

ALGERIAN ANTI-TERRORISM LEGISLATION BETWEEN THE INEVITABILITY REPRESSION AND THE REQUIREMENTS OF CONSTITUTIONAL HUMAN RIGHTS



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Abstract:

This article considers that the Algerian penal legislator has used the Peace and Reconciliation Charter as civil legislation to enhance the preventive and repressive dimensions of the antiterrorism criminal law, which makes terrorism a source of expansion of the criminal law system. Even though, this situation is not compatible with the constitutional foundations of the national antiterrorism legislation, which reached a very critical level by assigning the «enemy» attribute to the accused suspects by their involvement in terrorist acts. The main interpretation here is that criminal law is the most powerful legal lethal weapon to fight against terrorist crimes. However, inquiry shows that this exceeds the criminal system's preventative competency.

On the contrary, given the gravity and brutality of terrorist acts, the penal response has often been exaggerated and inconsistent with the humanitarian dimension and the cultural, religious references of Algerian society and its constitutional doctrine. To address this issue, the Algerian legislator remedied the imbalance by including the general principles of the Charter for Peace and National Reconciliation as a parallel and complementary approach to the preventive and repressive role of criminal law.

Therefore, the Algerian legislator has invented a unique legal solution system in the domain of antiterrorism criminal laws, which consists of evaluating and setting the critical point of balance between the repressive and preventive proportions of the criminal antiterrorism law in harmonization with the constitutional foundations of human rights through the use of the Peace and Reconciliation Charter.

Key words: Repression; Criminal law; Constitution; Peace and Reconciliation Chart; Terrorist entities; Terrorist project; the repentant.

Introduction:

The current approach to national anti-terrorism legislation creates at least two legal normative concerns. First, there is criticism of how counter-terrorism policies frequently result in unjustifiable and unfair criminal legislation. In contrast, there are many worries that providing a wide range of rights to suspects accused of involvement in terrorist acts will unduly restrict and obstruct how law enforcement and judicial officials deal with the practical and legal challenges faced by terrorism.

In fact, the tension between these two concerns is neatly summarized by discussing that the competing interests of protecting human rights and freedoms against increasing the effectiveness of law enforcement and the judiciary in combating terrorism generate significant burdens and pressures that affect overall government policy regarding counter-terrorism, so the government response may fluctuate between abuses and flawed omissions.

On the one hand, there is a tendency to downplay the importance of terrorism and reduce it to just another criminal offense. This is done by ignoring or minimizing the links between terrorist crimes and political conflicts; as well as to avoid the use of specific harsh ways and means to deal with this issue that falls outside the framework of rational responses to crimes.

On the other hand, there are approaches that tend to exaggerate the dimensions of terrorist acts, justifying the disproportionate use of state power to control this violence. While terrorism constitutes a threat to democracy, freedom, and the enjoyment of human rights, as well as the benefits of economic and social development that emerge from the common constitutional tradition as fundamental principles of Algerian society, some conclude that nothing in the Constitution can be interpreted as aiming to limit or restrict fundamental rights or freedoms.

As the term “terrorism” has entered Algerian criminal law through the Penal Code and the Code of Criminal Procedure, under Legislative Decree № :92-03 of September 30, 1992, related to combating terrorism and sabotage, which used the repression tool as decisive and closed the window of tolerance.

This legislative decree was repealed, and its provisions were included within the Penal Code pursuant to Order 95-11 of February 25, 1995. The provisions were included in Section Four bis of Chapter One, relating to felonies and defleets against state security, under the title of crimes described as terrorist or

subversive acts. The provisions were also included within the Code of Criminal Procedures pursuant to Order 95-10 of February 25, 1995.

Amendments and completions will continue until the issuance of Order № 21-08 dated June 8, 2021, amending the Penal Code (amending Article 87 bis and adding Articles 87 bis 13 and 14), which is the law that followed widespread, systematic, and barbaric attacks against the Algerian people, state institutions, and the nation's capabilities since the beginning of the eighties.

Then, combating terrorism became a national priority, and its scope expanded later in 2001 to become an international priority, according to which efforts were combined, planned, and legislation was coordinated. Therefore, Algerian criminal law was adapted, including texts that guarantee confronting this phenomenon, so as to put an end to these actions and increase the effectiveness of counting them.

But how were terrorist crimes taken into account by the criminal law without conducting a critical assessment of the criminal legal fear of terrorism consequences on the legislator in light of the defined constitutional rights and freedoms? This paper aims simply to analyse the specific criminal legal normative standards applicable to terrorism, far from any declared state of emergency, and with respect to the constitution.

In fact, criminal law takes into account the specific nature of these crimes and their specific motives and essentially seeks to escalate repression, while criminal procedure allows for the establishment of a procedural system that severely deviates from ordinary law as a way to enhance the efficiency of investigation.

As a result, in this paper, we address the substantive confrontation of terrorism and the effect of extenuating circumstances and legal "pleas in law" on the punishment. In the second theme, we conclude by determining the extent to which national criminal standards are compatible with the constitutional determinants of human rights in confronting terrorism.

THE FIRST TOPIC:

Substantive confrontation of terrorism in Algerian legislation

There is no doubt that clarifying the approach of the Algerian penal legislator about criminalization and punishment through the main foundations of criminal law, which are the necessity and need for legislation, is a crucial issue, taking into consideration the other elements such as equality before the law and substantive and procedural legitimacy.

The Algerian legislator is considered among the most prominent in the world in developing an objective policy of ethical local origin. This policy is based on the support of the unique Algerian experience in confronting terrorism with its multiple dimensions, as well as the nature of the constitutional, legal, and cultural heritage prevailing in the entity of a tolerant society. The aim is to find appropriate formulas and compositions to stabilize the critical point of balance between security and freedom, and ensure its stability. The genius of Algerian society has emerged through the system of legislation that has established appropriate mechanisms for restoring balance in the event of circumstantial disruption, or the structural relationship between security and freedom in proportion to the nature of society and the extent to which rights and freedoms are entrenched in it.

These are the determinants that allowed the Algerian legislator to place the various forms of terrorist crime that can be committed within the scope of criminalization while imposing the prescribed punishment for them by following a strict and escalating punitive policy to suppress them.

1. Repression versus prevention in confronting terrorist threats

There is no doubt that terrorist crimes deserve deterrent harsh punishments due to their brutality and the serious damages and sabotage that usually occur when such crimes are committed. It is also logical to believe that the criminal law's response to terrorist crimes should be different from its reaction to ordinary crimes, given that terrorist crimes usually include an organized project whose dangers to individuals and properties increase as the capacity of the terrorist entity expands and increases in a sustained relationship.

Terrorist entities tend to cause collective harm against randomly selected victims only because of their presence at the moment when the crime is being carried out. As for the political dimension, it is inherent in terrorist activity and is absent in ordinary crimes. But the current response of Algerian criminal law to terrorism is largely disproportionate to the type of harm caused by terrorist crimes, even if we take into account the differences between terrorist crimes and common crimes.

Moreover, the criminal law's effective response to terrorism is full of unconstitutional provisions and rules that impose cruel and unusual punishments and unjustifiably criminalize acts that do not clearly cause identifiable harm. The criminal law also significantly and unjustifiably limits the due process rights of those accused of terrorism crimes and, therefore, advocates the features of the current approach to combating terrorism. According to this argument from its theorists, taking such extreme arrangements and measures is justified by the urgent necessity to prevent terrorist crimes in the future.

Therefore, to evaluate whether the adoption of such extreme laws is actually necessary to prevent terrorist crimes over time, the situation requires

studying the objectives of the approach followed by the legislator to encounter terrorist crimes. This is given that terrorism itself is an aggravating circumstance for setting punishment. The aim is to measure the permissibility and extent of the effect of mitigating facts on the punitive texts designated to suppress terrorist crimes. Additionally, it is necessary to examine whether the terrorist crime can be linked to its political dimension, as well as the impact of security measures and conditions of exemption from punishment. Finally, the evaluation should conclude with the issue of compensation for the victims of terrorist crimes.

The Algerian legislator followed a strict approach since the entry into force of Legislative Decree 92-03 of September 30, 1992 (Legislative Decree №: 92-03, 1992, p. 1817 & F). This approach was based on the necessity of activating the role of national legislation in criminalizing terrorism through the foundations of social defense against crimes and adapting the punishment as an act of internal sovereignty.

Over time, the development of national criminal law in the twenty-first century became closely linked to the way it is used to respond to terrorist crimes. The principal core for targeting the punishment process was applied according to the severity of the wrongful act, in order to enforce general and private deterrence, reform and rehabilitation, as this is the primary goal of terrorism punishment. This was expressed by many international agreements using different expressions, one of the most important being the text of Resolution 1373 of 2001 issued by the UN Security Council in its second paragraph (e), which requires ensuring that punishments duly reflect the gravity of terrorist acts.

Given that terrorist crimes have taken the form of international crimes, especially after the events of September 2001 in New York and the brutality of terrorist entities by committing crimes against humanity such as genocide, enslavement, and attacks on humanity, the international legislator is authorized to consider the appropriateness of penalties. The penalties should be determined by the gravity of the acts committed, as outlined within the statute of the international court competent to try terrorists who commit international terrorist crimes (UN Security Council Resolution №: 1664, of March 29, 2006) (Amal abd errahi othman, 1972, p. 265-268).

2. Terrorism as a Circumstance that Aggravates Punishment

Essentially, the presence or absence of certain circumstances does not affect the legal existence of the terrorist crime itself (Abir, G, Larson, 2006, p. 53 & F). However, the realization of these circumstances can increase or decrease the seriousness of the crime, which in turn requires increasing or reducing the criminal responsibility accordingly.

Terrorist crimes are complex, as they often involve a combination of several interconnected common crimes, such as premeditated murder, rape, arson,

deliberate sabotage, placement of explosives in public places, smuggling, robbery, drug trafficking, kidnapping, and detention. The political dimension and motivation behind the commission of these acts carry grave dangers, as evidenced by the evolving means and goals of terrorist organizations (Mohammed S. Aldeen wattad, 2006, p. 1017-1030). Additionally, the nature of the interests attacked and the deep-rooted terrorist intention to undermine the foundations of the state contribute to the seriousness of these crimes.

The circumstances surrounding the crime, its context, and the extent of its connection to the intended purpose of the act are the key factors that distinguish the gravity of a terrorist crime. Terrorist crimes generate a sense of terror and dismay that is more serious than the consequences of ordinary crimes. Additionally, terrorist acts often impact a larger segment of victims compared to the more limited parties affected by other types of crimes. Furthermore, the sheer magnitude of the damages resulting from terrorist activities is also a significant factor. Consequently, terrorism is punished with more severe sentences, not simply because it is a crime, but because it is a more serious offense than others. This is why it has been rightly asserted that terrorism is not just a single crime, but rather a complex combination of various criminal acts.

The Algerian Penal Code considers terrorism an aggravating circumstance in certain crimes. It is important to note that the aggravating circumstance is merely a modifier that affects the severity of the punishment, without altering the essence of the crime itself. Specifically, Article (87 bis 2) stipulates that for all acts not falling under the categories provided for in Article (87 bis) above, the penalty incurred is doubled from the punishment prescribed in the Penal Code or other specific texts, even when these acts are linked to terrorism and subversion.

Furthermore, Article (87 bis 1) of the Penal Code states that the penalties imposed on the perpetrator of terrorist acts are increased to the death penalty when the original prescribed punishment is life imprisonment. Similarly, the punishment becomes life imprisonment when the original penalty stipulated in the law is temporary imprisonment ranging from 10 to 20 years. From this, it can be observed that the Algerian penal legislator has adopted a policy of increasing the punishment for the list of specified crimes if terrorism was one of the methods used to achieve or implement the purposes of the terrorist project.

It must be taken into account that the mere association of actions with terrorism is considered an activity that confers the characteristic of terrorism to these crimes, even if the connection is accidental. This occurs when the terrorist intent is present in the same context. Terrorism is a form of serious violence that includes the use or threat of lethal force. The perpetrator resorts to such violence within the framework of the objectives of the terrorist project. Consequently, there is nothing that legally prevents the failure to use the terrorist method from leading

to the failure to carry out the criminal behavior required for the crime of terrorism. In such cases, the available crime may carry a lighter legal description.

Regarding aggravating circumstances, they affect the severity of punishment without altering the description of the crime itself. In the case of terrorist crimes, the means used are integrated into the criminal behavior in a way that leads to the crime being classified under the description of terrorism, as long as the required criminal intent is present (Sayed Hassen El beghal, 1982, p. 13).

The occurrence of a terrorist crime, which is what the Algerian legislator expressed in the text of Article (44) of the Penal Code, refers to the objective circumstances related to the crime that lead to aggravation or reduction of the penalty imposed on whoever contributed to it, depending on whether the contributor to the crime knew or did not know of these circumstances. Hence, the impact of the criminal consequence of terrorist crimes is considered an aggravating circumstance coupled with the seriousness of the effects, which is clear from the tightening of the penalty for possession of explosive materials.

Likewise, the character of the perpetrator in the crime of heading or establishing a terrorist organization is considered an aggravating circumstance, as compared to the crime of joining or engaging with such an organization. The legislator has imposed harsher penalties depending on the character of the victim. For example, if the offense is committed against a judge, employee, commander, or public officer while they are performing their official duties or on the occasion of it, and the matter is related to a terrorist purpose, this is also considered an aggravating circumstance.

The legislator has also increased the penalty for enabling an imprisoned terrorist to escape, such as by offering them a weapon or bribing their guards. This is considered an aggravating circumstance related to the terrorist purpose, leading to an increase in the penalty. Additionally, the legislator has stipulated that activities or involvement with a terrorist entity abroad, whose actions aim to harm the interests of Algeria, is also grounds for an increased penalty.

THE SECOND TOPIC:

The effect of the extenuating circumstances and legal pleas in law on the punishment

These are cases in which the penal legislator grants the judge the discretion to impose a punishment below the stipulated minimum, if the circumstances of the case deem it necessary to do so (Hassanine Ibrahim Saleh Abid, 1970, p. 216 & F). In such a case, the total exemption from punishment stipulated in Article (39) of the penal code cannot be implemented, for the simple reason that the crime has

occurred, and its consequences have been achieved. However, the offender may still benefit from a reduction or decrease in the amount of the penalty.

So Article (87 bis 8) From the Penal Code stipulates that: «In all cases, the long term prison sentences imposed pursuant to this order may not be less than:

- 20 years of term imprisonment, when the sentence imposes dis perpetual imprisonment.

- Half, when the sentence pronounced is long term imprisonment.

The penalty is also reduced by one degree for anyone who reports to the administrative or judicial authorities a felony or adelic against state security after the completion of its implementation or its initiation, but before the start of the prosecutions. The perpetrator benefit also of reducing by one degree the penalty if he was able to arrest the other perpetrators or accomplices in the same crime or in other crimes of the same type and the same danger, after the start of the prosecution, in accordance with what was stipulated in Article (92) of the Penal Code.

The penal legislator had previously enacted Article 40 of Legislative Decree 92-03, which relates to combating terrorism and sabotage. This article stipulates that if the individuals belonging to a terrorist organization cause the death of victims or permanently incapacitate them, they will be sentenced to 15 to 20 years of imprisonment, provided that the prescribed penalty is not death. Furthermore, the article grants leniency to those who notify the authorities of their departure from the terrorist organization and cease all related activities within two months of the decree's issuance. A similar provision was included in Article 4 of Order 95-12, which outlines mercy measures. This article repeated the same extenuating measures mentioned in Article 40 of Decree 92-03. Additionally, Law 99-08 relating to the restoration of civil harmony also included a mechanism to extenuate penalties and place suspects on deferral, as outlined in Chapter Four, particularly Article 27.

Order 06-01, regarding the implementation of the Charter for Peace and National Reconciliation, included articles 12 to 20, which outlined the methods for replacing and reducing sanctions. Through this order, the Algerian legislator has established extenuating conditions in accordance with the evolving approach to addressing the crime of terrorism. Initially, the approach was characterized by harsh extremism, combined with military and security solutions. However, the legislator later shifted towards more conciliatory policies, extending a hand to those who still had a path to reintegrate into society.

1. Exemption from punishment

These are the excuses that exempt convicted individuals from punishment and relate exclusively to cases specified by the legislator and result in preventing

the application of the penalty despite the commission of the crime and the establishment of responsibility for it (Ahcen bouskiaa, 2002, p. 278). So as for Article (91) of the Penal Code which stipulates that relatives or in-laws up to the third degree are exempted from punishment, every person who knows of the existence of plans or acts to commit crimes of treason, espionage, or other activities that are of a nature to harm national defense and were not reported to the military, administrative, or judicial authorities immediately upon becoming aware of them.

Article (92) of the Penal Code stipulates also that anyone who informs the authorities of a felony or delict against the security of the state is exempted before starting or initiating its implementation.

For example: Resolve and determination of a terrorist entity to detonate a bomb in a public place, but the partner who provided the bomb to this group changed his mind, so he notified law enforcement officers and provided them with information that helped identify the rest of the group members and arrest them.

Order 06-01 regarding the implementation of the **Charter of Peace and Reconciliation** through the **expiration of the public law suit exempted** six (6) categories of beneficiaries, namely:

- Persons who surrendered themselves to the authorities during a specific period (January 13, 2000 and the date of publication of the order).

- Every person who voluntarily appears before the authorities and ceases committing the terrorist crimes specified in the Penal Code within a period of six (6) months.

- People under investigation, inside or outside the country, who were not involved in mass massacres and surrendered themselves to the authorities within the same deadlines.

- Persons who have put an end to the activities of praising, encouraging, or financing, promoting and publishing and declared this before the competent authorities within a maximum period of six months starting from the date of publication of the matter.

- Persons sentenced in absentia who are not involved in mass massacres.

- People who are imprisoned and not yet sentenced.

This is in accordance with the provisions of Articles (4), (5), (6), (7), (8) and (9) of Order 06-01 mentioned above.

It follows that cases of exemption in the terrorist matter emerge through the exemption resulting from kinship, as well as the exemption resulting from the law in the event of the cessation of the public lawsuit out of a desire to push and encourage terrorists to return to the right path and not continue committing the crime. Exemption is also achieved as a result of uncovering the perpetrators.

It should also be noted that the legislator is required, in the future, to incorporate the reasons for exemption into the text of Article (92). This exemption should not be contingent solely on the perpetrator's separation from the terrorist group, but also on their positive cooperation. Specifically, the provision of such cooperation could take the form of the terrorist informing the authorities, regardless of whether they were recruited as an agent or acted of their own free will. It would be sufficient for the terrorist to provide information to the public authorities that would lead to the arrest of all or part of the perpetrators, especially their leaders.

In both cases, the repentant informant must benefit from the prescribed exemption. If we require the arrest of all the perpetrators or partners as a condition for the exemption, we would be narrowing its scope. This is especially relevant when considering the enormous risks to which the repentant person may be exposed. Additionally, in order to apply both cases of exemption, it is necessary to add the condition of ensuring the credibility of the information provided by the informant. This should be considered as a prerequisite for the informant to benefit from the exemption.

2. Compensation for victims of terrorist crimes

The Algerian legislator is considered an international leader in establishing a comprehensive reparation system for compensating victims of terrorism. This makes Algeria a global reference model to be followed for redressing the harm suffered by victims of terrorism. The Algerian system is distinguished by the state's role in supplementing the capabilities of the terrorist entity in compensating the victims. This approach was necessary due to the practical impossibility of relying solely on the system of requesting compensation before civil or criminal courts. To address this, the Algerian legislator has established a dedicated fund with a special account to compensate victims of terrorism. Additionally, a legal framework has been put in place to specify the methods and limits of such compensation.

The victim is the person who has suffered physical, emotional, property, economic, or financial harm as a result of the commission of any crime within the jurisdiction of the court (Adel Mohamed El Feki, 1984, p. 21). Regarding terrorist crimes, it is notable that they often lack a personal element due to the lack of a direct connection between the terrorist offender and their victim or victims. Victims of terrorism are frequently chosen according to statistics corresponding to an unrelated, random, and unselective factor. As a result, they may come from different segments of society, age groups, races, ethnicities, and religions.

The damage caused by terrorist acts extends beyond individual victims, affecting both public and private property and facilities (Ahmed Abd El Adim Mostafa El Masri, 2003, pp. 148-F). The terrorist entity may also specifically target certain types of victims, such as politicians, financiers, businessmen, societal

leaders, and celebrities who oppose its ideology. This is often done in search of symbolism, publicity, and propaganda. Ultimately, the main purpose of terrorism is to spread terror and panic, and hence the psychological impact of terrorist behavior is the primary goal, rather than the specific victims themselves (Rebab Antar Essyed Ibrahim, 2002, p. 60).

As for the state's obligation to compensate victims of terrorist crimes, it stems from its responsibility to ensure security throughout the territory and achieve it equally among citizens in accordance with the constitutional principle of equality between individuals. In that logic the magnitude of the damages and losses resulting from the terrorist crime cannot be borne by the terrorist entity or its members despite the consequence of their criminal responsibility (Ahmed abd elatif el faki, 2003, p. 64 & F), despite the fact that the financial burdens incurred by the state to pay for the benefit of the victims or those who have rights are huge, extend over time, have multiple beneficiaries, and are inevitably deducted from the state budget.

In the same context, the Algerian legislator has issued several decrees to provide compensation and reintegration for victims of terrorism. Firstly, the Algerian government issued Executive Decree No. 99-47 of February 13, 1999. This decree relates to granting compensation for the benefit of natural persons who have suffered physical or property damages as a result of terrorist acts or incidents that occurred within the framework of combating terrorism. The compensation is also extended to the rights holders of these victims. Secondly, the Algerian President issued Decree No. 06-124 of March 27, 2006. This decree determines the modalities for the reintegration or compensation of persons who were subject to administrative procedures for dismissal from work due to actions related to the national tragedy.

The legislator also issued the Presidential decree № :06-94 of February 28, 2006, related to state aid for families afflicted by the involvement of one of their relatives in terrorism. In addition, a distinct Presidential decree № :06-93 of February 28, 2006 was issued granting compensation for the victims of the national tragedy (the category of missing persons). The compensation also included the category of women victims of sexual terrorist attacks (rape) through the insuance of the Executive decree № :14-26 of February 1, 2014, supplementing the Executive decree №:99-47, related to a collective compensation mechanisms within the framework of a guarantee funds in the form of an open account called the "Terrorism Victims Compensation Fund", where the Minister of the Interior is the main disbursement orderer (disburser) and the willayas (province) governors act as a secondary disbursement orderers according to the provision of Article 102 of the Decree 99 -47.

The Algerian legislator took early steps to address the consequences of damages caused by terrorist crimes. Parallel to the issuance of Legislative Decree

No. 92-03 of September 30, 1992, related to combating terrorism and sabotage, the legislator included Article 145 in the Finance Law of 1993. This article was issued pursuant to Legislative Decree No. 93-01 of January 19, 1993. The legislator then designated Article 145 through a special Executive Decree No. 93-181 of July 27, 1993. Subsequently, a joint ministerial instruction was issued on May 31, 1997, specifying the conditions and modalities for allocating the monthly pension under the title "Compensation for physical damages resulting from a terrorist act or an accident that occurred within the framework of combating terrorism." Furthermore, the Prime Minister issued Instruction No. 1 dated October 28, 2017, regarding the difficulties faced by the category of victims of terrorism.

In the context of criminal trials of terrorists, it is noteworthy that most of these trials are conducted without the presence or establishment of civil parties. These trials are carried out based on the principle of the Algerian state versus the terrorist offender, identified by their identity. The compensation funds, in an administrative manner, are responsible for compensating the victims of terrorism. However, the victims cannot be established as parties in the judiciary, in accordance with the principle of the impossibility of combining two compensations at the same time, as stipulated under Article 38 of Order 06-01. This order includes the implementation of the Peace and Reconciliation Charter, which establishes the civil responsibility of the state.

These legal texts represent a qualitative leap in addressing the dimensions of the terrorist crime and its widespread effects within society. They also aim to absorb the embers of the crime itself by curbing the incentives for revenge against terrorists and their families. This is particularly important given the serious danger and the dangerous increase in the number of terrorist crimes. Furthermore, the compensation systems that existed prior to 1993 were inadequate in adapting to the special type of terrorism risks. However, the limits of compensation remain concerning property damage and economic damage to companies and institutions, as the nature of these types of damages does not allow for fair compensation.

Conclusion:

The criminalization of terrorist crimes raises a number of fundamental issues within the framework of national domestic law and the legislator's obligations to guarantee and protect human rights and freedoms. As we have seen, the first issue relates to the extent of enforcing the principle of legality, which states "no punishment without law," and the associated requirement of legal certainty. The second fundamental issue concerns how to ensure that terrorists do not enjoy impunity, while also guaranteeing the non-violation of basic rights and freedoms, especially civil and political freedoms, in the context of the criminalization and prosecution of terrorism-related crimes.

The last issue relates to the state's responsibility for its failure to fulfil its national and international obligations. While the state has a duty to preserve,

restore, and secure public order in society, this involves detecting and preventing terrorist plots, as well as arresting and interrogating those suspected of committing terrorist attacks.

However, even in the face of the objective need to protect and restore public order, the authorities must have a set of options for means that are compatible with the changing nature of the terrorist crime. To achieve these goals, some means may be easier to implement and more effective in reaching the desired outcome. In this context, the cost-benefit equation can come into play in the decision-making of the authorities.

Nevertheless, it is necessary that the means be chosen in a way that does not violate the basic human rights of individuals, so that society's existential imperative to contain terrorism by effective means cannot be above the law, as it would be contrary to the basic concept of the rule of law to justify denying human rights. Even in the name of maintaining the rule of law in society, in a tense situation, achieving the right balance between the legitimate necessity of protecting society as a human group and the necessity of protecting the members of this society may not always be simple.

Indeed, the choice of loading the criminal law alone with the burden of confronting terrorist crimes has been a complete failure; even it helped to relieve the headache but did not cure the disease, and the proof for this is the more than 10 years of intense judicial, military, and security war against terrorism. But with the adoption of the Charter for Peace and Reconciliation in 2006, the course of events has changed to a long path of stability and security, which contribute to the development of the country and improve the living conditions of citizens.

The conclusion we can reach is that there are always options available to respond to a society's existential needs without unreasonably infringing on the basic human rights of its members. These options do not necessarily have to be established through repressive means. Unless there is absolutely no other way to ensure the survival of state institutions other than curtailing the civil liberties of the society's members, resorting to extreme measures that violate basic human rights under the pretext of security is a flawed, risky, and ultimately useless approach, even from a legislative standpoint.

From the perspective of the rule of law, it is crucial that any such measures be subject to judicial review. Ultimately, the final judgment on these matters should rest with the society itself, as the people are sovereign and choose the institutions that serve their aspirations. As Benjamin Franklin famously said, "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."

The importance of a legislative approach to confronting the crime of terrorism, with criminal law serving as the primary instrument, stems essentially

from society's collective will to preserve the social contract and the rule of law. This creates a framework for the legitimate application of criminal law in addressing terrorist crimes. Furthermore, society can go beyond merely reacting to terrorism and actively develop appropriate legislative solutions that draw from cultural, social, and religious sources. This proactive approach allows society to shape the necessary legal tools to combat terrorism, rather than simply relying on the existing criminal justice system.

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