

A complete study and review of criminal laws to control terrorist crimes

Javad Zarei ^{*1}, Parastoo Ghasemi Saei ²

1- Master of Criminal Law and Criminology, Islamic Azad University, Tabriz Branch, East Azarbaijan Province, Iran,

2- Master of Criminal Law and Criminology, Islamic Azad University, Tabriz Branch, East Azarbaijan Province, Iran,

Abstract

Considering the increasing danger of terrorist acts and its significant expansion, many legal measures have been devised in both international and domestic dimensions to deal with these crimes. Several international conventions have criminalized terrorist crimes and emphasized the need for countries to pay serious attention to the trial and punishment of the perpetrators of such crimes. In addition, in a preventive measure, the financing of terrorism as an independent crime or as a so-called crime hindering criminalization and the countries have been asked to take the necessary measures to try and punish the criminals and have the necessary cooperation in addition to criminalizing it in the domestic laws. Terrorist crimes have received special attention due to the disastrous results and fundamental violations of human rights, and in this regard, under the pretext of maintaining security and fighting against these crimes, the civil rights of those accused of these crimes are not considered in the proceedings, especially in the investigation phase. Today, if a person is accused of terrorism, he is deprived of many of his rights. The criminal procedure does not seek to guarantee classic criminal justice in these crimes as before. Adherence to principles in its classical sense has no place in modern readings of criminal justice. The ineffectiveness of punishment-oriented approaches after the occurrence of terrorist attacks in preventing this criminal phenomenon has led to the expansion of new strategies to control terrorism through pre-emptive mechanisms and the adoption of preventive measures before the occurrence of terrorist crimes. The current article tries to answer the question "in order to prevent the harmful risks of terrorism in the stage before committing terrorist crimes, what precautionary measures are foreseen in the legal systems?" to answer The findings of this research show that today, forward-looking approaches to curb terrorism have found a special place in legal systems and legislative systems have adopted a forward-looking approach to this dangerous phenomenon by adopting mechanisms before the occurrence of terrorist threats. The most important forward-looking strategies in the control of terrorism are ownership limitation, financial transparency and prevention of terrorism financing, communication, educational and employment restrictions, residence and surveillance requirements, travel control and inspection of places. The guarantee of implementation of preventive measures in the face of terrorism includes executive measures, control and arrest orders.

Key words: Prevention, Terrorism Management, Control, Terrorist crimes.

Introduction

Today, organized terrorist crimes, while spreading violence and threatening security, have overshadowed many economic, political and social dimensions of human societies. Terrorism in the current millennium not only leads to killing and spreading terror, but its new dimensions have also attacked the great culture of the nations and the religious and cultural beliefs of these nations.

Therefore, in recent decades, terrorist threats have been raised in the form of an organized and comprehensive crime and have introduced new legal structures into the literature of fighting terrorism. These new strategies have created deep and new changes in legal concepts, tools to deal with terrorism and even the response time to terrorist threats.

After the attacks of September 11, 2001, governments considered terrorist actions as war and considered the right of legitimate defense. Thus, the terrorist events of September 11, while expanding the doctrine of pre-emptive defense or "preemptive deterrence" (Kegley Jr & Raymond, 2005: 43),

They left a significant impact in changing the approaches of facing terrorism in the legal systems and presented the criminal preventive approach with more speed.

Therefore, along with coercive tools and criminal responses to terrorism, which are often focused on the time after committing terrorist attacks, emerging measures to contain terrorism were noticed, which targeted the time before terrorist crimes were committed, in order to Prevent terrorist attacks and neutralize possible threats and damages in the initial stages.

"Preemption" is defined in "Merriam Webster's Academic Dictionary" as preventing from happening, preventing from happening and stopping (Bunn, 2003: 1). "Oxford Glossary" defines the term preemption as to prevent or overtake something. In this strategy, "prevention" means attack prevention as the main goal (Odhiambo & Others, 2012: 28).

This strategy considers government interventions necessary before the threat occurs; That is, a change in the emphasis of the government from a reactive and punitive mode that intervenes after the damage, to a preventive mode in which the government seeks to intervene before the damage (Tulich, 2012: 53).

Some researchers such as "Gibbs van Broncht and Kennedy" call this new paradigm "a general form of prevention against all possibilities". Basically, the said paradigm is based on pre-emption and uncertainty, which allows forced and coercive limitations based on what is predicted to happen in the future (Donkin, 2011: 39). Many researchers believe that the proactive strategy will have more social benefits through the protection of potential goals and objectives compared to other approaches (Arce M & Sandeler, 2005: 184).

Also, today "prevention policy" has become a legal duty for the public sector and new prevention-oriented strategies have been proposed to achieve national security (Qurashi, 2018: 1). In this passage, "preventive methods and practices" include coercive measures imposed by the government on people suspected of terrorist threats (Boyce, 2015: 345). Under this model, it is permissible and legal to take any punitive and coercive mechanism before the emergence of any terrorist act, even if there is uncertainty or imminent danger.

In the aforementioned approach, "logic of prevention" takes priority over other considerations, including the need for reliable documents (Bronitt, 2008: 78). In fact, regarding terrorist crimes, due to the priority of national security interests, preventive measures are sometimes contradictory to the basic legal principles such as the principle of acquittal (Foroghi et al., 2015: 109).

Therefore, by taking preventive measures against suspected people, limiting the involvement of individuals in activities related to terrorism has a legal aspect, and thus the necessity of pre-empting dangerous and suspicious targets is manifested. Therefore, the new approaches have two basic pillars "preemption and prevention" and the author has used the term preventive approach in terrorism control to include all preemptive measures and preventive measures in curbing terrorism.

Considering the effects of terrorist attacks, immediate and less urgent threats that are used to justify pre-emptive and preventive defense based on international law are placed in a similar situation for action. Therefore, it is possible that an action that is interpreted as a preventive measure is considered in advance measures. In this article, the interpretation of preventive action in the description of preemptive and preventive measures is evaluated as a suitable description.

The preventive paradigm is formed by insisting on the approach that the criminal justice system, which began its mission after the occurrence of terrorist attacks and damages and applies criminal responses and punishment to the perpetrators of these attacks, even if they are identified and arrested, has the necessary efficiency. To control and curb terrorism, it needs new approaches that include the steps before committing terrorist crimes with a forward-looking approach.

In this way, in order to protect people from the risk of terrorism and to prevent or limit the participation of people in terrorism-related activities, restrictive mechanisms are imposed on terrorist suspects that have a proactive or forward-looking approach and monitor the stages before terrorist attacks occur. Despite such changes in the approaches of terrorism control, not much attention has been paid to these new approaches in the country's legal literature, and the search for such new measures has been severely neglected in the literature of fighting domestic terrorism. This is despite the fact that our country has been the target of terrorist attacks many times and has suffered irreparable damage as a result of hostile terrorist actions.

Looking at the legal system of the country, it becomes clear that the current system of criminal law has adopted a traditional and reaction-oriented approach to the phenomenon of terrorism, and most of the laws are focused on the time after committing terrorist crimes, and the new paradigm of facing terrorism and preventive measures before the attacks occur. Terrorists do not have much place in this legal system. Therefore, the convergence of research literature and domestic criminal policy with new terrorism control strategies that emphasize the stages before the actualization of terrorist threats seems necessary.

Thus, the basic question of this article is, "In order to control terrorist actions in the stage before terrorist threats occur, what precautionary measures are foreseen in the legal systems?"

Therefore, the purpose of this research is to examine the future-oriented mechanisms in the field of activism in the stage before the commission of terrorist crimes and to identify the legal provisions in the context of the legal systems with an emphasis on the laws of England, Australia and the United States. .

In addition, in the article, we will examine the issue of what is the position of coercive and restrictive anti-terrorism measures in Iran's legislative system, and can the reflection of these measures be found in Iran's relevant laws? Undoubtedly, considering the gap of studies in the field of preventive measures in the control of terrorism, conducting such research can open new horizons in the field of legal studies in front of the researchers.

1. Preventive measures to control terrorism

Today, terrorism confronts countries with serious threats that are very different from the risks caused by traditional wars. Therefore, changing laws and new concepts have been proposed in the literature of fighting terrorism (Hunter, 2010: 36).

In this way, new strategies have been established to curb terrorism in legal systems, which have adopted a forward-looking approach to this dangerous phenomenon by identifying and providing measures before terrorist crimes occur. These measures are taken based on criteria such as "reasonable suspicion criteria and reasonable belief criteria" (Anderson, 2012: 63) that a person has been involved in terrorism-related activities.

The most important predictive strategies in the control of terrorism can be examined under financial, communication and information measures as well as supervision:

1-1. Financial measures

These measures basically take place in the two domains of financial transparency and ownership limitation.

A- Financial transparency and preventing the financing of terrorism:

After the incident of September 11, 2001, the international community considered the control of the financial resources of terrorism as a combined and preventive strategy. In this approach, governments use an effective tool to deal with terrorism by identifying the source of terrorists' financial income and by destroying or limiting their financial resources (Shams Natri and Eslami, 2014: 285).

In this regard, the "Group of Eight" consisting of the United States, Canada, France, Germany, Italy, Japan, Russia, and the United Kingdom, approved a series of changes in the laws, including to information centers, security and protection allowed to monitor the suspicious efforts that disrupt the security of the country. These centers were also allowed to collect any information about the accounts and their holders who are suspected of extremist actions (Najirad, 2018: 439).

In the legal system of Germany, actions against the financing of terrorism and disconnection of terrorist networks have been described as elements of the fight against terrorism (Donkin, 2011: 191). Also in France, the criminalization of "gathering to finance terrorists" allows people who travel abroad for terrorist training and those suspected of supporting terrorists to be arrested by the police and tried in court after a maximum of six days. Anderson, 2012: 20).

On August 27, 2006, the first control order in Australia was issued against a person named "Jack Thomas" by the High Court of Canberra, the capital of Australia. After examining the evidence, the court stated that Thomas had received help from a terrorist group and the issuance of a control order would significantly help prevent a terrorist campaign (Donkin, 2011: 112).

In Sweden, laws were amended on August 1, 2015 to deal with the financing of terrorism and money laundering. The obligation to provide information related to financial and non-financial actors in the Swedish Anti-Money Laundering Act provides the possibility of collecting and accessing this type of information for the Police Financial Intelligence Unit, which is responsible for receiving reports of suspicious transactions (Lofven & Ygeman, 2015: 18).

In Spain, banks are required to identify their internal procedures to combat money laundering, such as customer identification and reporting procedures. These executive policies are reviewed every year by a specialist from outside the organization. The specialist must prepare a complete report for the Spanish Financial Intelligence Unit. This report is available for six years (Laurent Chetin and others, 1392: 83).

In Iran's legal system, a series of measures have been taken in the direction of financial transparency and countering the financing of terrorism. According to some researchers, "Iran's executive criminal policy regarding money laundering and terrorist financing is much more advanced than the legal and judicial criminal policy" (Abdolahi and Karamati Moez, 2017: 110).

In this context, we can refer to Article 14 of the Law on Combating the Financing of Terrorism. According to this article, "all the persons subject to the Anti-Money Laundering Law are required to send the report of operations suspected of financing terrorism to the Supreme Anti-Money Laundering Council". Also, requiring individuals, institutions and organizations to report suspicious transactions and operations to the competent authority determined by the Supreme Anti-Money Laundering Council, as specified in Article 7 of the Anti-Money Laundering Law approved in 1386, is a measure in the direction of financial transparency. The nature of these financial and banking arrangements is preliminary and they can be applied only on suspicion.

B- Limitation and deprivation of ownership:

Part of the preventive mechanisms in the control of terrorism is related to ownership restrictions on property and financial services. The United Kingdom Terrorism Prevention and Investigation Act has taken some restrictions under the title of "Property Actions" against the suspects of terrorist crimes. These limitations include:

- a) restrictions on the person in relation to the transfer of ownership of property or the obligation not to transfer money or property to a person or place outside England;
- b) Undertaking to narrate information and details related to property;
- c) Obligation to comply with specific conditions regarding the use of financial services; d) Obligation not to have or control money or financial balance with a specified amount (TPIM Act, 2011, S1: 5-6).

Also, in the criminal law of Australia, the limitation or prohibition of the ownership or use of certain goods and materials is established (Criminal Code, 1995: 104). It is obvious that the above financial and banking restrictions can be applied for the purpose of ensuring public security. Therefore, such measures can only be taken in cases that are effective and efficient in neutralizing terrorist threats and eliminating its risks. In addition, the aforementioned restrictions must be limited to a certain period of time and then be abolished.

Also, due to the restrictive and coercive nature and due to the intervention in the stage before the occurrence of terrorist crimes, the above measures should be carried out within the framework of the principle of legality and in a narrow manner and in exceptional cases in order to guarantee the goals of preventive strategies and prevent an obstacle in the direction of civil liberties. Do not become citizens. This issue is also reflected in international documents. Therefore, "the principle of legality requires that the text of the law must be certain and completely predictable in its application and results" (United Nations Publication, 2009: 37).

In this regard, the Council of Europe Convention on the Prevention of Terrorism has committed member states to respect the rule of law, human rights and other international regulations (CETS, 2005: 196). Also, in international documents, in order to implement global tools to fight terrorism, it has been recommended to implement criminal justice, as well as stability and efficiency in the performance of national institutions that are responsible for regulating criminal policies (UNODC, 2017: 85).

Therefore, just as the principle of legality of crimes and punishments is aimed at the criminal justice system, preventive measures should also put such a necessary principle at the top of their agenda. The legal prescription of preventive measures is the first step in guaranteeing the progressive principles of criminal law, the legality of new mechanisms and the approval of its formal and executive processes.

1-2. Communication and information measures

The arrangements for limiting the communication of people suspected of terrorist crimes, limiting the use of electronic devices, limiting employment and education, and sharing information are considered to be among the most important preventive communication and information measures.

A- Limitation of communication and use of electronic means of communication:

One of the important measures in curbing terrorism is the restrictions related to the communication of people suspected of terrorist crimes and their isolation. In the legal system of the country of Australia, the limitation or prohibition of communication of people suspected of terrorist crimes is foreseen in Article 104 of the Penal Code (Criminal Code, 1995: 104).

In England, according to the "TPIM Act", the Home Secretary can impose restrictions on the communication of terrorist suspects. Some of these limitations are:

- a) Obligation not to communicate with specific people without obtaining permission;
- b) Duty to inform the Ministry of Interior before meeting or communicating with other people (TPIM Act, 2011, S1: 8).

In paragraph (a), communication is prohibited in order to prevent a potentially susceptible person from communicating with terrorist persons. Therefore, identified persons are those who have a history of participating or assisting in terrorist activities or are members of terrorist groups. In this paragraph, a person's contact with terrorist persons is considered harmful for him, and for this reason, a temporary ban on contact with these persons is imposed.

But in paragraph (b) in order to protect other people, the contact of the suspect with other members of the society is limited and communication with other people is at the discretion of the executive authority and with the permission of this authority. Be allowed to socialize and interact.

On the other hand, the limitation related to the possession and use of communication devices, especially electronic devices and new technologies such as the Internet, is one of the tools to control terrorism. Today, "computer technology is used for matters such as recruitment, political propaganda, financing and coordination between terrorist groups" (Rezaei and Heshmati, 2015: 59).

For this reason, much attention has been paid to how to monitor new technologies in anti-terrorist laws. "Some of these provisions include restrictions on the possession or use of electronic communication devices or the restriction of other persons from using electronic communication devices in the suspect's

residence" (TPIM Act, 2011, S1: 7). In Australia, restricting access or use of the Internet can be applied by issuing a control order to suspects of terrorist crimes (White, 2008: 4).

For example, we can refer to the surveillance order issued against a person named "Jack Thomas". According to this order, restrictions on the use of mobile phones, phone cards, SIM cards, internet services, e-mail, access to satellite or public phones were set (Donkin, 2011: 112-113).

In Iran's legal system, a specific and obvious example of premeditated cooperation is the issuance of a judicial order to block Telegram by the Tehran Prosecutor's Office, which was announced in 2017 (www.isna.ir/news/97021006264).

This judicial action was to neutralize the activities of terrorist groups in the virtual safe space, as such a coercive and restrictive mechanism was preemptively established in order to proactively confront terrorism. The difference between this limitation of electronic devices and the limitation of access to electronic communication devices proposed in the legal system of England and Australia is related to the purpose and subject. In Iran's legal system, the above-mentioned judicial action was taken in a general and general way, but the communication limitation of other systems is specific and includes the subject of surveillance.

It should be added that due to the guarantee of the civil rights of individuals, it is recommended that communication restrictions and the conditions for their implementation be specified in legal texts and applied only when limiting the communication of suspected persons is effective in preventing the actualization of terrorist threats, and then the restrictions be canceled and normal conditions restored.

It has been emphasized in international documents that "in order to deal with terrorism, the application of restrictions must have a legal basis in national law and pursue a goal such as protecting public security. Therefore, there must be an urgent social need to limit civil rights and liberties, and the restrictive action must not destroy the essence of the relevant rights" (OSCE, 2014: 50).

B- Education and employment restrictions:

The restriction related to work and education is one of the anticipatory measures in the control of terrorism that is foreseen in the legal systems. In the legal system of England, restrictions such as the requirement not to do specific work or occupation and the prohibition of studies including any educational course have been established (TPIM Act, 2011: 9).

In Australia, the obligation to participate in compulsory education or rehabilitation and counseling, as well as restrictions on the activities or occupation of suspects are foreseen (Walker, 2013: 176). The above occupational and educational restrictions are comparable to the supplementary punishments specified in Article 23 of the Islamic Penal Code of 2012, such as the prohibition to engage in a specific job, profession or work and the requirement to learn a specific profession, job or work.

Of course, despite the similarities in nature, there are obvious differences between these two legal institutions. The limitations set in the Islamic Penal Code refer to all crimes, such as hadd, retribution, and punitive punishment up to the sixth degree and have the aspect of punishment and punishment, but the mentioned educational and occupational restrictions in the legal system of England and Australia only refer to the time before the crime and They are aimed at terrorist threats and do not have the aspect of punishment, although they create hardships and limitations on a person's job, profession and education.

C- Residence and monitoring requirements and the necessity of reporting:

The requirements related to a person's residence and its monitoring is another forward-looking measure to curb terrorism, which is imposed on people suspected of terrorist crimes. In England, "the obligation to stay in a place between certain hours and the obligation to inform the Minister of the Interior of his identity or the identity of any person who will stay in the said place are examples of these restrictions" (TPIM Act, 2011, S1: 2)).

In the legal system of Australia, the obligation to stay in certain places and at certain times of the day and installation of an electronic tag is foreseen (Criminal Code, 1995: 104).

In Australia, pursuant to an order issued against David Hicks on December 21, 2007, the restrictions of being required to remain at a specified address between midnight and 6 a.m., an undertaking to identify himself to a member of the Australian Police (three times a week) and the requirement were assigned to fingerprinting (Donkin, 2011: 126).

Also, another monitoring requirement in dealing with terrorist suspects is the need to report the change of residence address. In July 2002, the US Department of Justice announced that immigrants are required to report address changes within 10 days. After the implementation of the above law, the Public Audit Office reported that there are no control methods to ensure that the information received from the address of a foreign citizen is fully processed.

Researchers believe that since the reporting program is based on trust and honesty, terrorists can easily provide false information (Kerwin, 2005: 88-89). Hence, the change of address reporting strategy cannot be completely effective in controlling suspected people.

D- Necessity of sharing information:

Gathering information has a special place in the strategies of curbing terrorism and it is done in order to identify terrorists or disrupt their planning (Sabir, 2014: 212). Gathering information is a process of creating a large body of information that may be extracted forcibly. This process can be used to prosecute pre-criminal offenses and as coercive interventions such as preventive detention (Pickering & McCulloch, 2009: 634).

In fact, the information approach in dealing with terrorism seeks to prevent the formation of terrorist groups and neutralize their terrorist intentions (Purseed, 2016: 162). Hence, access to information is a basic prerequisite for preventing terrorist crimes. Here, we can mention the establishment of the "Counter-Terrorism Cooperation Council" in Sweden, a network of 14 organizations that operates at the national level in order to accelerate coordination and improve efficiency in the fight against terrorism (Lofven & Ygeman, 2015: 15).

Australia's approach to counter-terrorism relies on an intelligence-gathering framework. Information is collected in many different forms by Australian national security agencies, including state and city police, and used to identify emerging threats (ANZCTC, 2017: 14). It should be added that contrary to the prevailing practice in judicial cases, where documents and evidence are the criteria of action, the documents of precautionary measures are the evidence, reasonable suspicion and information gathered by security and police institutions, because in the aforementioned system, ensuring security takes precedence over all priorities.

1-3. Regulatory measures

Supervisory mechanisms include measures for persons and measures for places.

1-3-1. Measures for individuals

Supervisory measures regarding individuals include the application of travel and commuting restrictions, the control of travelers, and the establishment of restrictive guidelines for suspects. Two of these measures are mentioned below.

A- Traffic control and restrictive guidelines:

The most obvious surveillance measures regarding individuals impose restrictions on the movement of the person under surveillance and his travels. In legal systems, the creation of restrictive orders has different natures and purposes, which are reviewed here.

"According to the TPIM Act approved in 2011 in England, a person can be required to comply with a limited instruction by a police officer. But the restriction on the movement of people should be strictly according to the issued order. An executive officer may adopt such rules only to ensure security. The duration of these procedures should not exceed 24 hours. Also, an obligation to wear or use an electronic device and an obligation to maintain such a device can be issued" (TPIM Act, 2011: 4 & 12).

In 2012, Iran's legislator has taken an effective step in curbing the risks caused by the behavior of suspects of criminal acts by allocating articles 247 to 254 of the Criminal Procedure Law to judicial supervision. Also, with the identification of the security order of commitment not to leave the house or place of residence determined through electronic monitoring according to paragraph (c) of article 217 of the above law, which according to article 29 of the executive regulations of this paragraph approved on 1/22/2015, the suspect is released under the supervision of the electronic systems will follow, prevention rights in Iran have entered a new stage (Ismaili, 2016: 313).

In the penal code of Australia, the mechanism of prohibiting or limiting the presence in some areas or places has been established (Criminal Code, 1995: 104). Considering the goals of protecting public security, which is the goal of implementing preventive strategies, it can be inferred that "some areas or places" defined in Article 104 of the Criminal Code of Australia mean public places, airports, vital and military facilities, city centers and areas of these. There are such that the probability of terrorist operations and bombings is higher in them and irreparable damages will follow.

In the legal system of Canada, the courts can impose certain orders, including curfew and the requirement to stay in a certain area, on the suspects of terrorist crimes under the "commitment to peace and public order" (Anderson, 2012: 19).

In the United States laws, another regulatory action is provided under the title of "Lonely Individuals Surveillance Actions". "This term refers to people who are suspected of terrorist activities, but are not affiliated with terrorist groups" (Mohsani, 1391: 195). The FBI's Behavioral Analysis Unit recently conducted a study that found extreme views, hostile attitudes, and anger to be characteristic of these people. These investigations show that there is basically a time gap between the extremists' first threatening action and their terrorist actions, so during this period, necessary interventions should be made in order to prevent the occurrence of terrorist actions. (Wood & van Slyke, 2018: 4).

Another type of surveillance measures of persons is related to travel restrictions to keep people suspected of terrorist crimes under surveillance and to prevent, detect and eliminate them from entering dangerous places or places where there is a possibility of easy access to the internal affairs of other EU member states. They determined suspicious trips as a priority to fight terrorism" (Sabaghian and Sarostani, 2017: 153).

In the United Kingdom, restrictions such as the requirement not to have travel documents such as passports or tickets and the requirement to submit said documents are foreseen (TPIM Act, 2011: 2). In addition, in the 2015 Anti-Terrorism and Security Law, the possibility of confiscating and revoking the passports of people suspected of participating in terrorism-related activities has been established (Boutin, 2016: 8).

Also, the provisions of the French Immigration Law allow the executive authorities to prevent the entry of foreigners who are considered a threat to public order or to issue an order to expel foreigners who are considered a threat to public order.

Then, in November 2014, travel to an area where terrorist groups operate was made a crime and a ban on travel and entry to suspicious areas was approved. According to the report of the Parliamentary Commission of France between November 2014 and April 2016, 308 travel bans were issued and 98 bans on entering France were set between February 2015 and April 2016 (Boutin, 2016: 10-11).

B- Targeted conversations or behavior identification strategy:

One of the surveillance techniques used to control passengers in airports is the strategy of "targeted conversations or behavior identification strategy". According to this technique, security officers patrol and talk to passengers at the airport and look for behaviors that may cause problems.

Rafi Ron introduced the technique of behavior identification in Boston. The justification for this approach is that identifying a bomber is much easier than discovering a bomb. Hence, state troopers are trained to look for certain signs, such as passengers avoiding eye contact or appearing anxious. Police do not automatically arrest someone who is nervous; They just ask a few questions and the traveler continues on his way.

If something seems amiss, the military can request a full search of the passenger and their luggage. Also, in America, the background check system called "computer pre-screening of passengers" will start checking the financial databases as soon as a ticket is purchased and assign a green, yellow or red risk level to the ticket buyer. "Arnold Barnett", an assistant professor at the Massachusetts Institute of Technology, has criticized the accuracy of such a system in detecting terrorist threats (Schwartz & Creswell, 2005: 94-95).

1-3-2. Measures regarding places

Surveillance measures aimed at places can be applied only in certain places where the possibility of terrorist acts is greater. Inspection of entry and exit points as well as inspection of places are considered to be the most important measures for places.

A- Inspection of entry and exit points and border control:

Border control and inspection of entry and exit points are among the arrangements that are considered in the precautionary processes. According to the United Kingdom's Terrorism Act, port officers have the authority to question, interrogate and detain passengers at ports, airports and train terminals. Also, this inspection includes additional powers, including the use of biometric information and the removal and downloading of the contents of the mobile phones of passengers (Anderson, 2016: 38).

The surveillance approach in Germany known as "security packages" is aimed at intensifying border control, ensuring the security of German airspace, expanding surveillance networks and deporting or canceling the permanent residence of foreign nationals (Donkin, 2011: 189). In Iran, border control and the deployment of security equipment is one of the measures to curb terrorism, which often refers to physical measures and control of entry and exit points of the country.

B- Inspection of premises and inspection:

One of the surveillance approaches in curbing terrorism is the inspection of places and persons. According to the UK TPIM law, in order to limit the involvement of suspected people in terrorist activities, the police can enter any area for search and inspection.

In this case, there should be reasonable criteria for inspecting premises. The officer may search persons and places without a warrant and by reference to articles 5-7 of the TPIM Act and seize documents or evidence related to the crime in order to prevent them from being lost, damaged or altered. This should be effective in prosecuting and arresting the person (TPIM Act, 2011, S5: 5-7).

In addition, in the United Kingdom's terrorism law, stop and search powers have been developed. These measures include:

- 1- Arresting and interrogating a person who is suspected of being a terrorist;
- 2- Inspecting a vehicle that is reasonably suspected to be used for terrorism-related crimes (Anderson, 2016: 36).

In the above arrangements, the purpose of searching places and inspecting persons is to discover dangerous objects and items such as weapons, ammunition, incendiary and explosive materials in order to neutralize terrorist threats such as bombings and shootings. Therefore, even in cases where the police officer has reasonable grounds, not necessarily evidence, for the existence of such dangerous items, he can search the person and places without the need for a court order.

2. Guarantee the implementation of precautionary measures in the face of terrorism

Anticipatory mechanisms in curbing terrorism have implementation guarantees and legal supports that can be reviewed in the form of executive measures, seizure and detention, and control orders.

2-1. executive actions

In the fight against terrorism, a series of executive measures that are on the border of prevention and suppression have been proposed in recent years. Below are two examples of these executive measures.

A- Creation of reactive forces:

Today, the creation of reactive forces is proposed as an executive measure. Researchers like "Das and Lahiri" have tried to use statistical analysis method to prove that only relying on paramilitary methods is insufficient in the fight against terrorism, and instead, they have recommended combining these methods with preventive strategies. They called such an approach the "Direct Preventive" approach (Das & Lahiri, 2017: 2-3).

Also, some researchers have suggested the formation of a terrorist vanguard force in order to deal effectively with terrorism. "Howard Robert Simpson" in his article on organizing to fight terrorism suggested that the vanguard unit is a fledgling force that should not be completely military in structure. The said unit should have at least representatives of civilian organizations and direct the implementation of preemptive measures against terrorist groups (Sloan, 1986: 35). In the legal system of Saudi Arabia, the preemptive approach called "preemptive operations" has been the focus of the political system of this country.

Security forces have achieved great achievements in preventing several terrorist threats and have launched preemptive attacks in more than 200 cases (AL Zahrani, 2012: 9-10).

In Sweden, the "Swedish Security Service" is responsible for the prevention of terrorist crimes. The Swedish police department plays an important role in detecting signs of criminal activity and helps in providing resources to the security service (Lofven & Ygeman, 2015: 21).

B- Cancellation of citizenship and deprivation of social benefits:

Revocation of citizenship is used as a part of anti-terrorism policies by the United Kingdom. From 2010 to 2016, there have been about 30 cases of cancellation of citizenship. In this process, the citizenship of dual citizens born in England can be revoked by the order of the Minister of Interior. Also, the Netherlands uses the cancellation of nationality as a tool to fight terrorism (Boutin, 2016: 9).

In France, the identification of people suspected of terrorist threats and the deportation of foreign nationals have been considered (Donkin, 2011: 184). Also, the Netherlands is one of the countries that takes advantage of the elimination of social welfare benefits as a measure against terrorism. According to this arrangement, Dutch fighters stationed outside the municipal registers will be removed and thus will not receive any social benefits or financial assistance.

Between December 2013 and September 2016, this measure was used 98 times (Boutin, 2016: 17-18). Obviously, the above measure should be taken in cases where a person is considered a serious threat.

2-2. Seizure and detention

Seizure and detention is the most obvious guarantee of implementing preventive approaches in the face of terrorism, which is applied as a restrictive and punitive measure in relation to suspected persons. "Deprivation of liberty based on prevention is considered a measure to protect public security, in which criminal law has a forward-looking approach to maintain security and is also applied to the stage before the crime is committed" (Najafi-Abrandabadi and Rizvani, 2014: 9).

"David Lowry" defined detention or preventive detention as "non-judicial deprivation of liberty by means of executive measures". In addition, "Charles Townshend" (1983) considers "arrest due to

reasonable suspicion" as another principle of detention (Donkin, 2011: 63). In England, in the laws related to terrorist suspects, special powers of arrest have been established in relation to some terrorist crimes.

In particular, it is sufficient for the arresting officer to have a reasonable suspicion that a person is involved in the commission or incitement of terrorist acts. This detention should be reviewed at 12-hour intervals. Beyond that time, the arrest warrant must be issued in court (Anderson, 2012: 58).

Also, according to the anti-terrorism, crime and security law of England, any foreigner who is suspected of participating in a terrorist activity can be kept in prison without being charged (Qadiri Bahramabadi, 1396: 165).

There are a number of pre-terrorist offenses in the Australian criminal law that allow individuals to be arrested and prosecuted before committing terrorist acts in Australia or abroad (ANZCTC, 2017: 15). In the United States, when dealing with terrorism suspects, foreign nationals who, according to the Attorney General, participate in terrorism-related activities are subject to administrative detention under the Patriot Act. In addition, according to the National Defense Law, military detention of American citizens and nationals residing in this country is possible (Anderson, 2012: 19-20).

In Northern Ireland, preventive detention, known as a temporary detention order issued by the Secretary of State, is a quasi-judicial process that allows the detention of people suspected of organizing, training and carrying out any terrorist act for up to 28 days (Donkin, 2011: 74-75).

Also, in Indonesia, new measures have been proposed to strengthen the capacity to deal with terrorist threats, especially after the 2016 terrorist attacks in Jakarta. These measures include:

- A- Granting authority to the security apparatus to detain a suspect for more than a week;
- B- Prescribing the use of communications, financial transactions and information reports as evidence in courts to accuse terrorism suspects;
- C- Giving authority to intelligence officers to arrest terrorist suspects.

These measures are proposed with the aim of creating a proactive regime (Singh, 2016: 1-2).

2-3. Control appointments

Another type of guarantee is the implementation of preventive measures in the form of control appointments. This performance guarantee can be checked in the following ways.

A- Issuance of control orders and its notification:

In line with security goals and protection of citizens, legal systems have developed coercive measures against people suspected of terrorist crimes in order to eliminate possible threats in the stage before the crime occurs. In the new literature on terrorism prevention, the responsibility of individuals is no longer only focused on the steps after the crime, but in the event of a threat, each member of the society has an individual responsibility in dealing with these violent threats.

Considering that in the new paradigms, the protection of citizens and stabilization of national security are drawn more than any other goal, people suspected of terrorist crimes simply by carrying out certain behaviors and relationships, for example, communication with terrorist groups and suspicious

correspondence, with a series of actions and Precautionary measures, including the issuance of control orders, will be faced.

It is obvious that the issuance of control or supervision orders requires compliance with criteria such as the criterion of necessity and proportionality.

The two legal systems of England and Australia have harmonized control agreements more than other legal systems. The commitments issued in a control order against an individual must be necessary to prevent or limit the involvement of individuals in terrorism-related activities. "In Australia, the temporary control order must be notified to the individual's lawyer and contain points such as the type of restriction, the duration of its implementation and a summary of the reasons for issuing the control order" (Donkin, 2011: 100).

B- How to apply control appointments:

Due to its special nature, which is a combination of judicial and executive actions, control orders are issued in most cases through executive institutions such as the Ministry of Interior, unlike court rulings that must be issued only by judicial courts. In some cases, the approval of a judicial authority such as the prosecutor and the court is required.

"In Australia, the police and the attorney general can request a control order from the court. Such requirement may be extended up to 10 years" (Anderson, 2012: 18).

Also, the use of the aforementioned measures is limited to certain periods of time. According to the Australian Criminal Code, a control order may be imposed for a period of up to 12 months (White, 2008: 1).

According to the UK TPIM Act, there is a two-year limitation for a directive or control order, provided that the person under the order does not commit any new terrorism-related activities during this period (TPIM Act, 2011: 4).

In fact, the control order is limited to a period of time when a person suspected of terrorist activities is in a threatening situation, and when the above conditions are removed, the aforementioned measures are canceled.

Conclusion

Terrorist threats in recent years have made human societies face many security challenges. Today, the punishment-oriented approach and only relying on criminal responses after the occurrence of terrorist attacks is not very effective in preventing terrorist crimes. Therefore, a new paradigm has been predicted under the title of proactive approaches to control terrorism.

The new approach pays special attention to the adoption of coercive and punitive mechanisms and arrangements before the occurrence of terrorist threats in order to prevent possible damages and dangers of terrorist actions through preemption. In fact, preventing terrorist attacks and neutralizing terrorist threats are considered to be the goals of preventive measures.

Several countries, such as England, Australia, the United States, Indonesia, France, Germany, the Netherlands, and Canada, have adopted forward-looking approaches in their legal systems to curb terrorism and have taken measures to prevent the dangers of terrorism before terrorist crimes occur.

Preventive measures in the face of terrorism can be examined in the framework of financial measures, communication and information measures, as well as monitoring measures. During these mechanisms, in order to confuse the backgrounds of committing terrorist crimes, there are various restrictions and prohibitions regarding the ownership and use of some tools and goods, travel, occupational and educational restrictions, control of a person's residence and residence, as well as mechanisms aimed at financial transparency and preventing the provision The finances of terrorism are seized.

Regarding the place of precautionary measures in the country's legal system, it should be acknowledged that even though Iran is one of the victims of terrorist attacks and the necessity of an efficient and comprehensive confrontation with the phenomenon of terrorism is recognized as an urgent need in the common political and legal discourse of the country, but the legislative policy Currently, in relation to terrorist crimes, it often looks at the stages after the crime has been committed, and it is a conservative approach.

Therefore, preventive approaches to contain terrorism do not have much place in Iran's relevant laws, and preventive measures before committing a crime are limited to a few cases, such as checking business records, gathering information, and financial and banking transparency measures. Undoubtedly, preventive measures can be a suitable approach in determining national legal and executive mechanisms in the direction of controlling terrorism and terrorist acts and should be taken into consideration by Iran's internal authorities.

Reference

- Abdulahi, Saman. Karamati Moez, conductor. (2017). "Challenges and obstacles to deal with the financing of terrorism", Political Science Quarterly, year 14, number 42.
- AL Zahrani, Hachem Mohammed. (2012). Saudi Arabia's Efforts and Experience in CounterTerrorism, www.repository.nauss.edu.
- Anderson Q.C., David. (2016). The Terrorism Acts In 2015, London, The Stationery Office.
- Anderson, David. (2012). Control Orders In 2011, London, The Stationery Office.
- ANZCTC: Australia New Zealand Counter- Terrorism Committee (2017). National Counter- Terrorism Plan, 4th Edition, Australia, Melbourne.
- Arce M, Daniel G. Sandeler, Todd. (2005). "Counterterrorism: A Game-Theoretic Analysis", Journal of Conflict Resolution, Vol. 49 No. 2.
- Boutin, Bérénice. (2016). "Administrative Measures against Foreign Fighters", ICCT, The Hague 7, no. 12.
- Boyce, Madeline. (2015). "Book Note: Preventive Justice, by Andrew Ashworth & Lucia Zedner", Osgoode Hall Law Journal, Vol 52.
- Bronitt, Simon. (2008). Critical Perspectives on Terrorism Law Reform, Canberra, ACT, Australia, ANU Press.
- Bunn, M. Elaine. (2003). "Preemptive Action: When, How, and to What Effect?", INSTITUTE Strategic Forum, No. 200.
- CETS: Council of Europe Convention on the Prevention of Terrorism. (2005). Council of Europe Treaty Series. Prevention of Terrorism - No196. Warsaw.



- Criminal Code Act 1995, AustLII.
- Das, Satya P. Lahiri, Sajal. (2017). Why Direct Counter-Terror Measures Only May Fail. : An Analysis of Direct and Preventive Counter Terrorism Measures”, Preliminary Draft. The final draft in International Journal of Economic Theory, December 2019.
- Donkin, Susan. (2011). the Evolution of Pre-emption in Anti-Terrorism Law, ARC Centre of Excellence in Policing and Security, Education and Law Griffith University.
- Foroughi, Fadlullah. Ghani, Kayvan. Mirzaei, Mohammad. (2015). "Situational prevention of nuclear terrorism with emphasis on international regulatory measures", Criminal Law Research, year 4, number 14.
- Hunter, Thomas Byron. (2010). “Targeted Killing: Self-Defense, Preemption, and the War on Terrorism”, Journal of Strategic Security, Vol 2, No. 2.
- Ismaili, Mohammad. (2016). "Preventive justice: curbing crime in the framework of the legal system", criminal law and criminology studies, year 4, number 2.
- Kegley Jr, Charles W. Raymond, Gregory A. (2005). Preemptive War Does Not Reduce Terrorism, United States of America, Gale and Greenhaven Press.
- Kerwin, Donald. (2005) Restricting Immigration Does Not Reduce Terrorism, Are efforts to reduce terrorism successful? United States of America, Gale and Greenhaven Press.
- Laurentchtein, Peter and others. (2012). Prevention of money laundering and terrorism financing, translated by Maryam Keshtkar, Tehran, Tash publication.
- Lofven, Stefan. Ygeman, Anders. (2015). Prevent Preempt Protect the Swedish counter-terrorism strategy. Government Communication, Stockholm. <https://www.government.se>.
- McCulloch, Jude, Pickering, Sharon. (2009). “Pre-Crime and Counter- Terrorism”, Brit. J. Criminol, 49.
- Mohseni, Farid. (1391). "Criminal developments in American patriotism law", Judicial Law Perspectives, 17, No. 60.
- Najafi Abrandabadi, Ali Hossein. Rezvani, Sudabah. (2014). "Deprivation of freedom based on prevention with emphasis on Article 150 of the Islamic Penal Code 2013". Criminal law research, year 4, number 12.
- Najirad, Mohammad Ali. (1388). The Globalization of Terrorism, Tehran, Ministry of Foreign Affairs.
- Odhiambo, E.O.S. & Others. (2012). “Emptive and Preventive Incursion against Al, Shabaab In The Light Of International Law”, Journal of Defense Resources Management, vol 3, issue 1 (4).
- OSCE: Organization for Security and Co-operation in Europe. (2014). Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism. Vienna.
- Poursaid, Farzad. (2016). "New Counter-Terrorism", Strategic Studies, Volume 20, Number 77.
- Qadiri Bahramabadi, Rashid. (2016). "Confrontation between right and expediency with an emphasis on terrorist crimes", Justice, No. 98, 147-173.
- Qurashi, Fahid. (2018). The Prevent strategy and the UK war on terror, Palgrave Communications. www.nature.com/palcomms-www.nature.com.
- Rezaei, Alireza. Heshmati, Amir. (2015). "Neo-terrorism with an emphasis on religious terrorism", Habalul Matin Quarterly, Year 5, Number 46.

- Sabbaghian, Ali. Sarostani, Abbas. (2017). "Anti-terrorist policies of the European Union; Trends, efficiency and perspective", strategic studies, year 21, number 79.
- Sabir, Rizwaan. (2014). Understanding Counter-Terrorism Policy and Practice in the UK since 9/11, A thesis for the degree of Doctor of Philosophy, University of Bath Department of Social and Policy Sciences.
- Schwartz, Nelson D. Creswell, Julie. (2005). Are efforts to reduce terrorism successful? United States of America, Gale and Greenhaven Press.
- Shams Natri, Mohammad Brahim. Islami, Daoud. (2014). "Criminal nature of terrorism financing", criminal law and criminology studies, year 2, number 4 and 5.
- Singh, Bilveer. (2016). "Revising Indonesia's Anti-Terrorism Laws", Nanyang Technological University No. 57.
- Sloan, Stephen. (1986). Beating International Terrorism: An Action Strategy for Preemption and Punishment, Air University Press Maxwell Air Force Base.
- Terrorism Prevention and Investigation Measures Act 2011, Parliament of the United Kingdom.
- Tulich, Tamara. (2012). "Prevention and Pre-emption in Australia's Domestic Anti-terrorism Legislation", International journal for crime, justice and social democracy, IJCJ, 1 (1).
- United Nations Publication. (2009). Handbook on Criminal Justice Responses to Terrorism, Criminal Justice Handbook Series, New York.
- UNODC: United Nations Office on Drugs and Crime. (2017). Universal Legal Framework against Terrorism: Counter-Terrorism Legal Training Curriculum, UNITED NATIONS, and Vienna.
- Walker, Clive. (2013). The Reshaping Of Control Orders In The Uited Kingdom, Australia, Melbourne University Law Review, Vol 37.
- White, Lisa. (2008). Australia:Terrorism Laws:Control Orders, the Law Library of Congress.
- Wood, Jonathan. Van Slyke, Shawn. (2018). Terrorism and new ideologies Risk Map, Control Risks CORE. Available at: www.loc.gov.
- [www.isna.ir/news/ 97021006264-10-1397-18.28](http://www.isna.ir/news/97021006264-10-1397-18.28). 1397/1/26