

INTERNATIONAL AND LEGAL IMPORTANCE OF THE LAW OF “JASTA”(The case of Iraq is a model)

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Abstract. In the article the authors analyze the scope of the American Law "on combating terrorism and providing justice to victims of terrorism and other purposes", its international legal, political and economic consequences in the context of International Relations. The authors conclude that the concept of functional immunity, according to which a foreign state enjoys immunity only when it performs sovereign functions (actions of *jure imperii*), if the state commits acts of a private nature (actions of *jure gestionis*), it does not enjoy immunity, continues its development in international relations. The adoption of legislative acts concerning jurisdiction of national courts of foreign States to foreign countries can lead to negative legal, political and economic consequences, but can also be a tool of political pressure and struggle. The compensation of victims of terrorism is in conformity with the purposes and purposes of the United Nations, since this compensation is intended to protect human rights and put an end to their violation, especially as human rights are one of the most important purposes of the United Nations, as stated in the second preambular paragraph of the United Nations Charter.

Key words: terrorism, jurisdiction, state immunity, JASTA, international law, international custom, Victims of terrorism, Compensation.

INTRODUCTION. For a long time, human society was subjected to one of the most dangerous threats of our time - the threat of terrorism. This problem has not lost its relevance today. Not a day goes by without the reports from the regional and world news agencies about the commission of new terrorist acts and the next attempts to spread terrorism in various parts of the world. Terrorism is a serious danger to the development of human civilization [1, P. 154]. The roots of terrorism go deep into history and originate in the middle of the 20th century. Today, terrorism has taken on a variety of forms and manifestations, and has become transnational in its nature. Terrorists use the most modern technologies and communications, and benefit from the development of weapons technology [2].

Despite numerous strenuous efforts to combat terrorism, the phenomenon of terrorism is still very ambiguous, which expands the range of political actions and consequences, and the problems and dilemmas caused by terrorism through the terrorist organizations and operations are on the top of political issues. At the same time, for legally correct qualification of terrorism and the development of adequate and effective ways to combat this socially dangerous phenomenon, in the context of international law, one should be guided by the definitions of "terrorism" and "terrorist activities" that are reflected in the international and regional agreements and treaties, as they reflect the view of the world community as a whole, and not of a separate state or any political entity. This requires the development of common, global ways of combating terrorism and religious extremism. It is particular in the light of covert and not always obvious forms of connection of some states with the terrorist organizations and extremist groups, which is often expressed in their material, technical or political support [3, P. 72, P. 4]. These acts of terrorism, as well as the political steps of individual states that entail criminal consequences of an international scale, should receive a proper legal assessment, and the persons whose participation in the relevant crimes has been proven in accordance with the procedure established by law should be subject to a proportionate punishment. And in this case we are talking not only about the responsibility of individuals as the potential subjects of a crime, but also about such subjects of international criminal law as the governments and whole states.

METHODS. During the study, the following methods were used: comparative legal, special legal, structural analysis method, synthesis method, method of comparative law, method of logical generalizations, etc.

RESULTS. An example of activating such practices in the modern international justice was the so-called US Law "On Countering Terrorism and Ensuring Justice for Victims of Terrorism and Other Purposes" (JASTA) [5], approved by both Houses of the Congress and entered into force on September 28, 2016, extending the jurisdiction of the US courts to the foreign countries suspected of organizing terrorist acts in the United States. The official name of this law is the Justice Against Sponsors of Terrorism Act, abbreviated as JASTA by the American method. It was submitted and approved by the House of Representatives and the Senate on September 23, 2016. The former US President (Barack Obama) used the veto power over the law, but the Congress responded with an objection and used its right against the presidential objections. The law was adopted on September 28, 2016. The provisions of this law are included in the legislation in order to have legal force, the purpose of which is to provide the widest possible range of civil lawsuits in accordance with the Constitution of the United States and to receive compensation from the individuals and legal entities of foreign countries that directly or indirectly provide substantial support to the persons or organizations carrying responsibility for terrorist activities against the United States. The first article of this law defines the name of the law as the Justice Against Sponsors of Terrorism Act. The second article of this law contains six clauses, the first clause indicates that the international terrorism has become a serious problem threatening the vital interests of the United States. The second clause indicates that the international terrorism negatively affects the domestic and foreign trade of the United States. The damage to foreign trade undermines the stability of the market and narrows the scale of movement of American citizens outside the country, as well as adversely affects the arrival of

foreign tourists in the United States. The third clause states that some foreign terrorist organizations are active through an individual or affiliated groups gathered in large numbers outside the United States and aimed at the United States. The fourth clause explains the need to identify objective reasons for providing assistance and the extent of legal liability for the acts calling for incitement and conspiracy, in accordance with clause 18 of Chapter 113B of the US Law. The fifth clause indicates that the individuals, organizations or countries that are directly or indirectly contributing to or participating in providing support or resources to the terrorist individuals or organizations represent a serious danger. When they commit terrorist acts that threaten the security of American citizens, national security, or foreign and economic policy, they can be brought before the US courts to answer questions about their actions.

In the sixth clause, the genuine interest of the United States of America is given to the individuals and legal entities affected by the terrorist acts committed in the United States in order to provide the judicial system and initiate civil suits against the individuals, organizations or countries, as well as directly supporting the persons or organizations liable for damage. Article 3 of the law reveals the responsibility of foreign states for the committed terrorist acts, considering that a foreign state will not apply immunity to the judicial authorities of the United States in any case. Financial compensation is required from a foreign country due to physical injuries to the individuals and property or as a result of deaths in the United States cause by: an international terrorist act, operation or action; a malicious action of a foreign state or any official, employee or agent of this state during his/her term of office, regardless of the place where the malicious action has occurred. In this article, an American citizen has received the right to file lawsuits against any foreign state. According to Article 4 of this law, the state is not exempt from legal responsibility, it is considered a legal amendment to the International Treaty on the Sovereign Immunity of Foreign States. Article 5 of the law concerns the suspension of proceedings in case of negotiations with the respondent government on the claim resolution. The US federal courts are granted exclusive jurisdiction in any actions. The law provides for a term of case consideration, not exceeding 180 days. The court extended the term of case suspension for another 180 days. The most important results of the law that has come into force are as follows:

1. Grant - gives the right to the families of victims of the terrorist attacks of September 11, 2001, in particular to the families of victims of terrorism in the United States in general, to sue against foreign countries in case of terrorist acts.

2. The law allows the US courts considering the cases involving claims against any foreign country or foreign official in case of injuries, murders or damage that have occurred in the United States as a result of a terrorist act committed anywhere in the state.

3. The opportunity to file civil claims against any foreign state or foreign official in case of injury, death or damage caused by any international terrorist act.

4. The law allows the federal courts "exercising personal jurisdiction and imposing liability on any person who performs the following actions: assists, instigates or attempts to commit any act of international terrorism against any US citizen".

5. A foreign country cannot enjoy immunity from the jurisdiction of the US courts in any matter requiring financial compensation from a foreign state as a result of human bodily and property damage, or murder that has occurred in the United States, resulting from an act of international terrorism in the United States;

6. and also as a result of a terrorist act of any foreign state, official, employee or agent of this foreign state during his/her term of office in the framework of his/her position or employment, regardless of the place of origin of such acts.

7. In order to maintain friendly international relations and prevent international tensions between the United States and other countries, the law authorizes the US Secretary of Foreign Affairs and the US law to grant the US courts the right to terminate proceedings in relation to a foreign country. It is possible, if the Foreign Secretary testifies that the United States shares good relations with a foreign respondent state in the process of resolving claims against a foreign state. The publication of a law of this kind at the national level provides the legal protection of the state, the security of strategic interests, and the constitutional and political security of the society. In this regard, we recommend the countries facing threats from terrorist criminal groups, or the countries affected by the scourge of criminal terrorist acts (Iraq), adopt the Justice Against Sponsors of Terrorism Act. It constitutes a real guarantee of peaceful coexistence and safety of citizens of these countries from the countries supporting terrorism.

DISCUSSION. The international legal basis of the responsibility of the states supporting terrorism is implemented through the fact that each state has its own territory, power and population. The state has obligations in relation to its citizens, and the rights and actions of individuals are legal in accordance with the laws of the state. The individuals are not punished for other actions not limited by the legal framework of the state. The state accepts responsibility for the unlawful behavior and activities of its citizens outside the country, as determined by the citizenship system. Repeated humanitarian crimes have focused not our attention on the sovereignty of the states, but on their responsibilities, both for their own citizens and for the international community, namely the responsibility to protect each state when it comes to massive human rights violations, such as genocide, ethnic cleansing etc. In light of the growing need for human security, some lawyers point to a declining role of the state. The state may be a source of a problem, but not a source of a solution. A state may play an effective role in protecting human rights, but sometimes it violates human rights. There seems to be a growing understanding that the international community should take responsibility for the protection of individuals, especially when the states are unable to do so. (6)

Human rights are no longer limited to the internal jurisdiction of the states where intervention is prohibited. Human rights issues are no longer limited to the constitutions and domestic legislation, but are governed by the international law and are controlled by the international organizations and courts. However, the states may hide behind their internal jurisdiction and argue that the human rights issues are an internal issue that does not allow intervention. (7). Thus, according to the report of the International Commission on Intervention and Sovereignty, the principle of protection responsibility corresponds to the idea of respecting the principle of sovereignty and protecting human society, and not justifying the violation of their rights. (8)

SUMMARY. The criterion of a person's citizenship, as a basis for legal consequences and establishing legal responsibility, is one of the main criteria and general principles adopted in THE domestic legislation at the national level and in THE international treaties at the international level. One of the most important legal consequences of the citizenship criterion is the responsibility of the state for the behavior of its citizens and their responsibility in the case of an act that violates national, regional or international security or causes a violation of legal regulations. It is regardless of whether this act is carried out in the territory of this state or outside it. Its citizens or persons having its citizenship, on the one hand, should take appropriate "precautions" and, on the other hand, pay fair compensation for the human and material damage caused to the affected countries. The ultimate goal of the United Nations, international resolutions and international judicial sentences is to achieve international peace and security. This requires the honest work of international will to seriously promote international cooperation in the fight against terrorism. It should be made by the state's monitoring of its citizens both within the country and outside its borders and the information exchange on the names of individual participants in the terrorist acts or persons suspected of committing terrorist operations. As well as by providing periodic reports on their countries, on travelers, on institutions involved in the fight against terrorism, monitoring the movement of assets and business activities, constant access to the web-sites and prevention of all ideas that encourage violence in all its forms and manifestations. All this will inevitably reduce the scourge of terrorism, otherwise the state bears legal responsibility in accordance with the nationality of a person who has committed the violence and the criminal act of terrorism. The violation of human rights is tantamount to infringement of all countries of the international community. (9)

CONCLUSION. The international judicial statements about the responsibility of the state for a citizen who has committed a criminal act of terrorism. It is known that the Lockerbie incident is a criminal case initiated on the basis of the fall of an American passenger plane that flew over Lockerbie in Scotland in 1988. After a three-year joint investigation, it was issued a warrant for the arrest of two Libyan citizens and the former Libyan leader Colonel Muammar Gaddafi, with an aim of transferring these men for trial in the Netherlands in 1999. As a result of lengthy negotiations and UN sanctions, a Libyan officer was sentenced to life imprisonment after being convicted. Gaddafi claimed responsibility for the Lockerbie bombing and paid compensation to the families of the victims, although he insisted that he did not order the attack. A compensation for the victims of terrorism is consistent with the goals and objectives of the United Nations, since it is designed to protect human rights and stop their violation, since the human rights are one of the most important goals of the United Nations, as indicated in the second preambular clause of the United Nations Charter. (10) Summing up, it should be noted that we are in front of the field of legislative vacuum at the international law level, which requires participation of the international community. We look forward to this global peaceful role of the UN - the need to speed up the filling of the field of legislative vacuum by the decision of the UN Security Council, the conclusion of a multilateral treaty, a regional or bilateral agreement designed to bind the countries supporting terrorism, whose citizens, on the one hand, commit acts of criminal terrorism outside its borders, deliberately or accidentally, without violating their international obligations. On the other hand, to ensure the implementation of the payment of financial compensation, commensurate with the scale of destruction and suffering caused by a terrorist act committed by a citizen of a state or a person having its citizenship, in the interests of the safety and protection of the citizens of another country.

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