

LIABILITY FOR DAMAGES CAUSED BY TERRORIST ACTS, PUBLIC DEMONSTRATIONS, OR MANIFESTATIONS IN THE REPUBLIC OF NORTH MACEDONIA

Betim Ameti

Faculty of Law, International Balkan University betimameti@hotmail.com

Abstract

The liability for damages caused by terrorist acts, public demonstrations, or manifestations in current construction *lat.de lege lata* doesn't satisfy the cornerstone legal standards of legal clarity, legal certainty, and legal efficiency. The first anomaly is the absence of at least a framework definition of constitutive notions of this type of liability such as terrorist acts on one hand and putting forward acts of violence which are an entirely different criminal offense, for which this tort law institute is not meant for. The second defect of this institute is the juxtaposition of the Law on Obligations and Law on Public Gatherings which stipulate two different solutions (location of liability) for the same situation i.e. damages caused due to public demonstrations or manifestations. And third, the long procedural deadlines prescribed with Litigation Act decrease the efficiency and thus the aim of this institute. During the research were used the analytical, normative, and comparative methods. However, the synthetic and historical method appeared as necessary. The deductive and inductive were only used to drop the conclusions and observations of the research. As an auxiliary we used the teleological, ontological, and other methods. After thorough and comprehensive research discovered that legislative intervention is necessary to overcome the abovementioned anomalies. The intervention we recommend to overcome the shortcomings of this institute is definition of the notion of terrorist acts, as actions that can cause damage, abrogation of the acts of violence as actions that may cause damage, abrogation/Revision of Article 7 of the Law on Public Gatherings, and an accelerated procedure for exercising compensation.

Keywords: Liability, damage, terrorist acts, public demonstrations, public manifestations

1. INTRODUCTION

The liability for damages caused by terrorist acts, public demonstrations, or manifestations is an institute of tort law, which provides an answer to the question of who is responsible for compensating the damage caused in the abovementioned situations. In cases where a terrorist act, public demonstration, or manifestation causes damage to natural person or legal entities, the state is responsible for the damage, even though it did not cause the damage. The idea behind this type of liability is based on different premise at the states which have incorporated this type of institute of tort law, but generally, two are the most dominate.

The first premise is that the state should be held accountable for failing to prevent such an event, and as a result of that shall repair the damage (Koch, 2006, p.6). The second premise derives from the principle of solidarity, hence the state undertakes to help the injured party by restoring the damage, in both cases, the state is the legal tortfeasor, once the state has restored the damage, then has the right to seek redress from the person who factually *lat.de facto* inflicted the damage (Mrvić - Petorvic, et. al., 2003). Many developed countries have incorporated this institute into their legislation (for example, Germany, France, Spain, Croatia, Serbia, Macedonia) regardless of the content differences from one another. The difference is a normal occurrence given the fact that their legal systems are an outcome of different cultures, traditions, and degree of economic development. However, it is important that all those legal systems in cases where damage is caused by terrorist acts, public demonstrations, or manifestations, the state is responsible for the caused damage. The institute of liability for damage caused by terrorist acts, public demonstrations, or manifestations in the Republic of North Macedonia (hereinafter: the RNM) is regulated by the Law on Obligations, (Official Gazette 161/2009) (hereinafter: LO) adopted in 2001. This institute, according to the form and content it has today, is slightly different from its predecessor from which it was taken over, and that is the Law on Obligations of the former Socialist Federal Republic of Yugoslavia (Official Gazette 29/1978) (hereinafter: SFRY). The subject of this paper will be the notion of this institute, the disadvantages that we think it has, and in the end, some suggestions will be proposed in light of solving these issues.

2. RESPONSIBILITY FOR THE DAMAGE INFLICTED WITH TERRORIST ACTS, PUBLIC DEMONSTRATIONS, OR MANIFESTATIONS IN THE REPUBLIC OF NORTH MACEDONIA: NOTION AND PROBLEMS

The liability for damage caused by terrorist acts, public demonstrations, or manifestations in the RNM is regulated in Article 166 of the LO under the title "*Responsibility due to terrorist acts, public demonstrations or manifestations*". According to Article 166 paragraph 1, the state, regardless of the existence of a fault, is always liable for "*damage caused by death, bodily injury or damage, i.e. destruction of the property of a natural or legal person, due to acts of violence or terror, as well as during public demonstrations or manifestations* " (Галев & Дабовиќ-Анастасовска, 2011). Hence, whenever damage is caused by acts of terror, acts of violence, as well as during public demonstrations or manifestations, the RNM will be responsible, regardless of who the actual tortfeasor is. However, this article does not regulate in any way what those acts of terror, acts of violence, public demonstrations or manifestations are (Ѓорђевиќ & Stankovič, 1986), which means that in a particular case, the court will have to consult the relevant laws, such

as The Criminal Code (Official Gazette 51/2011) to determine whether an act of terror or violence exist in a particular case. An additional aggravating circumstance is that for this existence of it the court usually decides in litigation, and not in criminal proceedings, which means that a civil procedure judge will have to interpret another matter (criminal) to bring a quality decision. Another problem is that although the title of Article 166 is "Responsibility for terrorist acts ...", the same at the very beginning of paragraph 1 of Article 166 mentions the acts of violence and thus further creates a legal confusion. This, because there is no logic the acts of violence to be mentioned before the acts of terror when the goal *lat. telos*, of the institute is to protect the citizens initially from acts of terror, and not from acts of violence, with are two different criminal offenses according to the Criminal code of RNM. The second issue which the incorporation of the acts of violence raises is that, if presumably, the lawmakers wanted acts of violence to be covered by the state than in long run it will be a huge burden for the state budget to cover the damage which arises from the abundance of cases due to acts of violence.

Public demonstrations and public demonstrations as actions that may cause damage are subject to further regulation in Article 166 of the LO. However, legal theory generally agrees with the notion of these actions (Чавдар & Чавдар, 2008, p. 346). Thus, public demonstrations can be defined as *"dissatisfaction expressed by a group of people against acts adopted by the authorities or other (public) institutions in the country or measures taken against acts or measures of foreign states and their bodies or organizations, or against acts and procedures of international organizations"* (Јлоза, 2000). While public manifestations mean *"support that is expressed to the acts and measures adopted by the authorities or other (public) institutions in the country, and the acts or measures of foreign countries and their bodies or organizations, as well as of acts and procedures of international organizations "*. There is another problem with public demonstrations and manifestations as forms of public expression of opinion and action, and that is the different responsibility that it is prescribed when damage is caused by these actions. On the one hand, LO prescribes the liability of the state, and on the other hand, the Law on Public Gatherings (Official Gazette 152/2015) (hereinafter: LPG) stipulates the liability of the organizer of these events. This way we have two laws that regulate the same thing in two different modes, and so the principle of legal certainty is seriously affected.

Last but not leas anomaly of this institute is that neither the LO nor the Law on Civil Procedure (Official Gazette 116/2010) (hereinafter: the LCP) stipulates an accelerated procedure in exercising the right to compensation, and the purpose of this institute is to compensate the injured party as soon as possible after such an unfortunate event.

3. THE LIABILITY FOR DAMAGE CAUSED BY TERRORIST ACTS, PUBLIC DEMONSTRATIONS, OR MANIFESTATIONS DE LEGE FERENDA

Once we have detected the problems of the institute, the liability for the damage caused by terrorist acts, public demonstrations, or manifestations, the next question is how to solve them. We consider that a legislative intervention in Article 166 of the LO is necessary to solve the above-mentioned problems.

The legislative intervention should address the following points:

3.1. Definition of the notion terrorist acts, as actions that can cause damage;

3.2. Abrogation of the acts of violence as actions that may cause damage;

3.3. Abrogation/Revision of Article 7 of the Law on Public Gatherings;

3.4. The process of exercising compensation should take place according to the rules of an accelerated procedure.

We consider that the above mentioned solutions (except for item 3.3) are better to be made by intervention within the LO instead of adopting a new special law (e.g. as in Croatia) for two essential reasons. First, the intervention itself encapsulates only one or two articles in the LO and the adoption of a new law would unnecessarily create confusion and difficulties for the average citizen and it will add extra legislative costs. Second, even if we disconnect this institute from the LO, it remains part of the "family" of tort law, and even in that special law, then there would be a need to refer to the provisions of the LO as general law *lat.lex generalis*, with this the legal efficiency will diminish.

We consider these changes to be carried out based on the analogy of liability for construction and liability of animals to whom LO dedicates an entire chapter within that section, while for the implementation of item 3.3, a legislative intervention should be undertaken in Article 7 of the LPG.

Definition of the notion terrorist acts, as actions that can cause damage

Defining of the notion terrorist acts is not an easy task, especially given the fact that here, firstly, it is a criminal matter and secondly, there is no consensus among the criminal theory on the definition itself. In such a situation, we believe that the aim in defining the terrorist acts in the LO should be twofold: first, to maximize the accuracy of the being of terrorist acts and second, to be in cohesion with the Criminal Code of the Republic of North Macedonia. We have such an example of defining terrorist acts in Croatia, where a special law (Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija, Official Gazette no.117/2003), has been passed that regulates this issue and we believe that the RNM should follow the definition method of it.

3.2. Abrogation of the acts of violence as actions that may cause damage

To avoid the possibility of inducing legal confusion and overburdening the state budget, we believe that acts of violence should be abrogated from Article 166. Such an approach has the Republic of

Montenegro (Zakon o obligacionim odnosima, Official Gazette, no. 47/2008) and Kosovo (Ligji per maredheniet e detyrimeve, Official Gazette, no. 04/L-077), they abrogated acts of violence from the LO, on we support the opinion that RNM should do the same.

Abrogation/Revision of Article 7 of the Law on Public Gatherings;

Article 7 of the LPG stipulates the liability of the organizer of public gatherings for the damage caused as a result of those gatherings. However, this way of regulation clashes with Article 166 of the LO, which locates the liability for the same situations at the state (RNM). This approach of regulation in practice can seriously create problems because two laws for the same matter prescribe two opposing solutions. This seriously jeopardizes the principle of legal certainty and therefore it is necessary to take urgent steps to resolve this legal conflict. We propose two alternatives, and that is the abolition of Article 7 of the LPG, and such will remain in force only the solution in the LO or amendment of Article 7 by referring/redirecting to the provisions of the LO.

The process of exercising compensation should take place according to the rules of accelerated procedure

The factor time is one of the fundamental values on the basis of which this institute is constructed. One of the aims of this institute is to compensate the victim as soon as possible and to normalize his/her life after such an unpleasant event. However, this aim would lose its meaning if the necessary procedure to be followed to acquire that redress takes a long time. Also, the procedure in the Republic of North Macedonia is quite inefficient and expensive, a similar procedure takes a minimum of 3-4 years to reach a first instance verdict only (Basic Court Tetovo, Verdict C. no. 416/04 and Basic Court Debar, Verdict C.no. 48/10). To solve this problem, we believe that the solution of the Croatian law should be followed, which means that within LO should be supplemented an article that will provide an accelerated (special) procedure for claims from damages caused by terrorist acts, public demonstrations or manifestations.

4. CONCLUSION

The liability for damage caused by terrorist acts, public demonstrations, or manifestations as it is regulated *lat.de lege lata* continues to abound in disorder, illogicality, and contradiction. The disorder is an outcome of a deficiency of definitions over the basic and crucial elements i.e. notions (acts of terror) of this institute. The illogicality refers to the emphasis of the secondary terms (acts of violence) over the primary ones (such as acts of terror, public demonstrations, or manifestations) for which this institute actually exists. The contradiction arises as a result of the clash between the provisions of the LO with the LPG in relation to the different locus of liability that they prescribe when the damage occurs as a result of public demonstrations or manifestations. We believe that legislative intervention is desired to resolve the above mentioned situation. That intervention should refer to defining the notion of terrorist acts as actions that could cause damage and thus improve this institute. Also, it requires the abrogation of acts of violence as actions that may cause damage because they are not in cohesion with the purpose *lat. telos*, due to which this institute exists. Abrogation/Revision of Article 7 of the Law on Public Gatherings is necessary and urgently to eliminate the contradiction that exists at the moment and to avoid possible legal uncertainty in the long run. The process of realization the compensation should be carried out according to the

rules of the accelerated procedure because otherwise the meaning of this institute will perish, and thus the damaged party should receive compensation as soon as possible to continue with the normal course of life in the community.

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