEGAL ENTITIES	50
10 SANCTIONS AND MEASURES	54
11 PROTECTION AND SUPPORT OF VICTIMS OF TERRORISM	57
12 CONCLUSION	61
REFERENCES	64

Acknowledgement

This work would not have been completed without help and support of many individuals. I would like to thank everybody who has helped me along the way. Particularly I would like to thank Cecillie Hellestveit for her guidance, valuable comments, suggestions and all support given to me during the course of this work. I would also like to thank Professor Barnashov A.M. at Tomsk State University for his great help in providing me with relevant articles and literature.

1 Introduction

The subject of my work in general terms is terrorism from a Russian legal perspective. The issue of terrorism is one of extreme urgency due to many tragic events that have occurred in different parts of the world and that have touched Russia in particular¹. In order to adequately respond to the terrorist activities, the world community and individual states have to undertake measures for fighting it. Russia being on its way to establishing democratic values and supremacy of law, it is not possible to pursue and punish terrorists “with no investigation or trial” as, for instance, was practiced some time in the USSR towards persons “provoking disorders” during the Second World War². The society must have sound legal bases for lawful and effective actions. Such bases will also serve as a point of departure for the interaction of States concerned in the realm of fighting terrorism. International cooperation is absolutely necessary for counteracting terrorism considering the scope and high level of congruence of terrorist actions all over the world. After the international bodies such as UN organs, Council of Europe or regional bodies (which are called upon to serve interests of the states of the particular region) create a framework of solving a problem, States in their turn shall implement international instruments through their domestic legislation in order to make internationally agreed provisions working. One such instrument is the Convention of Council of Europe on the Prevention of Terrorism opened for signature in Warsaw 16 May 2005³. Ratification of this Convention by Russia required certain changes in Russian legislation. In order to comply with the requirements of this

¹ More information on the events occurred in Russia written in English on www.coe.int/gmt

² From the dictionary on <http://www.assured.ru/>

³ It can be found on <http://conventions.coe.int>

Convention there was a need to change the main law concerning terrorist activities “On combating terrorism” adopted in 1998 and to amend federal legislation on the subject.

The objective of this work is to show how the content of the Convention on the Prevention of Terrorism (the Convention) has been integrated into the Russian legislation in the three years since its ratification. In order to achieve this goal, it is necessary to look at the legal requirements of the Convention and to examine to what extent the Russian legal instruments meet these requirements. It is necessary to look at every legal instrument which was called to implement a particular requirement, for instance, provisions of the Constitution, federal laws and governmental decrees, implementing the provision of the federal laws in their turn. This approach will allow us to assess how successful the process of implementation of the Convention has been.

The starting point of this work is a brief description of the Russian legal system with an aim to show the hierarchy of legal instruments within it including the international principles and norms. After that I will give an overview of the provisions of the Convention which will show the character of the norms contained therein. Then I will look at the ratification of the Convention by Russia and answer the question why it needed to be ratified and what was the procedure for it. The next step is to shortly compare previous and present federal laws on fighting terrorism and examine whether there was a need to replace the existing law instead of amending it. From the next chapter I will be discussing the implementation of the concrete provisions of the Convention starting with the requirements of it on national prevention policies, proceeding on international cooperation, corpus delicti under the Convention, ancillary offences, liability of legal entities, sanctions and measures for punishing the offences prohibited under the Convention.

The last chapter will contain the discussion on the implementation of the measures for supporting the victims of the terrorism.

In the conclusion part I will try to assess the success of Russia in the implementation of the Convention.

2 Russian legal system

In order to understand the scheme of the implementation of the Convention into the Russian legal system it is worth saying some words about the legal system itself. Besides showing the hierarchy of the legal instruments in the system this chapter will help us to grasp why certain legislative acts had to be amended in order to meet the requirements of the Convention.

International principles and norms according to the Constitution are on top of the hierarchy of Russian legal system. It can be argued saying that it is the main law of the State and shall have superior power. But in the Constitution itself it is stated that international act shall prevail over any domestic instrument. Since the Constitution is the domestic instrument (of the highest power though) it shall comply with international documents and principles established there. Of course, the Constitution was elaborated with a consideration of all international standards and norms so the situation of a conflict between it and any international acts is unlikely.

Thus, the Constitution takes the second place after international norms and principles and all of domestic act shall comply with it, if not - any of such acts can be recognized by a Court as illegal on the base not complying with a Constitution.

Constitutional laws are on the level under the Constitution: they implement the provisions of the Constitution, after that – it is federal laws including the most important ones, such as Criminal code, Civil code, several procedural codes and others. Only federal authorities can adopt such laws, authorities of the constituent entities of Russian Federation do not have such powers.

The Criminal Code has a great importance in the Russian legislation because it is the only source of *corpus delicti*. It means if a certain act is not enumerated in the Penal Code it does not constitute a crime. Thus, in order

to implement the Convention in the part of inclusion of certain acts envisaged there as crimes into the Russian legislation the Criminal code had to be amended.

Next place in the hierarchy is given to Decrees of the President. Regulation of the Government follows after it. These instruments implement the federal laws, execute the legislative acts. These sources of legal norms were also used in the process of implementation of the Convention as will be shown later. Constitutions of the republics inside Russia and other laws of constituent entities of Russia are not relevant for the discussion on terrorism because such entities are not competent to legislate on the matter.

3 Council of Europe Convention on the Prevention of Terrorism

3.1 Overview

Before looking at the implementation of the Convention it is important to make a short overview of its provisions in order to find out what its legal orientation and value is.

It is worth noting that the Convention⁴ opened for signature for both member and non-member States of the Council of Europe which had participated in its elaboration on 16 May 2005 on the occasion of the Third Summit of Heads of State and Government of the Council of Europe. The possibility for non-member States to ratify the Convention rendered it a universal document in the fight against terrorism. The Convention was signed by 28 states and ratified by 14 of them⁵. It came into force 1 June 2007 under the condition of being ratified by 6 states including 4 member states (so far the Convention was signed and ratified only by member states⁶).

As it is possible to see already from the name of the Convention it was created as a framework instrument for preventing terrorism. It seems to be an essential part of the fight against terrorism with a focus on the earlier stage when the terrorist acts have not yet occurred. It aims to strengthen member states' efforts to prevent terrorism and sets out two ways to achieve this objective. Firstly, by establishing as criminal offences certain acts that may lead to the commission of terrorist offences, namely: public provocation (art. 5 of the Convention), recruitment and training (art. 6 and 7); Secondly, by reinforcing co-operation on prevention both internally (national prevention policies - art. 3), and internationally (modification of existing extradition and

⁴ Information about the preparatory work can be found on <http://conventions.coe.int/Treaty/EN/Reports/Html/196.htm>

⁵ Status as of 04.09.2008, the source is <http://conventions.coe.int>

⁶ Non-member States of the Council of Europe are Canada, Holy See, Japan, Mexico and United States.

mutual assistance arrangements and additional means – art. 17-20).

Thus, the requirements of the Convention follow from these two main directions on the prevention of terrorism. At the same time the title of the Convention does not presuppose that the Convention is exhaustive in providing for all the means that may contribute to the prevention of terrorism. Clearly, it only provides some means and concentrates on policy and legal measures. In this respect, the present Convention joins other international standards in the overall objective of preventing and fighting terrorism.

Art. 2 of the Convention states explicitly the purpose of the Convention which is “to enhance the efforts of the Parties in preventing terrorism and its negative effects on the full enjoyment of human rights...both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral and bilateral or agreements between the Parties”. This provision is a core one for understanding the ultimate aim of the Convention. It points to the balance between the need to punish certain activities as ones potentially leading to the commitment of terrorism and the importance of respecting rights and freedoms which are enshrined in the norms of legally binding international treaties. Art. 12 develops art.2 by requiring parties to “ensure that the establishment, implementation and application of the criminalization under Articles 5 to 7 and 9 of this Convention are carried out while respecting human rights obligations...” As examples of legally binding international treaties art. 3 and 12 mention the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (CCPR). From the rights and freedoms contained therein art. 12 marks out the right to freedom of expression, freedom of association and freedoms of religion as the most relevant ones to the prevention of terrorism by virtue of criminalizing certain acts under the Convention. In such

prevention the Convention requires states to act with due respect to their obligations “under international law” concerning human rights⁷.

As pointed out in the Explanatory Report the Convention⁸, starting with the Preamble, contains several provisions concerning the protection of human rights and fundamental freedoms, both in respect of internal and international co-operation on the one hand, and as an integral part of the new criminalization provisions (in the form of conditions and safeguards) on the other hand. It is a crucial aspect of the Convention, given that it deals with issues which are on the border between the legitimate exercise of freedoms, such as freedom of expression, association or religion, and criminal behavior. For instance, public provocation to commit a terrorist offence prohibited under the Convention implies the intent of a person allegedly committed this crime to incite the commission of a terrorist offence. So, the distribution of a “message” which contains critics of the authorities or of the other information undermining the respectability of it to public without such intent cannot be prohibited. The distribution of such information shall be regarded as a display of a freedom of expression protected under art.10 of ECHR or art.19 of CCPR.

The Convention also contains provisions regarding the protection of victims of terrorism, compensation for them, state jurisdiction, liability of legal entities, extradition and other issues relevant to the prevention of terrorism on the international level and within state-members.

The Convention constitutes an important part of the international legislation

⁷ The Convention uses the term “where applicable” (art. 3, 12) to indicate, that ECHR would not be applicable to non-member states of the Council of Europe which are parties to the Convention. Regional instruments can be also applicable here in respect to the states of that region which are parties to such instruments, for example, the 1969 American Convention on Human Rights.

⁸ It is located on <http://conventions.coe.int/Treaty/EN/Reports/Html/196.htm>

The Report serves to facilitate the application of the provisions of the Convention by clearing out the intent of the drafters in formulating the provisions in a certain way.

on the fight against terrorism and on its prevention in particular. Member and observer states of the Council of Europe decided to move forward with the criminalization of certain kinds of behavior which had not been dealt with before at the international level. The Convention is in line with the policies of Russia to prohibit the activities which are able to lead to the actual commitment of terrorist acts. And for this reason Russia ratified the Convention and has been taking certain steps -legal and factual- to implement its provisions. The factual steps were taken towards the enhancing the organizational bases of the fights on terrorism as the Convention requires (par.2 of art.3).

In this work I will concentrate on the articles of the Convention setting the requirements regarding national prevention policies of the parties to the Convention, international co-operation between them, prohibiting certain acts as criminal offences which may lead to the commitment of terrorist acts, requiring to establish liability of the legal entities involved in such offences and protect victims of terrorism. These provisions present the essence of the Convention. The implementation of it into the Russian legislation is the overall subject of this work.

3.2 Ratification by Russia

Before dealing with the particular requirements of the Convention it is important to know how international treaties are incorporated into the Russian legislation. What place does the Convention take in Russian legislation as a condition for its future implementation? Can the Convention be applied directly or does it have to go through certain procedure?

According to the Russian Constitution universally recognized principles and norms of international law and international agreements entered by the Russian Federation are an integral part of its legal system. If an international

treaty that the Russian Federation is bound by, establishes other rules than those prescribed by the existing law, the rules of the international treaty shall prevail.

The law "On international instruments of Russian Federation"⁹ ("On international instruments") requires ratification of some specific categories of international instruments. According to this law the Convention is a subject to ratification because it requires "changes in existing legislation or the adoption of new federal laws, as well as establishing other rules than those prescribed by existing legislation". Since the Convention requires the inclusion of some acts as terrorist offences into the criminal legislation, it must be ratified (it applies equally to all kinds of the legislation).

The Supreme Court explained the matter the following way¹⁰: according to art 5(3) of the law "On international instruments" the provisions of officially published international treaties Russia entered to that do not require the issuance of domestic acts for its application can be applied directly. For the implementation of the other international treaties Russia shall adopt appropriate legal acts. The obligation of the states to amend their domestic legislation contained in the international treaty is one of the signs of impossibility of the direct application of this treaty in Russia.

In accordance with the Russian Constitution ratification of international treaties in Russia takes the form of a federal law. Since we know that the Convention is a subject to the ratification according to the law "On international instruments", we suppose that there must be a certain federal law for the ratification of the Convention. Such law came into force 6 of May

⁹ Federal law of 15.07.1995 N 101-FZ "On international instruments of Russian Federation" (adopted 16.06.1995).

¹⁰ The decree of the Plenum of The Supreme Court from 10 November 2003 N 5 "On the application by the courts of general jurisdiction of the universal principles and norms of international law and international treaties".

2006 and was deposited with the Secretary General of the Council of Europe 19 May the same year. In this law Russia declared that:

- Russia “shall have jurisdiction over the offences established in accordance with art.5 to 7 and 9 of the Convention in the cases envisaged in art.14, par. and 2, of the Convention”¹¹.

Art.14 deals with a compulsory jurisdiction over the offences envisaged in art.5-7 which are public provocation to commit a terrorist offence, recruitment and training for terrorism and ancillary offences under art.9. The first paragraph requires states to take necessary measures in order to establish their jurisdiction over the offences set forth in these articles of the Convention when

- a the offence is committed in the territory of a state;
- b the offence is committed on board a ship flying the flag of a state, or on board an aircraft registered under the laws of it;
- c when the offence is committed by its national.

Par.2 of art.14 leaves to the discretion of states to establish their jurisdiction over the same offences when it was directed towards or resulted in the territory of a state or against a national of this state and in some other situations enumerated in par. 2 (b, c, d, e)

Thus, Russia accepted the jurisdiction under both paragraphs, including the one which did not require accepting the jurisdiction, but recommended to do so.

In this declaration made with respect to the Convention Russia stated the following: “The Russian Federation declares that it shall have jurisdiction over the offences established in accordance with Articles 5 to 7 and 9 of

¹¹ List of declarations made with respect to treaty No. 196 (the Convention) is located on <http://conventions.coe.int>

the Convention in the cases envisaged in Article 14, paragraphs 1 and 2, of the Convention". By declaring this, Russia excluded par. 3 of art 14 from its jurisdiction and did not accept jurisdiction over the offences in the case where alleged offender is present in its territory and it does not extradite him or her to another state whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested state.

As noted in the Explanatory Report par. 3 establishes an additional criterion for jurisdiction which is of a mandatory nature and is related to cases falling under the principle of *aut dedere aut judicare* established in Article 18. This article requires a state in the territory of which the alleged offender is present when it has jurisdiction in accordance with Article 14 and it does not extradite that person to submit the case to its competent authorities for the purpose of prosecution.

Even though Russia refused to establish its jurisdiction under 14(3), it will have to submit the case to its authorities when an alleged offender is present in Russia and it does not extradite this person to another state (with a condition that rule of jurisdiction of the requested state is equal to Russian one).

Russia amended art. 12 of the Penal Code which deals with the issue of the operation of Russian criminal law in respect of persons who have committed offences outside the Russian boundaries. Under its new provision Russia shall establish its jurisdiction over crimes committed by its nationals or other persons permanently residing in Russia, regardless of where the crimes occurred provided for alleged perpetration infringed the interests protected by the Criminal Code. Such persons committed terrorist crimes shall be criminally liable, unless there is a decision of a court of foreign state entered into legal force setting up a punishment for them. The same applies to foreign citizens and persons without any

citizenship: these persons who do not permanently reside in Russia and allegedly committed a crime out of the Russian territory are criminally liable if a crime committed violates interests of Russia or its citizens or persons without any citizenship permanently residing on Russian territory. The same condition shall be fulfilled - the absence of a judgment of a foreign court on the case). The Convention does not prohibit the inclusion of the other cases of exercising criminal jurisdiction by the states into their domestic legislation. So every state empowered to establish its own rules on jurisdiction over the crimes established by the Convention. Thus, even though the Convention does not envisage exercising of jurisdiction of a state in the case when a crime committed violates interests of this state Russia could establish so in respect to its own jurisdiction.

- Russia “assumes that the provisions of Article 21 of the Convention shall be applied in such a way as to ensure inevitable liability for the commission of offences falling within the purview of the Convention, without prejudice to the effectiveness of international co-operation in extradition and legal assistance matters”¹².

Art. 21 of the Convention contains discrimination clause stating that nothing in the Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested Party has “substantial grounds for believing” that the request has been made for the purpose of prosecuting or punishing a person “on account of that person’s race, religion, nationality, ethnic origin or political opinion” or the person “risks being exposed to torture, inhuman or degrading treatment or punishment”, being punished by death penalty or life imprisonment considering some other circumstances of his/her extradition and treatment

¹² List of declarations made with respect to treaty No. 196 (the Convention) is located on <http://conventions.coe.int>

in the requested state. By making such declaration, Russia emphasized that grounds for refusing extradition of persons committed crimes under the Convention must not leave loopholes for the offenders to evade penalty. It means that a country rejecting a request shall act in good faith and shall not be guided by political considerations or purposes of shielding an offender, but by a goal to punish criminal behavior in accordance with legal standards.

The second declaration is more of a political value and shows the position of Russia on the matter. Since, the declaration is made unilaterally it cannot apply to the legal relations between Russia and another state. Namely, Russia cannot refuse to extradite a person to state A based on its declaration, for instance, saying that state A does not ensure inevitable liability of a person committed an offence. Russia would have to base its refusal on one of the grounds of the art.21 of the Convention.

Thus, the Constitution and the law “On international instruments of Russian Federation” envisage the ratification for the Convention, and the law on ratification was adopted. According to this law the Convention was ratified by Russia with mentioned declarations regarding the exclusion of the jurisdiction under par.3 of art.14 of the Convention and the inevitability of the liability of persons committed crimes prohibited under the Convention – public provocation to commit terrorist offences and recruitment and training for terrorism. The Convention needed the following implementation in order to make its provisions to work in practice.

4 Federal laws

Ratification of the Convention entailed the significant change- the adoption in 2006 of the new federal law regulating terrorism matters “On countering terrorism”(OCT).It replaced the law “On fighting terrorism”(OFT) which was adopted in 1998 and amended several times after the adoption. What was the reason of this change? Was it possible to amend the existing law in order to meet the requirements of the Convention?

In order to answer this question we should look at the main changes happened in OCT compare to OFT and the requirements of the Convention entailed such changes. The offences envisaged by the Convention will not be discussed in this chapter because such prohibition had to be implemented by amending the Criminal Code.

Firstly, fundamental principles of counteraction against terrorism were changed. OCT extended a list of such principles. The principle of “ensuring and protecting fundamental civil and human rights and freedoms” stands first in this list now while OFT did not contain such principle at all. This amendment was aroused from the aim of the Convention to reaffirm that all measures taken to prevent or suppress terrorist offences have to respect the rule of law, democratic values, human right and fundamental freedoms as stated in art.2, 3, 12 and the preamble to the Convention. For the same purpose the legal regime of an antiterrorist operation was introduced to art.11 of OCT. Such regime may be established for the period and the on the territory of an antiterrorist operation and consists of a set of measures and restriction exhaustively enumerated in OCT. The temporary restrictions on the rights and freedoms of citizens may be imposed only within such regime.

Secondly, the Convention requires states to improve the co-operation

among national authorities. OCT regulates this matter significantly better than OFT did by defining the functions of the President and the Government in fighting terrorism, regulating the usage of the Armed Forces in the fight against terrorism and in an antiterrorist operation, authorizing them with powers they did not have before, regulating the conduct of an antiterrorist operation, identifying the competence of the operational headquarters, prescribing negotiations in the course of an antiterrorist operation. By doing so, OCT made a big step forward in settling down the organizational bases for the fight on terrorism in Russia.

Thirdly, OCT thoroughly regulates the compensational measures for the damage caused as a result of an act of terrorism in respect of its victims and social rehabilitation of such persons. It is required by the Convention in art.13. OCT also envisages compensation, legal and social protection for persons participating in the struggle against terrorism. The provisions of the OCT regulate this matter almost identically with the provisions of OFT.

Fourthly, OCT provides for the liability of organizations involved in terrorism as it is required by art.10 of the Convention. OCT is the only document which envisages such liability. OFT contained the provisions on the matter, but regulated the confiscation of the property of such organization differently: it did not envisage satisfying the creditors` claims before the property enters the revenues of the State. OCT eliminates this unjust rule and prescribes such satisfaction.

Thus, OCT replaced OFT as a result of several fundamental changes in order to meet the requirements of the Convention. Of course, law-makers could amend OFT by introducing any changes there but the name of the new law also played its own role. The term "counteracting" is broader the term "fighting", so the new name "On countering terrorism" was supposed to emphasize that not only authorities, but the whole civil society shall be

involved in the process of eliminating terrorism.

OCT became the main tool of implementation of the convention but not the only one considering that the requirements of the Convention could not be met by amending only OCT. The Convention required the inclusion of certain offences into the Russian legislation and it could be achieved only by amending the only source of criminal offences- the Criminal code. The decrees of the president and regulations of the government played the role of the instruments of the implementation of the federal laws. Thus, all of the instruments which were called upon to implement the provisions of the Convention on the prevention of the terrorism shall be examined.

Now let us look directly at the requirements of the Convention and means of its implementation.

5 National prevention policies

The core provisions of the Convention require states to improve their prevention policies in order to avert the terrorist threat, as well as to be better prepared for fighting it in the case a terrorist act actually occurred. The implementation of these provisions of the Convention constitutes an extensive work of the states, which include issuing of domestic legislative acts, implementing their own legislation on the matter, undertaking factual measures. The latter ones can be launched with an aim, for instance, to promote cross-religious dialog as required in par.3 of art.3 of the Convention. Assessing the national prevention policies of Russia will allow us to evaluate the extent of the implementation of the Convention in this realm.

Art.3 of the Convention refers to national prevention policies and particularly includes four aspects connected with the prevention of terrorism: a) training, education, culture, information, media and public awareness (par.1); b) co-operation between public authorities (par.2); c) promotion of tolerance (par.3); and d) co-operation of the citizens with the public authorities (par.4). Each State can determine the extent and manner of implementation of the provisions of the Convention, in a manner consistent with its system of government, and its laws and procedures applicable to these areas of public relationships, but in carrying out prevention measures, every state shall ensure respect for human rights and freedoms.

Each party shall take measures with a view to preventing terrorist offences while respecting human rights obligations.

Par.1 of art.3 requires Parties to take appropriate measures (in particular in fields of law enforcement training, information and media, public education and awareness raising) for the purposes of preventing the commission of

terrorist offences. It lists a number of international human rights instruments that provide relevant human rights standards which shall be respected. This list includes ECHR, CCPR and other international treaties containing human rights obligations applicable to state-parties to the Convention.

Russia being a member of Council of Europe from 1996 signed and ratified Convention for the Protection of Human Rights and Fundamental Freedoms, 10 Protocols to it, CESCR, CCPR and by doing so already undertook the obligation to respect rights and freedoms established there.

Russian Constitution states that a man, his rights and freedoms are the ultimate value. Recognition, respect and protection of the rights and freedoms of a man and a citizen are the obligations of the State. Russia recognizes and guarantees the rights and freedoms of a man and a citizen under the generally recognized principles and norms of international law and in accordance with the Constitution. The State guarantees equality of rights and freedoms of man and citizen regardless of gender, race, nationality, language, origin, property and official status, place of residence, religion, beliefs, membership of public associations, as well as other circumstances. Any forms of restrictions on the rights of citizens on social, racial, national, linguistic or religious grounds are prohibited.

OCT establishes fundamental principles of counteraction against terrorism which include insuring and protecting fundamental civil and human rights and freedoms, lawfulness, priority of the protection of rights and legitimate interests of the persons running the danger of terrorism, systematic approach and complex use of political, informational, propagandistic, socioeconomic, legal, special and other measures of counteraction against terrorism, priority of preventive measures against terrorism.

Par.1 of art.3 as well as par.2 there requires states to raise the level of public awareness regarding the existence, causes and gravity of and the

threat posed by terrorist offences and offences set forth in the Convention.

February 2003, the Supreme Court recognized as terrorist 15 organizations and prohibited their activity in the territory of Russia. 2 June 2006, the Supreme Court recognized a further two groups, "Jund al-Sham" and "Islamic Jihad" as terrorist organizations and their activities in Russia were also prohibited. The list of all of these organizations was published in "Rossijskaya gazeta". It is the only official list of organizations recognized as terrorist in Russia.

The Ministry of Justice published a federal list of extremist materials which includes books, newspapers, articles, music album and other materials which were recognized as extremist ones by the courts all over Russia. It also published a list of public and religious associations and other nonprofit organizations, which were liquidated or their activities were prohibited by the decisions of the courts on the grounds provided for by the federal law "On countering extremist activity ". The activities of one organization were suspended according to another list of the Ministry.

According to the law "On countering extremist activity" extremist activities (extremism) among others are a) the activities of public and religious associations or other organizations or editorial staff of mass media or individuals on the planning, organization, preparation and perpetration of acts aimed at violent change of constitutional order and violation of the integrity of the Russian Federation; undermining the security of the Russian Federation; implementation of terrorist activity or public justification of terrorism; b) public provocation to such activities; c) its financing. As we can see terrorism and its justification are regarded as kinds of extremist activities in Russia.

Public provocation to extremist activities became punishable after the law "On countering extremist activity" was amended by the federal law "On

amendments to certain legislative act of the Russian Federation connected with the adoption of the federal law on ratification of the Council of Europe on Prevention of Terrorism and of the Federal law on countering terrorism”¹³(the law ”On amendments”). Thus, such change came as a result of introduced interrelated amendments to a large amount of Russian legislative acts as a part of a process of the implementation of the Convention.

The following case before the Supreme Court illustrates how subtle can be the bound between countering extremist activities and eliminating dissent with the authorities. The Mass Media Supervision State Office (the Office) which is a state organ of executive power had brought a claim before the Court asking for termination of the activities of an electronic information agency called “Banfaks”. The Court established that the agency placed on its internet page a material with a name “Siberian mass media were warned under the responsibility of the editors-in-chief of inadmissibility of publication of the caricatures mocking the prototypes of world religions”. This material was about the real notice by the Office on the matter to the Siberian mass media. One of the visitors of this site left a comment to the material where he mentioned the principle of Roman law with regard to punishment for blasphemy and cited an article from the Argentine newspaper “Clarín”, containing assessments of the attacks on embassies in Muslim countries. The visitor also focused on the double standards used by officials in assessing the conflict on religious grounds. The Court did not find the agency guilty. It was not the first case of the Office against this agency before the Court (there was an opinion that the Agency had to be removed

¹³ Federal law of 27.07.2006 N 153-FZ “On amendments to certain legislative act of the Russian Federation connected with the adoption of the federal law on ratification of the Council of Europe on Prevention of Terrorism and of the Federal law on countering terrorism”.

for political reasons). Without going into the political aspect of this case, we should look at the provisions the Office referred to. Art.16 of the law on “Mass media” says that activities of the mass media can be ceased or suspended only by a constitutor of this mass media or by the court at the suit of a state body registered this mass media. Thus, the Office was empowered to bring such claim before the court. The Office claimed that the agency shall be responsible for extremist activities for using on its site the technology allowing others to place extremist commentaries. Extremist activities of mass media are prohibited under art.11 of the law “On countering extremist activities”. The Court ruled that the agency had not been assisting the visitor in placing his comment. The mere fact of not controlling the content of comments on its site cannot render an agency responsible.

It is a difficult task for a state to keep a balance between respecting human rights and freedoms and taking preventive measures. In the case of Russia the authorities very often are excessively controlling and hyperactive in suppressing acts which are legal but unpleasant for them. The provisions of the Convention on the matter are especially important for Russia. By ratifying this Convention Russia accepted an obligation to respect human rights, freedoms and democratic values of its own citizens in preventing terrorism. This obligation is not new. The Convention only specified a field of its application. Hopefully, Russia will fulfill these obligations under the Convention not just nominally, but in practice.

Each party shall take necessary measures to improve and develop co-operation among national authorities.

Par.2 of art.3 of the Convention focuses on the specific measures that Parties shall undertake with the purpose to enhance co-operation between public authorities as a mean of better prevention of terrorist offences and

their effects. A number of concrete examples of such measures are given in the Convention to illustrate the point, some concern prevention as such, for instance, through better protection of persons and facilities, the readiness to deal with the effects of terrorist attacks by focusing on the civil emergencies they generate and the challenges they pose.

Let us look how the provisions on better co-operation of the authorities were implemented in Russian legislation.

OCT establishes a leading principle for co-operation of the authorities—a principle of undivided authority in directing the forces while conducting antiterrorist operations. Even though its formulation points out that this principle covers the situation of conducting antiterrorist operation this principle in fact became a crucial one for building up the whole structure of organs involved in the fight against terrorism.

OCT defines organizational basics of counteraction against terrorism, namely it defines the functions of the president and the government in this field. In the same article OCT envisages the establishment of special bodies called upon to ensure coordination of the activities of the federal executive bodies, executive bodies of the constituent bodies of Russia and local self-government bodies in counteraction against terrorism. The special bodies consist of representatives of the enumerated entities.

In order to implement the provisions of OCT on the coordination of state and local executive bodies in countering terrorism the president signed a decree “On measures to counter-terrorism”. It is the most important instrument for the creation of the institutional framework of counter-terrorism in Russia. The decree provides for the creation of a National Anti-terrorist committee (NATC) headed by a Chairman, who is ex-officio the Director of Federal Security Service (FSS) of Russia.

NATC is entrusted with the task of countering terrorism in an integrated way,

including by: preparing proposals on state policy in the field of countering terrorism; coordinating activities of ministries and agencies and law-enforcement structures; monitoring and eradicating reasons and conditions facilitating the spread of terrorism and participating in international co-operation in this area.

In order to coordinate activities of the territorial executive bodies there were anti-terrorist commissions established (ATCs). On both levels of NATC and ATCs operational headquarters were established (Federal Operational Headquarters on NATC level). ATCs are entrusted with a task of coordinating preventive anti-terrorist efforts while the operational headquarters coordinate law-enforcement activities aimed at preventing, detecting and suppressing terrorist acts.

Thus, the decree establishes organizational bases for the performing of antiterrorist activities by defining the structure of organs involved, composition of officials within it and main functions of these organs.

The law "On amendments" amended laws "On police" and "Internal forces of the Ministry of internal affairs" by adding the function of participating in countering terrorism and ensuring the legal regime of counter-terrorist operations to these entities. It also designated application of certain measures and time limits prescribed by OCT to them. The internal forces are also involved into the protection of important public facilities and special cargo.

The law "On FSS" was also amended. Countering terrorism became one of the main activities of FSS. It is specially stated that limitations of citizens' rights to privacy of the home, correspondence, telephone conversations, postal, telegraphic and other communications necessary for carrying out antiterrorist activities shall be permitted only by an order of the judge on the basis of reasoned application of the head body combating terrorism or his

deputy. In urgent cases where the delay could lead to a terrorist act and endangering the lives and health of citizens, or when there are evidences to suggest that terrorist act occurs in a residential premises or committed, or in order to prosecute individuals suspected of involvement in the commission of terrorist act, officials authority to combat terrorism have the right to freely enter the dwelling, as well as to suspend the provision of communications services to legal and natural persons or restrict the use of networks and communications. Authority combating terrorism shall notify a prosecutor about such measures within 24 hours from the time when limits were imposed. This provision seems to be justified by the need of preventing or suppressing terrorist activities provided that the limitations of the citizens are necessary and imposed in a legal manner.

Developing the provision of OCT 6 of June 2007 the government adopted a decree “On measures to implement the federal Law on countering terrorism” which regulates the use of weapons and military equipment by Russian Armed Forces to eliminate the threat of terrorist acts committed in the air, in inland waterways, in territorial seas, and on the continental shelf of Russia, to secure marine navigation, including undersea navigation, and to suppress such acts.

Among the measures necessary to improve co-operation among the authorities with a view to prevent negative effect of the terrorist offences the Convention mentions improving the physical protection of facilities. In order to implement this provision the government adopted the resolution on “Approval of the rules of physical security of nuclear materials, nuclear facilities and nuclear material storage facilities”, which regulates the administrative regime and security measures at such facilities.

One of the fundamental principles of counteraction against terrorism is confidentiality of the information concerning special mean, techniques and

tactics of taking measures against terrorism, as well as concerning the composition of their participants. It means that such information must not be disseminated by mass media. This rule favors the safety of the participant of the fight on terrorism. It meets the requirements of the Convention on the improvement of the protection of persons involved in counteracting terrorism.

OCT introduced a controversial novel into the articles regulating operation of Armed Forces in suppressing terrorist acts in the air and afloat. In the certain circumstances the Armed forces are entitled to destroy the aircraft or sailing facility for preventing a real danger of the loss of life or the onset of an ecological catastrophe. These provisions of the OCT drew a wide response of the public. It is not easy to accept that life of the people on the aircraft is less valuable than life of other possible victims. The destruction of an aircraft or a vessel shall be indispensable and justifiable by a bigger loss which a vessel could cause. All of the conditions of such destruction shall be fulfilled: an aircraft does not respond the commands and visual signals of the aircrafts of the Armed Forces, refuses to follow the commands without explaining the reason, and does not obey the demand to land. There must not be any other ways to prevent a flight from causing a great harm. The Armed Forces shall act accurately in accordance with the requirements of the OCT. It is unacceptable if the command to destroy the flight will be given on order to exterminate a person on the board at the cost of innocent passengers' life. In the critical situation Russia all the more shall respect the most valuable human right-a right to life.

Each party shall promote tolerance.

Par.3 of art.3 of the Convention calls upon states to encourage inter-religious and cross-cultural dialogue with a view to reducing tensions and, in this manner, helping to prevent terrorist offences.

Constitution states that everyone is guaranteed freedom of conscience, freedom of worship, including the right to individually or jointly profess any religion or not profess any, to choose it freely, to have and disseminate religious and other beliefs and act in accordance with them.

Each is guaranteed freedom of thought and speech but propaganda of or agitation inciting social, racial, national or religious hatred and enmity are prohibited as well as propaganda of social, racial, national, religious or linguistic supremacy. No one may be compelled to express their views and opinions or reject them. Everyone has the right freely to seek, receive, transmit, produce and disseminate information by any lawful means (information constituting state secrets is defined by the federal law). The Constitution also guarantees the freedom of public activities of the associations.

The Constitution of the Soviet period guaranteed freedom of speech and press only in accordance with the interests of the people and the aim to strengthen and develop the socialist system (such as art.50 of the Constitution of the USSR in 1977). The current Constitution does not place freedom of thought and expression into any ideological framework. On the contrary: constitutional rules on freedom of thought and expression must act in unity with the provisions of the Constitution on the recognition of the ideological and political diversity, preventing the establishment of any ideology as a state or compulsory (art.13).

The federal law "On public associations"¹⁴ regulates the establishment of associations and states that citizens (both Russian and foreign) have a right to establish associations for the protection of their common interests and the achievement of the common goals.

¹⁴ The federal law "On public associations" of 19.05.1995 N 82-FZ.

The federal law “On freedoms of conscience and on religious associations”¹⁵ guarantees the freedoms of conscience and worship, prohibits the discrimination on the religious ground. It states that no one is obliged to reveal his attitude to religion and subjected to coercion in determining his attitude to religion. Religious associations shall be established for common worship and dissemination of the religion.

An association established in accordance to with requirements of law shall be protected by the State from illegal actions performed with an aim to cease the activities of such association.

Constitutional Court of Russia had several cases on the matter where it had to check whether certain law provision is consistent with the Constitution¹⁶. This activity of the Court is aimed at the protection of rights and freedoms of a man and citizen. It also ensures the superiority of the Constitution. Thus, in 2004 the Court checked constitutionality of the provision of the law “On political parties” prohibiting the establishment of the political parties based inter alia on the same religion of members therein. The Court stated the state has a right to put such limitation on the establishment of the political parties.

The same year the Court recognized as conforming with the Constitution the provision of the law “On national-cultural autonomy” stating that in a constituent entity of Russia only one national-cultural autonomy can be registered as regional. Court pointed that it does not diminish the rights of other autonomies on the territory of the subject.

In the other case two persons claimed before the Court that the provision of the law “On freedoms of conscience and on religious associations” is not

¹⁵ The federal law “On freedoms of conscience and on religious associations” of 26.09.1997 N 125-FZ.

¹⁶ Constitutional Court inter alia decides on the consistency of certain acts with the Constitution, on disputes over the competency of the state organs, treats claims of the citizens regarding alleged infringements of the constitutional rights.

consistent with the Constitution. The provision stated that the state shall respect the internal order of religious organization unless such order is illegal. One of these persons-the woman- was asked to cover the head with a kerchief and tie up a cloth around the waist while visiting the cloister. The Court disallowed the claim because no constitutional rights of these persons were infringed. The establishment of illegality of the internal order was out of the Court` competence.¹⁷

The Supreme Court also had an interesting case regarding the freedom of conscience. The Court recognized as null and void the paragraph of the instructions on the issuance of the passports for the citizens. The paragraph contained certain requirements for the passport pictures including the requirement to be without a headdress on such picture. A group of Muslim women claimed that this requirement is against their religious persuasion and they cannot uncover any parts of the body except for the face and hands for taking a picture. Russia guaranties each person a freedom to act in accordance with the religious persuasion with certain limitations placed by federal laws. Limitation at issue was not envisaged by the federal legislation; subsequently it could not be envisaged in the instruction either.

Russian authorities shall respect the beliefs and persuasions of numerous citizens of the state. Such persuasion shall be subject to limitation only in the cases envisaged by appropriate laws. The authorities shall teach citizens to respect others peoples` opinion by respecting it themselves. The requirement of the Convention to promote tolerance shall be fulfilled not only by establishing adequate legal bases, but also by an appropriate teaching about equity between all religions and beliefs.

Each party shall promote public awareness and encourage the public to

¹⁷ The cases can be found on www.ksrf.ru

provide help.

Par.4 of art.3 of the Convention deals with co-operation between citizens and public authorities for the purpose of the prevention of terrorism. It starts by calling upon States to promote public awareness about the terrorist threat. The notion of public awareness is also included in par.1 of the same article, but contrary to that paragraph, where it is used in general terms, in this paragraph it is used specifically in relation to citizens. Then provision goes on to invite state parties to consider encouraging the public to provide specific, factual help to public authorities with a view to preventing the commission of the offences set forth in the Convention.

As stated in Explanatory Report to the Convention the wording of this paragraph is based on the United Nations Convention against Transnational Organized Crime, adopted in Palermo on 15 December 2000 (art. 31, par. 5) and on Resolution A/RES/55/25 adopted by the United Nations General Assembly on 15 November 2000 which, in its operative par. 6, calls upon all States to recognize the links between transnational organized criminal activities and terrorist offences, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity.

The former law existed before OCT imposed the duty on citizens to bring to enforcement agencies attention any information which can help to prevent, detect and suppress terrorist activities, as well as minimize its impact. This obligation was a civic duty and could not be enforced. OCT regulates this matter in a more effective way: persons who assist authorities in detecting, preventing, suppressing, disclosure and investigation of a terrorist act, identifying and detaining persons preparing, committing or have committed such an act may be paid remuneration from federal budget. Since the duty to inform authorities cannot be forced it is more efficient to stimulate

financially activities of citizens in helping services (considering that most of people would be concerned about the risk of being followed by criminals for such help). The opportunity to get remuneration can render people too active at bringing information to the authorities, but in the field of preventing terrorism it is probably better to check any information on the matter than not to do it and have unfortunate results.

November 11, 2006 the Government adopted the decree "On financial sources used to provide financial rewards for assistance in combating terrorism". The decree defines a source of remuneration for the citizens who assist the authorities in a manner defined in OCT.

Russia successfully implemented some of the requirements of the Convention on improvement of national prevention policies, for instance, in developing cooperation between the authorities, enhancing the protection of the facilities, creating more comprehensive organizational bases for counteracting terrorism. But the implementation of the requirements on promoting public awareness and tolerance, in the fields of education and culture with a view to preventing terrorist offences shall be developed further. In order to be successful such implementation needs special informational programmes and cooperation with mass media which would allow the authorities to raise the level of the familiarity of the society with terrorism.

6 International co-operation on prevention

The Convention requires parties to assist and support each other with a view to enhancing their capacity to prevent the commission of terrorist offences, including through exchange of information and best practices, as well as through training and other joint efforts of a preventive character. This provision is to be implemented subject to the capabilities of the parties and where deemed by them to be appropriate. The parties to the Convention both member and non-member states do not have the same conditions for international co-operation considering financial, organizational and other differences so the implementation of this provision rightly left to states discretion.

OFT contains an important provision on international cooperation of Russian Federation in the fight against terrorism which is fully in line with Resolution 1624 of the UN Security Council (2005), calling for efforts to increase anti-terrorism at the international level. OFT states that Russia, in compliance with international treaties cooperates with foreign countries, their law enforcement agencies and special services as well as with international organizations in the field of countering terrorism. It is emphasized that Russia being guided by the interests of ensuring the security of individuals, society and the state, shall prosecute on its territory the persons accused (suspected) of involvement in terrorism, in compliance with Russian law.

On the Russian profile on counter-terrorist capacity within the CODEXTER (it is an inter-governmental committee of experts on terrorism) it is stated that Russia consistently supports the idea that the fight against international terrorism should remain a strategic priority for the G8 and Russia's 2006 G8 Presidency "effectively promoted the achievement of this goal". The summit in Saint-Petersburg resulted in adoption of G8 Summit Declaration on

Counter-Terrorism and the G8 Statement on Strengthening the UN's Counter-Terrorist Programme. These documents outline directives for G8 co-operation and emphasize the importance of the role of the UN in fighting terrorism respectively but do not impose obligations on the States within it. The work within the Commonwealth of Independent States (CIS) seems to be more effective. For instance, the Programme for co-operation of the member states of CIS in combating terrorism and other violent manifestations of extremism for two years period 2005 – 2007 envisaged several groups of activities (legal, practical arrangements, analytical and methodological work), financial sources of such activities, time limitations for it and other important organizational aspects. The same programme for 2008-2010 is already adopted by CIS members and hopefully will be successfully implemented. Russia also notes its co-operation the Collective Security Treaty Organization, the Shanghai Cooperation Organization and other entities including bilateral treaties but it did not resulted so far in the adoption of a comprehensive legal instrument aimed at preventing terrorism. International cooperation is an essential part of the counteraction against terrorism. States shall assist each other in preventing, eliminating and investigating acts of terrorism; have to collaborate with a view of obviating this problem as an ultimate aim. International instruments on universal and regional level shall serve legal bases for it. Such instruments shall impose obligations on their parties, provide for concrete measures and schedules. Statements and declaration do not contribute so much for the real fight on terrorism. Russia actively cooperates with post soviet union states and states in the Asian region as well as with European ones. It shall further such co-operation based on effective legal instruments containing not only proclamations, but factual measures to be implemented.

7 Corpus delicti under the Convention

The introduction into the domestic legislation of the states-parties to the Convention of criminal offences which may possibly lead to the committing of terrorist act was one of the most important aims of the Convention. It requires the states to establish public provocation to commit a terrorist offence, recruitment for terrorism and training for it as criminal offences under their domestic laws. The Convention provides for some criteria of such acts to be regarded as crimes such as unlawfulness and intent, and give short definitions of such acts but leave for the states to define exact elements of corpus delicti of these crimes. The achieved agreement of the European states on these provisions is a big step forward in creating the legal mechanisms on prevention of the terrorism. In order to implement the Convention Russia had to amend its Criminal code by adding the offences which were not envisaged there before. The Convention does not prohibit the inclusion by the states into their domestic legislation of the other crimes, which in opinion of the states also may lead to the commission of terrorist offences. It is a sovereign right of every state to legislate on the criminal matters. Authorities can prohibit any offences they deem deleterious for a state, considering, of course, the obligations of a state under international law. But the drafters of the Convention intended to fill the gap in international instruments against terrorism by creating an instrument aimed at the prevention of terrorism. Requiring states to prohibit certain acts under their legislation the Convention stipulates how it should be done. It does so not in details, but it defines crucial elements of corpus delicti of the crimes. The state-parties shall follow the requirements of the Convention in order to prohibit certain acts which can possibly lead to the commission of terrorist offences in accordance with standards set in the Convention. Such

requirements were called upon to ensure that not any, but dangerous acts possibly leading to terrorism are punished under domestic law of states-parties. For that reason the Convention requires parties to include intent and unlawfulness as conditions for an act to be punished.

Articles 5 to 7 of the Convention require states to establish criminal offences concerning public provocation to commit terrorist offences (art.5), recruitment for terrorism (art.6) and training for terrorism (art.7), coupled with a series of accessory crimes (art.9). These offences are not terrorist offences as such but have the potential to lead to the commission of the offences established by the international conventions included in the Appendix to the Convention. Art.8 of the Convention states that for an act to constitute one of the enumerated offences “it shall not be necessary that a terrorist offence be actually committed”. As highlighted in the explanatory report the place where the terrorist offence might be committed is irrelevant for the purposes of the application of the Convention. All of these offences must be committed unlawfully and intentionally. The exact meaning of these categories shall be established by states in accordance with their domestic legislation.

Each party shall adopt measures necessary to establish public provocation to commit a terrorist offence as a criminal offence.

According to the Convention «public provocation to commit a terrorist offence» means “the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed”.

For an act to be regarded as an offence under this provision the act must be committed a) with a specific intent to incite the commission of a terrorist

offence, thus, intentionally and unlawfully; b) is must result in causing danger that such offence might be committed. Considering latter the attention shall be paid on the author and addressee of the message as well as on the context of making such message available.

The term "distribution" refers to the active dissemination of a message advocating terrorism, while the expression "making available" refers to providing that message in a way that is easily accessible to the public (and not in respect of private communication).

Russian Criminal code did not envisage such offence before. After the adoption of the Convention the law "On amendments" introduced a new article 205.2 which prohibits this crime under the Criminal Code. This article provides for criminal liability for public calls for the exercising of terrorist activity or public justification of terrorism (it is also foreseen that it this crime can be committed by using mass media). So while the Convention envisages only one act resulting in distribution of the information which causes danger of the commitment of terrorist act the Criminal code envisaged not only "public calls", but also "public justification" of terrorism.

According to the footnote of this article public justification of terrorism means a public statement on the recognition of the ideology and practice of terrorism as the correct one and the one which needs to be supported and emulated. Such support can bear political, financial or organizational character. Considering the wording of the Criminal code and the absence of the intent for terrorist acts to be committed as a part of corpus delicti of this offence we can conclude that in the view of law-makers public justification of terrorism represents a veiled form of appeals to the implementation of acts of terrorism. They did not include the intent into this crime in order to be able to punish annoying for the authorities acts which did not mean the commission of terrorist offence. It is very difficult to distinguish then between

just a public utterance on the terrorist matter and public justification on it. What if a public figure in an interview will express his sympathy for particular people committed terrorist offence saying that he would also protect his interest by any means and every man should do the same, would he be liable for “public justification of terrorism”? Considering the present wording of this crime in the code, he would. “Public justification of terrorism” does not imply any activities to be performed; it is enough to say some unwary words publically to be liable for this crime.

Public calls for the exercising of terrorist activity constitute a crime already after the first act directed to it performed; for instance, after the first public speech, which contains the agitation for committing any of the crimes of a terrorist nature. Public justification of terrorism is accomplished since the first public performance declaring the recognition of ideologies and practices of terrorism as correct and worthy support and emulation is given.

It is important to point that while the Convention uses the wording “provocation to commit a terrorist offence”, the Criminal code says about “calls to exercise terrorist activity”. The last term is broadly interpreted by the OCT and includes also arranging and financing of an act of terrorism, establishing of an unlawful armed unit, using terrorists and other activities. So “terrorist activities” is a more general term compared to “terrorist offence” and includes it. The Penal code broadens this crime even more by prohibiting public justification of terrorism, which is an ideology according to OCT.

While the Convention uses the wording “with the intent to incite the commission of a terrorist offence” the provision of the Russian Criminal code does not. The first criminal case concerning the alleged perpetration of this crime is very illustrative one.

According to the investigation, in October 2006, twenty years old student

downloaded from the Internet a book "Russian cuisine. ABC of domestic terrorism" of unidentified authors and placed on a city forum. The book promised that the reader will be able to "arrange a small revolution in his locality". It described in detail the method of manufacturing and using explosives, poisons, techniques of beating with a knife, actions for frightening a crowd beside advises how to play dirty tricks on neighbors. Alexander Pyanzin claimed that accidentally found the book on the internet and posted a link to this book on the forum, not suspecting that this is illegal. Some other people (about 6) downloaded this book from the forum. According to prosecutor he committed a crime under the article "Public calls for the implementation of terrorist activity or public justification of terrorism". The Court did not decide on this case yet. But the fact that there was a base for an investigation and the case was submitted before the Court of one of the republics within Russian Federation allows making some conclusion out of this. The main one is that in order to commit a crime under art 205.2 it is enough to disseminate information which can be regarded as terrorist related. There is no need in special intent to incite the commitment of a terrorist offence. Considering the facts available Pyanzin did not mean to incite or somehow contribute to a terrorist offence, but just made "wrong" information available to public by putting it on the forum. More than that he is not the author of this book and the book was already available on the internet before he placed the link to it on the forum.

The Supreme Court which gives elucidations on the provisions of Russian laws does not give any explanation to this article. But the wording of the article and few cases on the matter allow concluding that the Criminal code provisions are much wider than the one of the Convention. Under the code large amount of acts can be regarded as criminal offences since the article does not require the special intent.

The Convention allows state-parties a certain amount of discretion in defining and implementing its provisions. Thus, public justification of terrorism under the Criminal code may constitute the offence of indirect incitement under the Convention. But the requirements of the Convention regarding the intent to incite the commission of a terrorist offence and unlawful and intentional provocation shall be met. As we could see Russia used a very short formula to prohibit this offence and did not include the intent to commit a terrorist offence therein. What can we conclude from it? Can we say that Russia implemented the provision of the Convention if it did so in the manner not consistent with the Convention? We can probably conclude that Russia implemented this provision nominally. The absence of the intent in corpus delicti of this crime will lead to much broader application of this provision of the Criminal code. And such application in its turn will influence right of persons allegedly committed this crime. And the latter is obviously not in line with the Convention. The Convention was created as an instrument obliging states not only to prevent terrorist offences, but also to achieve this goal with full conformity with human rights undertakings. These provisions of the Criminal code shall be reformed in order to constitute full-fledged well working provisions as it is required by the Convention.

Each Party shall adopt such measures as may be necessary to establish recruitment for terrorism as a criminal offence.

Art.6 of the Convention requires Parties to criminalize the recruitment of possible future terrorists, understood as solicitation to carry out terrorist offences whether individually or collectively, whether directly committing, participating in or contributing to the commission of such offences. The article allows parties to choose interpret the terms "association or group" and "solicit" in accordance with its national law. Solicitation can take place by various means, for instance, via the Internet or directly by

addressing a person. For the crime to be completed, it is necessary that the recruiter successfully approach the addressee, so it is not necessary for the addressee actually participate in the commission of a terrorist offence or join the group for that purpose. The provision requires that the recruiter intends that the person or persons he or she recruits commit or contribute to the commission of a terrorist offence or join an association or group for that purpose. The Convention shall be applied to the offences committed unlawfully and intentionally as required by par.2 of the art.6. The wording of the article prescribing punishment for this offence was changed by the law "On amendments". The previous provision envisaged a punishment for the involvement of a person in the commission of the crimes prohibited under certain articles of the Code or persuading a person to participate in a terrorist organization, as well as arming, training, financing of a crime or terrorist organization.

The new version of art.205.1 prohibits assisting terrorist activities namely persuading, recruiting or otherwise involving person in the commission the acts prohibited by certain articles of the Penal Code, arming or training of persons for the purpose of committing these crimes, as well as financing terrorism. Aggravating circumstance for these crimes is the fact that the act was committed by a person using his capacity as a state official. The new version of the article does not mention soliciting a person to join a group or association. Now the existence of a group or association is without any relevance for the qualification of an act as a crime under this article. On one side it is enough now for the crime to be committed to involve a person into the commission of the crime or train and arm him. By excluding a "group" from the provision law-makers rendered the task of proving the commitment of a crime easier, because now there is no need for the investigators to establish that there was a group or association involved. On

the other side when it was impossible for an investigator to establish existence of such group based on previous version of the article he could always exclude it from the subject of proof and concentrate on proving that there was soliciting a person to commit a terrorist offence without any connection to a group.

The new version of the article prohibits “financing of terrorism” and not financing of a terrorist organization as previous provision did. The new wording became extremely wide because OCT defines terrorism very broadly as an ideology of violence and the practice of influencing the adoption of a decision of authorities. OCT uses also the terms “terrorist activity” and “terrorist act”. Terrorist activity among others includes financing an act of terrorism. Probably this wording was chosen to embrace financing of any activities related to terrorism, and even in this case it would be enough with prohibition on “financing of terrorist activities” instead of “financing terrorism”.

So, the Penal code and OCT use the same terms but the content of it is not identical. This difference shall be eliminated. The terms shall have the same meaning in the legislation. The term “terrorist activities” shall embrace the same set of the activities in the Penal Code and OCT. The terms shall be used precisely and broader terms cannot replace narrower ones with the intent of the authorities to punish larger amount of acts under it. Art.208 of the Criminal code prohibits the creation of armed groups (associations, detachment, brigade), not allowed by federal laws, the leadership of such groups, participation in it, as well as financing of it. However, it does not punish persons who involve in such group, but it punishes only persons participating therein. This article is mentioned as the one prohibiting terrorist activities in several other articles of Criminal code including art. 205.1. The provision of art. 208 is a confusing one because it

is unclear if the creation of and participating in every illegal armed group can be regarded a terrorist crime. What is if such group created for purposes other than terrorist activities? Would it be still a terrorist group according to art.205.1? Russian legislators choose a way of making the provisions broader and vaguer than it is supposed to be in democratic society as Russia claims to be. Thus, even though art.208 does not mention terrorist character of a group creation of which it prohibits, the incitement to join such group which was not included in art.205.1 is punishable under art.208.

Art.205.1, as well as some other articles of Criminal code, contains the list of the offences which are understood as terrorist activities (namely commitment of terrorist act, hostage taking, creation of armed group not allowed by federal laws, hijacking, encroachment on the life of a State or public figure, forcible seizure of power or forcible retention of power, armed rebellion, attack on internationally protected person) while OCT contains another list of such activities. In the list included in OCT another wording is used and some of the crimes listed in Criminal code are not enumerated there at all. This inconsistency must be eliminated. Since the Criminal Code is the only source of *corpus delicti*, the list in OCT shall be rendered identical to the one contained in the code. As an alternative it could just make a reference to the relevant articles of the Criminal code or repeat the same list of terrorist offences. It is possible to use other reasoning and say that OCT is more specific instrument compared to the code. Then the Penal code shall be amended.

Each Party shall adopt measures may be necessary to establish training for terrorism as a criminal offence.

Art.7 of the Convention gives a definition of “training for terrorism”: it means “to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods

or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose”.

This provision does not criminalize receiving such know-how by the trainee. For such conduct to be criminally liable, it is necessary that the trainer know that the skills provided are intended to be used for the commission of or the contribution to commit a terrorist offence. Such knowledge together with intent and unlawfulness constitute the base for the act to be a crime.

The terms used in this provision shall be interpreted in accordance with existing international treaties and national legislation (for instance, term “explosive” could be defined according to the International Convention for the Suppression of Terrorist Bombings” art.1 par.3a).

Art.205.1 of the Criminal Code which prohibits assisting terrorist activities includes training a person with a purpose of commitment at least one crime from a list of crimes which constitute such activities.

Training of a person to commit terrorist offences includes teaching him the techniques of handling of weapons and hand combat, methods of carrying out terrorist acts, methods of influencing the adoption of decisions of governments or international organizations in the commission of acts of terrorism, hostage-taking, hijacking air planes, as well as psychological manipulating of future terrorists with a view to impart the required qualities to them. So such training under this article includes not only giving knowledge but also giving psychological support.

Russia implemented the articles of the Convention prescribing to prohibit certain offences which may lead to the commitment of a terrorist offence, so the Criminal code was amended and new articles were included there. But the purpose of the Convention is not only to prohibit such offences, but to do so with a full respect to the rights and freedoms of citizens of each state

implementing the Convention. In order to achieve the latter, corpus delicti of the crimes has to be clear and do not permit different interpretations. The Supreme Court shall provide for guidance for the implementation of these provisions by the courts. It will enable to distinguish clearly between the acts constituting the offences and acts which are maybe not pleasant for the authorities but still legal.

The Convention gives a certain amount of discretion to states in deciding on the exact elements of corpus delicti of the crimes envisaged in there and filling the terms used there with the content. But it defines the crucial aspects of the prohibiting the crimes such as intent for the public provocation to commit a terrorist offence to incite the commission of such offence, knowledge of the trainer that the skills provided by him intended to be used for commission of a terrorist offence. States shall follow the guidance provided in the Convention, all the more considering that they are obliged to do so. As we could see Russia was not very successful in following such guidance. The situation can be improved if Russia would become more interested in having proper Criminal code.

8 Ancillary offences

For the implementation of the Convention due to the extreme necessity of prohibition of terrorism and crimes possibly leading to terrorism it was important not only to oblige states to punish perpetrators of provocation to, training and recruitment of terrorism, but also other persons in a certain way involved in it. For instance, if the execution of recruitment for terrorism is commenced but not completed (for example, the person is not persuaded to be recruited, or the recruiter is apprehended by law enforcement authorities before successfully recruiting the person), the conduct shall be still punishable as an attempt to recruit. People which were helping the perpetrator with intent to achieve a criminal result shall also be punished.

Each Party shall adopt measures as may be necessary to establish certain ancillary offences as criminal.

Par.1 of art.9 of the Convention requires parties to establish as criminal offences the participation as an accomplice in the commission of any of the offences under Articles 5 to 7, the organization or direction others to commit such offence, as well as the contribution to the commission of it by a group of persons.

Provisions on incomplete offence and complicity in a crime are located in the General part of the Criminal code. Art. 32 states that joint intentional participation of two or more persons in the commission of a deliberate crime shall be deemed to be complicity in a crime. Thus, the intent is an indispensable element of a crime which has to be established in order to hold a participant liable. The next article states that in addition to the perpetrator, organizers, instigators, and accessories shall be deemed accomplices. According to art.33 (3) organizer is a person who has organized the commission of a crime or has directed its commission, and

also a person who has created an organized group or a criminal community (criminal organization) or has guided it.

Instigator and accessories are embraced by subpar.“a” of the art.9 of the Convention as persons “participating as an accomplice”. An instigator is a person who has abetted another person in committing a crime by persuasion, bribery, threat, or by any other methods. An accessory is a person who has assisted in the commission of a crime by advice, instructions on committing the crime or removal obstacles to it, and also a person who has promised beforehand to conceal the criminal means and instruments of commission of the crime, traces of the crime, or objects obtained criminally, and equally a person who has promised beforehand to acquire such objects.

The responsibility of accomplices in a crime is determined by the character and the degree of the actual participation of each in the commission of the crime. The criminal responsibility of an organizer, instigator, and accessory ensues under an article that provides for punishment for the crime committed, with reference to article 33 of the code.

Sub paragraph “c” of the art.9 of the Convention requires punishing the commission of the offences under art. 5-7 by a group of persons acting with a common purpose, with the condition that such contribution is intentional and made either with the aim of furthering the criminal activity of this group or made in the knowledge of the intention of the group to commit the offences.

The Convention does not use term “association” as it does in art.6, but uses a term “group”, which can have a lot of meanings. But considering that contribution to the commission of the offence shall be made with the aim of furthering the criminal activity where such activity involves the commission of an offence or with the knowledge of the intention of the group to commit the

offence, we can conclude that most probably a group at issue is an organized group or a criminal organization. Term “furthering” shows us that the criminal activities were being performed before and wording “intention of the group” also tells about more or less permanent character of the group.

Criminal code differentiates between the commission of a crime by a group of persons, by a group of persons under a preliminary conspiracy, by organized group or by a criminal organization. A crime shall be deemed to be committed by a group of persons if two or more perpetrators have jointly participated in its commission without a preliminary conspiracy; a crime shall be deemed to be committed by a group of persons in a preliminary conspiracy, if the persons took part in it after they had reached an agreement on the joint commission of a crime; a crime shall be deemed to be committed by an organized group, if it has been committed by a stable group of persons who in advance united for the commission of one or more offences; a crime shall be deemed to be committed by a criminal community (criminal organization), if it has been perpetrated by a united organized group (organization), set up to commit grave and especially grave crimes, or by an association of organized groups set up for these purposes.

Thus, the term “group” used in art.9 of the Convention will be interpreted according to art.35 of the Criminal code.

Par.2 of art.9 requires states to adopt measures necessary to establish as a criminal offence the attempt to commit the offences set forth in art.6 and 7 of the Convention. Thus, the attempt to commit the crime of public provocation to commit a terrorist offence does not constitute a crime under the Convention.

Intentional actions (inaction) by the person concerned, directed expressly towards the commission of a crime, shall be deemed to be an attempted crime, unless the crime has been carried out owing to circumstances beyond

the control of this person according to the Criminal Code.

The Criminal Code does not envisage the exception from its General part for the application of the art.205.2 (public provocation to commit a terrorist offence). The rules on attempt to commit a crime equally apply to all of the offences envisaged in there. Thus, while the Convention excludes the attempt to public provocations to commit a terrorist offence, the Criminal code does not. It means that attempts to commit such public provocation are punishable under the Criminal code. In the implementation of these provisions Russia "overdid" and did not comply with the requirements of the Convention not to punish the attempt to commit this offence. It is a negative tendency of Russian legislators to punish more than to punish less. It is inconsistent with the requirements of the Convention. The full respect to human rights and freedoms required by the Convention cannot be performed with the legislation which does not give a clear answer if a certain activity can be regarded as a crime. The provisions of the Criminal code which render the attempts to commit public provocation punishable shall be amended in order to meet the requirement of the Convention.

9 Liability of legal entities

The issue of liability of legal entities is the one under the ongoing discussions. States do not have the same view on the criminal liability of organizations. Some states introduced criminal measures for punishing legal entities involved into criminal activities while the others apply such measures only to natural persons. The makers of the Convention did not intend to unify the approaches to the liability of legal entities and left the sanctions for the certain illegal activities of legal entities on states choice.

Each party shall adopt measures necessary to establish the liability of legal entities.

The convention states (par.2 of art.10) that liability of legal entities may be criminal, civil or administrative. Every party to the Convention shall choose exact kind of liability for organizations in accordance with its own legal principles. Russian criminal law does not have a concept of criminal responsibility for legal entities but only for natural persons due inter alia to objectives of the criminal punishment which cannot be applied to an organization (for instance, the goal of correction of the personality of a criminal). Convention also states that criminal liability for organizations shall be without prejudice to the criminal liability of the natural persons who have committed the offences (par.3 of art.10).

Since the Criminal code deals only with natural persons the main source of the provisions on the liability of legal entities became OCT. It is important also to mention the Code of Administrative Delinquencies which contains a chapter, envisaging delinquencies encroaching upon public order and safety. The provisions of the Code can be applied both to natural persons and legal entities. It includes inter alia propaganda and public demonstration of Nazi attributes, production and dissemination of extremist materials,

violation of the legal regime of antiterrorist operation (the latter was introduced by the law “On amendments”).

Art.24 of OCT prohibits the establishment and activities of organizations whose goals or actions are aimed at popularization, justification or support of terrorism or at committing the crimes stipulated in the articles of the Criminal code punishing terrorist activities. So, OCT makes a clear reference to certain articles of the Criminal code by enumerating it. But while making such reference it repeats the wording of some articles of the code in itself. For instance, art.205.1 of the code prohibits financing terrorism, but OCT provision, while referring to art. 205.1, says again about support of terrorism (if the support is financial it becomes an overlap in the provisions). The same with art.205.2: prohibition of public justification of the terrorism overlaps with the same wording in OCT. So, the provision embraces almost any kinds of the activities can be performed by an organization involved in terrorist activities or related crimes but neglects matching in the provisions of two federal laws-OCT and Penal code.

An organization which is recognized as terrorist one becomes a subject to liquidation by a court decision on the basis of an application of a prosecutor in two cases. Firstly, if on behalf or in the interests of this organization certain crimes are arranged, prepared and committed; secondly, if such crimes are committed by the person who controls the organization. The property of the organization left after satisfying the creditors’ claims shall be subject to confiscation and entering to the revenues of the state.

OFT, the previous federal law regulating terrorism matter, did not envisage satisfaction of the creditors’ claims to the illegal organization. It is a positive change that the property of the illegal organization is a subject to confiscation by the state only after satisfaction of creditor claims to such organization. It is an important guarantee of the rights of persons dealing

with illegal organization without knowing that the former is involved in terrorist activities. This provision is in favour of fair trade relationships.

The same regulation shall be applied to foreign and international organizations in Russia.

Confiscation was removed from the Criminal code in 2003. The main reason of it was the fact that people sitting in State Duma were the ones who suffered from this punishment the most. The Convention allowed introducing confiscation as a punishment for the offences leading to terrorist crimes. Confiscation was introduced to the Criminal code again by the law "On amendments" and included in a separate chapter as a punishment under forty five articles of the Criminal code including the articles prohibiting terrorist activities. Confiscation can only be applied to the legal relationships emerged after 1 January 2007 as stated in the law "On amendments".

The provisions of the Criminal code do not apply to the legal entities, but only to natural persons. Confiscation can be assigned as a punishment for natural persons under the provisions of the Criminal code prohibiting all three offences envisaged in the Convention: public calls for terrorist activities and public justification of terrorism, assisting terrorist activities.

The liability of legal entities shall be based on the provisions of the OCT and future regulations of the government establishing the procedure of entering of the property of terrorist organization to the revenues of the State.

The provisions on liability of legal entities are very important ones to implement considering the fact that very often terrorist activities are performed by representatives of a terrorist organization. These provisions enable to hold liable not only the persons participating in such organization but also the organization itself. According to OCT it means that such organization will be liquidated and its property will be subject to confiscation. OCT envisaged satisfaction of creditors` claims before the performing

confiscation. It is a significant legal change on the way to full respecting rights of the citizens, in particular the right of private property proclaimed in the Russian Constitution.

10 Sanctions and measures

The effective prohibiting of illegal acts could never be performed without efficient measures aimed at punishing such acts. These measures shall be intimidating for a potential perpetrator, but proportionate to the seriousness of a crime. The Convention contains some requirements on the matter. Art. 11 of the Convention deals with penalties and sanctions shall be imposed on the persons committed the offences set forth there. As pointed in Explanatory report this article is consistent with the general trend in international criminal law: similar provisions can be found, for instance, in the United Nation Convention against Corruption (art.26) and other international instruments.

In addition to the requirements of the Convention to establish three core crimes which may possibly lead to the commission of the terrorist offences under states` domestic legislation, the Convention also sets up the requirements for the sanctions and measures which shall be applied both to legal entities and natural persons committed these crimes. Such sanctions and measures shall be effective and balanced and shall not be either excessively strict or unjustifiably light.

Each party shall adopt measures necessary to make the offences punishable by effective, proportionate and dissuasive penalties

The Criminal code states that the penalty shall be applied with a view to restore social justice, as well as to remedy a convicted and prevent the commission by him of a new crime.

Art.205.2 of the Criminal code provides for criminal liability for public calls for the exercising of terrorist activity or public justification of terrorism and sets up a punishment for this crime which is fine up to 300 000 rub or the sum of income of accused up to 3 years or deprivation of freedom up to 4 years.

Commitment of this crime where mass media were used is punished by the same kinds of penalties but its scale increases. Also the additional penalty is added-deprivation of the right to hold specified offices or to be engaged in specified activities up to 3 years.

Involvement of a person in the commission of the crime stipulated by articles prohibiting terrorist activities under the code or persuading a person to participate in a terrorist organization, the arming or training of a person with the aim of perpetrating the said crimes as well as the financing of an act of terrorism or an terrorist organization shall be punishable under art 205.1 by deprivation of freedom for a term of four to eight years. The same deeds perpetrated by the person through the use of his official position shall be punishable by deprivation of freedom for a term of seven to fifteen years accompanied by the fine. The Penal code envisages the exemption from liability under this article: a person who has committed the crime shall be released from criminal responsibility if through his voluntary and timely warning of the authorities or otherwise he assisted to prevent the act of terrorism or suppress the crime of terrorist nature, unless the actions of this person constitute a different corpus delicti. Such exemption is envisaged with a purpose to give an opportunity to a person contributed to terrorist activity to prevent the commitment of a terrorist act. The chance given by this exemption to such person and a deliverance of him from the liability is justified by a possibility to prevent a terrorist act.

Creation of an armed formation that is not envisaged by a federal law, operating of such a formation, as well as financing of it shall be punishable by deprivation of liberty for a term of two to seven years under art.208. Participation in such armed formation is punishable by restraint of liberty up to three years, or by arrest up to six months, or by deprivation of liberty up to five years.

The same exemption is envisaged under art.208: a person who has ceased to take part in an illegal armed formation of his own free will, and has handed in his weapons, shall be released from criminal responsibility unless his actions contain a different corpus delicti.

Par.3 requires states to ensure that legal entities held liable for the offences enumerated in the Convention are subject to effective, proportionate and dissuasive sanctions which can be ones of a criminal or non-criminal character and may include monetary sanctions.

The sanctions for perpetrating the terrorist crimes by organizations are established by OCT. It envisages liquidation of such organization, prohibition of its activities, and confiscation of its property followed by entering of such property to the revenues of the State.

All kinds of penalties envisaged by the Criminal code and sanctions prescribed by OCT seem to meet the requirements of the Convention to be effective, proportionate and dissuasive. The law "On amendments" introduced confiscation to the Criminal code and now this punishment can be designated for all of the offences envisaged under the Convention when committed by natural persons. The confiscation is envisaged for most of the crimes related to terrorism such as hostage-taking, creation of an armed formation, illegal obtaining of and trafficking in weapons and explosives and other serious crimes such as murder and trafficking in drugs. After these provisions of the Convention have been implemented into the Criminal code and OCT the assignment of the fair sanctions and measures is the responsibility of the courts.

11 Protection and support of victims of terrorism

Art.13 of the Convention regarding protection, compensation and support of victims of terrorism is consistent with recent developments in international law and the growing concern for the victims of terrorism as reflected, for instance, in United Nations Security Council resolutions, including Resolution 1566 (2004) of 8 October 2004; and in the International Convention for the Suppression of the Financing of Terrorism (art. 8, par. 4), in the European Convention on Compensation of Victims of Violent Crimes and some other international instruments.

The article gives some examples of such measures which are financial assistance, compensations for victims of terrorism and their close family members.

As stated in the Explanatory report the CODEXTER was also provided with the opinion of the Commissioner for Human Rights, who considered that the protection afforded to victims might also include many other aspects, such as emergency and long-term assistance, psychological support, effective access to the law and the courts (in particular access to criminal procedures), access to information and the protection of victims' private and family lives, dignity and security, particularly when they co-operate with the courts.

Each Party shall adopt such measures as may be necessary to protect and support the victims of terrorism.

Such measures were adopted and implemented already in OFT (the law existed before OCT). It envisaged compensation for damage suffered as a result of terrorist attack. The choice of the entity paying compensation depended on the territory where attack was committed and, accordingly, damage was suffered. Thus, the constituent entity of Russian Federation

where terrorist activities were performed had to pay compensation from its budget. Compensation for damage suffered as a result of terrorist acts committed in the territories of several constituent entities of the Russian Federation as well as compensation for damage caused to one entity but exceeded the budget of it had to be paid from the federal budget. If damage was caused to foreign nationals, compensation for it had to be performed by the federal budget regardless where terrorist act occurred. In all of the cases compensation payments by the state were followed by collection of the compensation amount from persons caused damage (by mean of recourse action).

So, compensation could always be demanded by person suffered from terrorist attack from exact budget on the local or federal level. Acquisition of money by authorities from delinquents was a problem of state officials and not of person who suffered the damage.

OCT regulates the matter less clear and not to benefit of the victims. It does not point on the budget which shall pay compensation and just mentions that the compensation shall be paid by the state including both compensation to individuals and legal persons who have suffered harm as a result of a terrorist act. This change probably will lead to some uncertainties in obtaining payment from the state.

Another change in OCT is even more controversial: "Compensation for moral damage suffered as a result of a terrorist act shall be carried out by persons who have committed it". Thus, the procedure for getting compensation for a moral damage (which will occur with a great likelihood) differs from the procedure for obtaining compensation for the material harm. A person suffered a moral damage does not have a right to acquire it from the state but only from a terrorist. But what if a criminal was killed or his property is not enough for performing payments to the large amount of

persons suffered from his actions? It seems that in this situation the victims will not get anything at all.

OCT envisages social rehabilitation for the persons who have become victims of an act of terrorism as well as soldiers, officers and specialists of the federal executive authorities engaged in combating terrorism; persons contributing to the fight on terrorism on a permanent or temporary basis; family members of such persons. The social rehabilitation includes psychological, medical and vocational rehabilitation, legal assistance, assistance in finding employment, housing, for the purpose of integration of these persons into society.

OCT states that the damage caused to life, health and property of persons as a result of participating in the struggle against terrorism shall be compensated. OCT also envisages social protection for family members of the person deceased as a result of participation in a counter-terrorist operation; a person who has been injured in the same circumstances and it has entailed his disability; a person who has been wounded and it has not entailed his disability. OCT includes the provision on the reimbursement of the property of persons participated in the implementation of measures to combat terrorism. Thus, if such property is lost or damaged, its owner is entitled to get compensation of its value. Art.23 of OCT regulates privileged calculation of the long service record, guarantees and compensations for persons participating in the struggle against terrorism.

Thus, persons who accidentally became victims of a terrorist act shall be entitled to get compensation for the damage as a result of such act and help in accordance to measures constituting social rehabilitation. Persons suffered from terrorist act participating in the struggle against terrorism (being a part of an appropriate service) and in a certain cases members of his family are entitled to social rehabilitation, legal and social protection

according to regulations of the government and compensation established in the OCT (joined by the privileged calculation of the long service record and additional guarantees and compensations established by the president and the government).

12 January 2007 the government adopted the decree “On rules adopted to provide rehabilitation for those affected by terrorist acts and those involved in combating terrorism”. Rules on indemnification of the damage to life and health of persons due to the participation in the fight against terrorism were approved of the resolution of the government of 21 February 2008.

Russia fully implemented the provisions of the Convention required establishing schemes for exercising the protection and support and paying the compensations for the victims of terrorism. OCT regulates this matter in depth, containing several provisions regulating the support for both groups of victims – duty-bound and accidental ones. We all hope that there will not be any need for implementing these provisions for the reason of absence of terrorist acts, but in the current moment it is important to make the provisions of the OCT on the matter working, so the real support can be given.

12 Conclusion

As a result of implementation of the Council of Europe Convention on the Prevention of Terrorism Russian legislation was significantly changed. The core provisions of the Convention require the introduction of three offences which may possibly lead to the commitment of a terrorist act, namely public provocation to commit terrorist offences, recruitment and training for terrorism, as well as ancillary offences. Two of these offences existed in Russian Criminal code before the adoption of the Convention and the crime “public calls for exercising terrorist activities” was introduced to the Penal code after such adoption by law “On amendments”. The requirements of the Convention concerning penalties for the crimes are met by setting effective and proportionate punishment under the appropriate articles of the Criminal code. OCT establishes sanction against legal entities involved in the offences prohibited under the Convention. It also provides for the measures aimed at supporting the victims of terrorism. The government adopted several decrees and resolutions important for the implementation of the OCT on the latter.

The Convention requires the improvement of national policy regarding the prevention of terrorism. It resulted in replacing of the main federal law regulating legal relationships in the field of combating terrorism by a new one which meets the requirements of the Convention to a larger extent by including new principles of counteraction against terrorism, defining organizational bases of it and functions of the main participant in the counteraction. The laws “On Federal Secret Service”, “On police”, “On internal forces of the Ministry of internal affairs” were amended and now indicate the role of these entities in the fighting terrorism. In the decree “On measure to counter-terrorism” president established new organizational

bases for the fighting terrorism by creating National Anti-terrorist Committee and anti-terrorist commissions in the constituent entities of Russia.

OCT fully implemented the provisions of the Convention on protection, compensation and support for victims of terrorism, by thoroughly regulating the matter. It envisages such measures both for the victims of terrorist acts and persons suffered from such acts participating in the struggle against terrorism, as well as for the members of their families.

Thus, Russia implemented the core provisions of the Convention. But it is even more important that the factual implementation of the provisions shall be exercised with respect to democratic values, human rights and fundamental freedoms. The Supreme Court shall provide the authorities with the information on qualification of the crimes, corpus delicti of every crime with a view to prevent arbitrary interpretations of the newly adopted provisions and unlawful judgments afterwards.

Russia suffers from double standards in the implementation of its own legislation. The decisions of the courts are very often depend on the status of a person under the trial. There is a lack of objectivity in the work of the law-enforcement authorities. It has to be improved, but it is not an easy task. The Convention develops the work of the states on preventing terrorism both on the international level by inter alia improving the co-operation between them and on the domestic level by imposing the obligations on the States to make certain steps towards averting terrorist activities. In is a responsibility of the states then to implement the provisions of the Convention in accordance with high international standards of human rights and freedoms. So far, Russia implemented the provisions of the Convention, but has to enhance the precision and certainty of the domestic norms, as well as the harmonization of it.

As we could see some of the provisions of the Convention were implemented nominally. For instance, the requirement of the Convention to punish public provocation to commit terrorist offence was fulfilled only in the part of the inclusion of this offence into the Criminal code. The requirement on the corpus delicti of this offence, namely the intent to incite the commission of a terrorist offence was not met. Attempt to commit this crime which is not punishable under the Convention became punishable under the Criminal code. Russia shall eliminate all of the inconsistencies with the Convention for at least two reasons. Firstly, Russia undertook the obligations under the Convention and shall fulfill it. Secondly, accurate implementation of the Convention will contribute to the improvement of the status of human rights in Russia. Corpus delicti of the offences shall be clearly designated so it will not allow interpreting it arbitrary and slanting it towards a particular act.

References

Pitkevich v. Russia, the European Court of Human Rights, Strasbourg, 8 February 2001

Judgement of the Chamber on civil cases of the Supreme Court of Russian Federation

N 18-G07-1, Moscow, 6 February 2004

Judgement of the Chamber on civil cases of the Supreme Court of Russian Federation

N 60-G04-3, Moscow, 6 February 2004

Judgement of the Chamber on civil cases of the Supreme Court of Russian Federation

N 81-G04-4, Moscow, 28 May 2004

Decision of the Constitutional Court of Russian Federation N 523-O, 27 December 2005

Decision of the Constitutional Court of Russian Federation N 519-O, 1 December 2005

Decision of the Constitutional Court of Russian Federation N 8-P, 28 June 2007

The decree of the Plenum of The Supreme Court from 10 November 2003 N 5 "On the application by the courts of general jurisdiction of the universal principles and norms of international law and international treaties".

International Covenant on Civil and Political rights

Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocol N 11

The Council of Europe Convention on prevention of terrorism

The Constitution of Russian Federation

Penal code of Russian Federation

The Code on administrative delinquencies of Russian federation

Federal law "On fighting terrorism" of 25.07.1998 N 130-FZ

Federal law "On countering terrorism" of 6.03.2006 N 35-FZ

Federal law of 15.07.1995 N 101-FZ "On international instruments of Russian Federation" (adopted 16.06.1995)

Federal law of 27.07.2006 N 153-FZ "On amendments to certain legislative act of the Russian Federation connected with the adoption of the federal law on ratification of the Council of Europe on Prevention of Terrorism and of the Federal law on countering terrorism"

The federal law "On public associations" of 19.05.1995 N 82-FZ.

The federal law "On freedoms of conscience and on religious associations" of 26.09.1997 N 125-FZ.

Cassese, Antonio. International Law. 2nd edition. Oxford, (Oxford University Press) 2005

Cassese, Antonio. International Criminal Law. 2nd edition. Oxford, (Oxford University Press) 2008

Saul, Ben. Defining terrorism in international law. Oxford, (Oxford University Press) 2006

Than, Claire de and Shorts, Edwin. International Criminal Law and Human Rights. London, (Sweet and Maxwell) 2003

Russian year-book of international law 2006 Special Issue Social-commercial company "Russia-Neva" Sanct-Petersburg 2006