Противодействие терроризму

Современное развитие законодательства о борьбе с терроризмом
Analysis and examination of terrorism crime legislation

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Abstract. *In the past 10 years, China's legislation on terrorist crimes has undergone great changes, which not only responds to the inherent requirements stipulated in the international conventions, but also reflects the policy governing terrorist crimes. The legislation of terrorist crime presents new dimensions, specifically for the preventive strengthening, the increase of severity, the increase of rigour. Under the background of risk society, the legislation of terrorism crime has positive social significance, which is embodied in the combination of punishment after the event and prevention before the event, the unity of behavior harm and personal danger. In the future criminal legislation, it is necessary to enhance the foresight of legislation, promote the scientific nature of legislation, and strengthen the effective connection between criminal law and anti-terrorism security law, which should be the development direction of terrorism crime legislation.*
Keywords: *Terrorism crime; Preventive criminal law; Risk society; Place for education;*

In order to cope with the rising trend of terrorism and the new characteristics, trends and trends of terrorist activities, international conventions and western countries are revising their legal provisions in time to effectively combat and prevent terrorist crimes. As an integral part of the international community, China has been facing increasing pressure of terrorism in recent years. Therefore, it is necessary to revise the laws and regulations related to terrorism based on the prevention of modern criminal law and the frequent incidence of terrorist risks. Since 1997, legislators have amended the relevant provisions of the Criminal Code three times in succession, revising the provisions on terrorism crimes, not only to actively respond to the relevant requirements of international conventions, but also to effectively deal with the increasingly frequent terrorist activities. The legislation of terrorism crime should accord with the principle of scientific legislation, and should alleviate the tension of criminal punishment in the early stage from the judicial dimension, and actively explore the effective way of governing terrorist crime outside the criminal law.

Comment on legislation of terrorism crime

Penal code promulgated in 1997, according to the needs of social development, and constantly to revise and perfect the criminal code, altogether has 10 before and after the amendment of criminal law, three of the amendment is associated with terrorism crime, namely, the Criminal Law Amendment III and the Criminal Law Amendment. Eight and Criminal Law Amendment Nine, the content of the amendment involves both the content of the general provisions of criminal law and the content of the provisions of the specific criminal law. There are both the increase and adjustment of a charge, and the amendment and improvement of the statutory penalty. The scope of the amendment is relatively wide.

1.1 . On the revision of the general provisions of the criminal law

The revision of the General Provisions of the Criminal Law mainly involves the penalty system for terrorist crimes, which is embodied in the corresponding provisions of the "Criminal Law

Amendment VIII". The content relates to the scope of special recidivism, the applicable conditions of probation, commutation and parole, etc.

First, expand the scope of application of special recidivists, make terrorist crimes a condition for the establishment of special recidivists, and expand the scope of application of special recidivists. The 1997 Criminal Code only stipulated crimes endangering national security as recidivism. The Criminal Law Amendment VIII further expanded the scope of special recidivism: "criminals of crimes endangering national security, terrorist activities, and crimes of mafia-style organizations anyone who commits any of the above-mentioned crimes again at any time after the execution of the sentence or the pardon is deemed to be a recidivism.

Second, improve the conditions for applying probation for terrorist crimes and prohibit terrorist criminals from applying probation. In addition to recidivists, the Amendment to Criminal Law (VIII) added the provision that “ringleaders of criminal groups” should not be subject to probation. That is, a ringleader of a criminal group and a recidivists are not eligible for probation. Most terrorist crimes are committed in the form of criminal groups. Therefore, the aforementioned amendment on the applicable objects of recidivism essentially increases the intensity of punishment for terrorist crimes.

Third, make it more difficult to apply commutation to terrorist crimes and revise the provisions on commutation of death penalty with suspension of execution. The Eighth Amendment to the Criminal Law stipulates that the people’s court may, in light of the circumstances of the crime, limit or commute the sentence of a criminal sentenced to death for crimes of organized crime and violence at the same time. Terrorist crimes mostly involve violent crimes of organized crimes. This provision indirectly strengthens the difficulty of commutation of sentences for criminals who are sentenced to death for terrorist crimes.

Fourth, the range of punishment applicable to terrorist crimes should be increased, and the provisions on parole of fixed — term imprisonment and life imprisonment should be revised. According to the Amendment to Criminal Law (VIII), parole shall not be applied to criminals who are sentenced to more than 10 years in prison or life imprisonment for crimes of organized violence. Since most terrorist crimes are related to "organized violent crimes", the above provisions should also be applicable to qualified terrorist crimes, which indirectly aggravates the criminal punishment of terrorist crimes.

1.2. Amendments to the Specific Clauses

Around 1997, organized terrorist activities have already occurred in some places, and such crimes are of great social harm. In order to effectively combat terrorist crimes, Article 120 of the Criminal Law of 1997 stipulates the organization, leadership, and participation in terrorist organizations. Crimes: Organizing, leading and actively participating in terrorist organizations shall be sentenced to more than three years but not more than 10 years of fixed-term imprisonment; others who participate shall be sentenced to not more than three years of fixed-term imprisonment, criminal detention or surveillance, commit the crimes mentioned in the preceding paragraph and commit homicide, explosion, kidnapping, etc whoever commits a crime shall be punished in acco

The Amendment (III) to the Criminal Law in 2001 amended the legislation on terrorist crimes mainly in the following aspects: First, the statutory punishment for the crime of organizing, leading and participating in terrorist organizations was increased, and the fight against terrorist crimes was intensified.

The first paragraph of Article 120 of the Criminal Law is amended to raise the statutory punishment for organizing and leading terrorist organizations from three to 10 years to more than 10 years or life imprisonment. For those who participate in terrorist organizations, a supplementary punishment of deprivation of political rights is added. Second, the crime of financing terrorist activities should be added as one of Article 120 of the Criminal Law.

Specifically, those who fund terrorist organizations or individuals who carry out terrorist activities shall be sentenced to fixed-term imprisonment of not more than 5 years, criminal detention, public surveillance or deprivation of political rights and shall also be fined, If the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined or be sentenced to confiscation of property. Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the preceding paragraph;

Thirdly, the crime of money laundering should be modified to expand the upstream crime types of money laundering crime. Upstream of money laundering crime including the original drug crimes, the underworld property organization crime, smuggling crime, this change will terrorism crime and drug crimes, the underworld property organization crime, smuggling crime common rules of upstream crime of money laundering, terrorism crime from the economic, to effectively prevent terrorism crime legalization of the illegal income. In addition, special provisions are also made for unit crimes.

Persons in charge and other persons who are directly responsible for such crimes in units, if the circumstances are serious, shall be given a heavier punishment and be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; Fourth, after the crime of gathering a

crowd to disturb the order of public places and traffic order in Article 291 of the Criminal Law, the crime of placing false dangerous substances and the crime of fabricating and intentionally spreading false terrorist information are added as one of Article 291 of the Criminal Law, in order to effectively prevent the use of false terrorist information to disturb social order.

The 2015 Criminal Law Amendment (IX) further tightened the criminal law network against terrorism. The "Criminal Law Amendment (IX)" added five types of crimes, including: Article 120-2 of the Criminal Law for the crime of preparing to commit terrorist activities, Article 120-3 of the Criminal Law for promoting terrorism, extremism, incitement to commit terrorist activities, and the crime of using extremism to undermine law enforcement in Article 120-4, the crime of compulsory wearing of terrorism, extremist clothing, and marks in Article 120-5 of the Criminal Law, and the crime of illegal possession of promoting terrorism or extremism in Article 120-6 of the Criminal Law. Secondly, the 2015 Criminal Law Amendment (IX)" further improved the penal provisions of related articles.

The specific manifestations are as follows: First, the crime of organizing, leading, and participating in terrorist organizations in Article 120 of the Criminal Law increases the penalty of property, which specifically includes different types of confiscated property, fines, and election fines; second, criminals are smuggled out of the country to participate terrorist activity training or jihad acts, as an aggravating scenario for the crime of illegally crossing the border of the country (frontier) in Article 322 of the Criminal Law, the perpetrator illegally crosses the border of the country (frontier) in order to participate in a terrorist organization, receive training in terrorist activities, or carry out terrorist activities If they are found to be sentenced to fixed-term imprisonment of not less than 1 year but not more than 3 years, they shall also be fined.

In addition to the criminal law, other relevant laws have also strengthened the legislative provisions on terrorist crimes. In recent years, the Decision on Issues Concerning Strengthening Anti-Terrorism Work, Anti-Money Laundering Law, Anti-Terrorism Law, and Internet Security have been promulgated and implemented. Laws and other laws and regulations, these laws and the criminal law together form a strict legal system to deal with and treat terrorist crimes from different normative dimensions.

Legislation trend of terrorism crime

In order to effectively control and restrain terrorist activities, the legislation of terrorist crime has undergone new changes and presented new characteristics in the world, and the criminal legislation of our country is no exception. From the perspective of legislative provisions and legal spirit, the legislation of terrorism crime mainly embodies three basic aspects: pre-precaution, severity of punishment and strictness of legal net.

2.1 . The prevention of terrorist crime legislation is obvious

Whether in Western social concepts or in our country's discourse system, risk society has become a unique form of social development. Although the concept of risk society is constantly criticized by scholars in jurisprudence theory, it plays an indispensable role in the development and construction of law and has a very obvious influence on criminal legislation. In other words, as the last barrier of social governance, the development of criminal law is increasingly influenced by the theory of risk society.

Terrorist crime is not something that only appears in a risky society. However, terrorist crimes also develop with the development of the society, and constantly derive new laws and characteristics. And the argument that the world is entering a risk society fits well with the emergence of new forms of terrorism. Since 9/11, the public has adapted to the emergence of a new type of risk. As the British Prime Minister said, we must remain highly vigilant to threats that are shared almost everywhere.[1]

Especially with the increasing development of technological networks and communication technologies, terrorist crimes have begun to use new media and tools to continuously obtain new living spaces and development patterns. It is in this context that terrorism crime has the characteristics of a risk society in terms of social background and occurrence mechanism, integrated into the connotation of the times under the risk society, and therefore has new attributes and connotations. In short, based on the needs of social risk governance, in order to prevent the uncertainty and harm of social risks, social policy advocates that laws and regulations should actively intervene in the field of life to prevent major social harms caused by harmful behaviors.

The policy intention of intervention is clearly reflected in the terrorist crime legislation, which makes the terrorist crime legislation show a distinctive social preventiveness. As some scholars have said, the regulation of terrorist activities falls into the current normative spectrum of preventive criminalization practice, that is, from the attempted criminalization in the judiciary to the preparatory implementation in the legislation; from the preparation of the blow for oneself to the preparation of the blow for others; from the regulation of crime preparation to the reg-

[1] Extract from the Prime Minister's Address to the Annual labor Party Conference, March 2004, cited in Waugh, P. (2004: 5), '*Blair T.*: Britain Must Never be Afraid to Fight Terrorists // The Independent. 13 March 2004.

ulation of all illegal criminal behavior preparation.[2] The legislative prevention of the crime of terrorist activities is mainly reflected in the following aspects:

First, the preparatory behavior is implemented. In the past practice, it was regarded as an act of preparation for a crime. The amendment to the Criminal Law stipulated it as an act of execution, and the act of preparation that was not punished in principle was directly regulated as an act of execution, so as to achieve the purpose of early intervention in criminal acts.

As the British scholar Andrew Cornford said, in the earlier stages of the traditional crime preparation process, there are a wide range of criminal behaviors, including many common types of crime.[3] For example, the crime of preparing to carry out terrorist activities in Article 120 bis added to the Criminal Law Amendment (IX) is a typical legislative example of the implementation of preparatory acts.

Second, help the behavior be criminalized. The act of helping in joint crimes is stipulated by the legislative subject as a principal offender. and the crime of financing terrorist activities added in the Amendment (III) of Criminal Law belongs to this legislative mode. In traditional judicial practice, helping behaviors, especially neutral helping behaviors, are generally not treated as crimes, or treated lightly as the principal offender. The provision of helping acts as principal offenders directly becomes the object of criminal law and regulation, which obviously advances the time point for criminal law to intervene in joint crimes.

Third, increase regulations on behavioral offences. From a theoretical point of view, the criminal structure of behavioral offenders is relatively simple, and the implementation of harmful behaviors can constitute a crime, and there is no need to investigate the circumstances of the crime or the results of the crime. The reason for adopting the behavioral offense legislation mode is that the harmful behavior generally threatens or infringes on the legal interests, which has the necessity of criminal punishment. Article 120-3 of the Criminal Law "Promotion of terrorism, extremism, and incitement to commit terrorist activities", Article 120-4 of the Criminal Law "using extremism to undermine the enforcement of the law", Article 120-5 of the Criminal Law forced to wear clothing and marks, and Article 120-6 of the Criminal Law, the crime of illegal possession of articles promoting terrorism and extremism. And so on four charges, these crimes are typical behavioral criminal legislation models, which clearly indicate that early intervention of similar behaviors.

Its preventive legislation is also the developing trend of international legislation. In the face of the threat of organized crime and terrorist activities, Germany has increased the number of abstract dangerous criminals, possession criminals and preparatory criminals for crimes against terrorist organizations.[4] The Anti-Terrorism Act of the United Kingdom also criminalizes "encouraging terrorist acts" and "preparing to commit terrorist acts",[5] thereby bringing more preparatory acts into the criminal circle. Australia comprehensively revised Article 101 of the 1995 Penal Code, focusing on the construction of a preventive crime system based on the premise that "terrorist acts have not been committed" around terrorist crimes, so as to enhance the strength of the overall defense. Among them, the focus includes criminal sanctions for premeditated, prepared and assisted acts such as terrorist training, assistance, financing, provision of relevant documents, preparation and planning of participating in terrorist acts, and inciting terrorist acts and so on.[6]

2.2 . Legislation on terrorist crimes has become more stringent

To effectively deal with terrorist crimes, in addition to the early intervention of criminal penalties, it is also necessary to increase the range of penalties and improve the types of penalties in the corresponding clauses, increase the penalties for such criminal acts, reflect strict criminal policies, and minimize or deter terrorism the occurrence of socialist activities.

The reason for increasing penalties for terrorist crimes is related to the development trend of terrorist activities at home and abroad. Judging from the occurrence of terrorist crimes in recent years, the pressure of terrorism on the international scale has become increasingly obvious, especially after the September 11 incident in 2001, the pressure on terrorism faced by the world has increased unabated, which has caused all countries to strengthen criminal penalties. in order to effectively restrain terrorist criminal activities.

From the perspective of the development of terrorism legislation in western countries, not only has the substantive law increased penalties and weakened the basic principles and spirit of the criminal law, but also made changes in the litigation procedures to improve the judicial efficiency of criminal penalties for

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[2] *Guo Zhilong.* The Chinese Realm of Preventing Sexual Criminalization: From the Perspective of the Comparison between Terrorism and Cybercrime // Legal Science. 2017 (2).

[3] See: *Comford A.* Preventive Criminalization // New Criminal Law Review. 2015. P. l.

[4] *Horder J.* Harmless Wrongdoing and Anticipatory Perspective on Criminalization / G R Sullivan & Ian Dennis (eds). Seeking Security : Pre-Empting the Commission of Criminal Harms, Oxford and Portland, 2012. P. 93.

[5] *Ji Ying.* Evaluation and Enlightenment of Preventive Criminal Justice in the UK // Politics and Law. 2014 (9).

[6] *Zhao Bingzhi.* Selection of Latest Foreign Anti-terrorism Laws. China Legal Publishing House, 2008. P. 1011—1017.

terrorist crimes, targeted responses and regulation of terrorist crimes. In the Anti-Terrorism Act 2000, the United Kingdom through hold terrorism related items sin set will reach of criminal law on the auxiliary behavior that is not of real harm, and established by him since the card holds items has nothing to do with terrorism crime push the formulary of the burden of proof allocation pattern, to prevent and combat has brought great convenience.[7] From the perspective of the legislative amendment of terrorism crime in China, it is mainly reflected in the improvement of the penalty level of terrorism crime, the increase of the penalty range of existing terrorism crime and the increase of the penalty type of terrorism crime.

In 2001, Paragraph 1 of Article 120 of the Criminal Law was amended in the Amendment (III) to the Criminal Law, raising the statutory punishment for organizing and leading terrorist organizations from 3 to 10 years to more than 10 years or life imprisonment, and adding a supplementary punishment of deprivation of political rights to those who participate in terrorist organizations.

For another example, the Criminal Law Amendment (IX) in 2015 further improved the penalty provisions for the crime of organizing, leading and participating in terrorist organizations: Article 120 of the Criminal Law increased the property penalty for the crime of organizing, leading and participating in terrorist organizations, specifically including confiscation of property, and different types of fine and selective penalty. It can be seen from the investigation of the specific provisions of the two amendments to the criminal law that the legislative subject has a clear idea on the amendment of the penalty for terrorist crimes, including the enhancement of freedom penalty, the increase of property penalty, and the addition of the additional penalty of deprivation of political rights. In addition, Criminal Law Amendment (VIII) the regulation shall not apply to the probation of terrorism crime, organized violent crime death sentence commuted, organized violence criminal sentenced to fixed-term imprisonment, life imprisonment for parole, given the regulations closely related to crime and terrorism, and indirectly increase the criminal penalties of terrorist crime.

2.3 . The legislation on terrorist crimes has become more stringent

Since 1997, legal provisions on terrorist crime legislation have been increasing in China. In addition to the Anti-Terrorism Law, the Cyber Security Law, and the Anti-Money Laundering Law, the criminal law has also continuously revised the terrorist crime provisions. It has reached a new height in the strictness of the law, and it is also clearly reflected in the strictness of the legal network, which is in line with the strict spirit and requirements of the legal network for terrorism and crime, and has a practical legal basis for the risk management of terrorist activities. The strictness of the law is mainly reflected in the following aspects:

First, criminal law and pre-law develop simultaneously. From the perspective of the entire legal system, the criminal law is the guarantee law of other laws, the final law for terrorism crimes, and the last barrier to terrorism. Therefore, in addition to perfecting the criminal law provisions, it is also necessary to develop pre-regulations, including financial Legal systems for security, network security, personal information and anti-terrorism security legal system, etc. Until now, such legal systems have been basically established, together with criminal law norms to build a network of legal systems to deal with terrorist activities. “Up to now, China has established a relatively complete system of anti-terrorism laws, including the Criminal Law, the Criminal Procedure Law, the State Security Law, the Anti-Espionage Law, the Anti-Terrorism Law, the Law on the Management of Activities of Overseas Non-Governmental Organizations in China, the Cybersecurity Law, and the National Intelligence Law,etc.”[8]

Second, the scope of conduct has continued to expand. The crime of organizing, leading, and participating in a terrorist organization was penalized for the first time in the 1997 Criminal Law. In the criminal structure of this crime, the behavior of organizing, leading, and participating in a terrorist organization are all practising behaviors, and other behaviors are regarded as non-practicing behaviors. For example, funding behaviors, helping behaviors, propaganda behaviors, possession behaviors, compulsory wearing of terrorist clothing or signs, etc., only play a role in promoting terrorist criminal activities. Subsequently, based on the policy needs for the treatment of terrorist crimes, the legal status of non-performing acts of terrorist crimes was continuously strengthened at the legislative level. For example, in criminal law amendment (III) appeared ready to implement terrorist, criminal law amendment (IX) set the funding terrorist, illegal possession of terrorism crimes, forced wear in terrorism clothing, signs of sin, promote terrorism, incitement to terrorism crimes charges.

With the development of the society, the expression forms of terrorist crimes will change, the criminal law norms will also change, and the objective expression ways of terrorist crimes will continue to enrich and improve. In this regard, German scholars have clearly pointed out that in the field of criminal substantive law, the shift of criminal accountability

[7] *Horder J.* Op. cit. P. 93.

[8] *Xiao Wu.* Continuous Improvement of China's Anti-terrorism Legal System // People's Daily. October 15 2018.

to the point before the criminal act has been carried out has become an important aspect of describing the trend of German criminal legislation.[9]

Third, this crime and related crimes develop together. In addition to the crime of terrorism, other crimes closely related to terrorist activities are also constantly improved in the amendment of the Criminal Law, so as to achieve the purpose of more effective regulation of terrorist activities. The Amendment to Criminal Law (III) stipulates that terrorist activity crime, drug crime, underworld organized crime and smuggling crime are the upstream crimes of money laundering crime, which expands the upstream types of money laundering crime.

The first article of Article 291 of the Criminal Law was added, that is, after the crime of gathering a crowd to disturb the order of public places and traffic order, the crime of putting false dangerous substances and the crime of fabricating and intentionally spreading false terrorist information were added, so as to effectively prevent the use of false terrorist information to disturb social order.

Fourth, the crime committed by natural person and the crime committed by legal person shall be punished simultaneously. In order to crack down on terrorist crimes economically and effectively prevent the legalization of illegal gains from terrorist activities, special provisions are made on unit crimes of money laundering crime, that is, the person in charge and other personnel directly responsible for unit crimes shall be convicted and punished according to money laundering crime. In addition, special provisions are made on the criminal responsibilities of units that finance criminal organizations for terrorist activities, provide training for terrorist organizations, organize, carry out terrorist activities, or train, recruit and transport personnel for terrorist activities.

Fifth, substantive law and procedural law are advancing together. The 2012 Criminal Procedure Law specifically stipulated technical investigation measures for terrorism and other crimes, including technical investigation, secret investigation and controlled delivery. Additional procedures for confiscation of illegal gains in major criminal cases such as terrorist activities; The addition of terrorist crimes as criminal cases of first instance under the jurisdiction of the Intermediate People's Court; Measures for the protection of witnesses, expert witnesses, victims and their close relatives of terrorism and other crimes have been added. It also stipulates that the residential surveillance of suspects suspected of terrorism and other crimes may be carried out at designated residences with the approval of the People's Pocuratorate at the next higher level or the public security organ if it may hinder the investigation.

Analysis of the Value of Terrorism Crime Legislation

Legislation on terrorist crimes has positive significance. It is a timely response to social policies under the background of high social risks. It is also a reasonable manifestation of preventive criminal law in terrorist crime legislation. It has diversified value representations for effective terrorism crime management. Specifically, there are two dimensions: the unity of post-incident punishment and pre-prevention, and the combination of behavioral harm and the perpetrator's harm.

2.1. Ex post punishment and ex ante prevention are unified

The unity of punishment after the fact and prevention before the fact is discussed from the perspective of the essence of penalty. In different social stages, the value of the criminal law and the structure of the criminal law will have different manifestations, and there will be specific changes according to social changes and policy demands. Based on this, we can see that in the context of a risky society, the criminal law governance of terrorist activities needs to show characteristics different from traditional society from the legislative and judicial levels.

The concrete structure of crime and crime countermeasures are the phased products of social governance of crimes. Under different social models and stages, crime governance models and policy attributes will change differently. In the traditional social model, the social relationship is relatively simple, the social attributes are single, and the types of crimes and crime patterns are also simplistic. Therefore, the criminal mode of crime goverance is relatively simple. In the pre-modern society, in view of the underdeveloped communication technology and network media, terrorist acts were usually limited to the traditional public crime, which caused relatively limited harm to the society, and the social people were not sensitive enough to terrorist crimes. Therefore, as with other types of crimes, there is no essential difference in the guiding ideology of criminal policy. It is basically based on the traditional moral responsibility and retribution thought to carry out criminal legislation and judicial discretion on terrorist crimes. Therefore, the specific structure and judicial strategies of this type of crime are relatively consistent with other types of crimes, which are based on the idea of retribution to construct the system and norms of punishing terrorist crimes.

Since Beck put forward the concept of risk society, risk society has become a theoretical model for

[9] *Ulrich G. Qi Bai.* Criminal Law in Global Risk Society and Information Society / translated by Zhou Zunyou, Jiang Su, etc. China Legal Publishing House, 2012. P. 167.

analyzing social problems and governing criminal behavior. In other words, with the advent of the risk society, it has brought new challenges to the traditional risk governance mechanism of human society. Since modern risks are fundamentally different from traditional social risks in essence and characteristics, we must re-examine the traditional risk governance system and establish a new mechanism that meets the requirements of a risk society.[10]

As a result, the western social governance model began to change or even disintegrate under the influence of the risk society, and the risk society became the theoretical basis for analyzing and interpreting social problems. According to the theory of risk society, social risks are pervasive at all levels of society, especially the crises brought about by technological risks and institutional risks have far-reaching impact, and deconstruct traditional social structures in form and substance. Based on this, terrorism has also become a component of social risk and an important indicator of risk society. Andrew Ashworth, a scholar, believes that preventive change is the pre-control of personal danger for the purpose of risk control.[11]

In China, the social attributes are more complex, including not only the traditional agricultural society, but also the modern society and the post-modern society. The risk types are more complex and the risk contents are relatively diversified, which is also an important reason why domestic scholars mostly include terrorism into the social risk.

In essence, terrorism is not the product of risk society. Terrorist activities have existed in modern society and pre-modern society. Of course, with the development of communications and network media, the manifestations, transmission methods and degree of harm of terrorism have all undergone tremendous changes. That is to say, under the new social background, terrorism is fundamentally different in form and content, and the public's feelings about terrorism are becoming more and more profound. Based on the new characteristics of terrorist crime pattern and substantial harm, the guiding ideology and values concept of criminal policy in tackling with terrorist crime also have a new orientation.

The means of criminal intervention begin to shift from post-punishment to pre-prevention, so as to achieve the goal of criminal law of preventing and controlling the occurrence of crimes in the early stage. The change of criminal policy reflects on the level of criminal legislation, which represents the value and attribute of preventive criminal law. We can see that this policy orientation is very obvious in the Amendment to Criminal Law (IX), for example, increasing the behavior offense, implementing the preparatory behavior, helping the behavior to become a major offense, etc. "The construction of the current value system of anti-terrorism criminal legislation in China, on the one hand, should adapt to the social needs, on the other hand, should also be coordinated with the nature of criminal law and its position and function in the legal system, and must maintain the orderly and reasonable combination relationship of the basic value of law in the anti-terrorism field."[12]

The transformation from ex post punishment to prevention in advance is an important goal shift of the criminal law system in crime governance, as well as a significant change in the value orientation of criminal policies, which is in line with the public's expectation for the future development of criminal legislation. Based on this, the public is willing to tolerate the state's intervention in social life more in response to risks, and the concept of general prevention in criminal law is more prominent. In terms of legislation, the state further promotes the principle of expansionary conviction that there are risks and penalties.[13]

Therefore, in the coming period of time, with the in-depth discussion of risk society theory, we will continue to deepen the active intervention and prevention of terrorist crimes, and the specific content will be reflected in all levels of criminal legislation, criminal justice and criminal enforcement.

3.2. The harm of behavior is unified with the danger of perpetrator

The harmonization of behavior and the danger of perpetrators are discussed from the perspective of criminal law. The criminal charges in the criminal law are determined by the legislator based on the judgment of the harmfulness of the harmful behavior or the dangerousness of the perpetrator, and on the basis of social needs and policy demands.

Classical criminal jurisprudence attaches great importance to the harmfulness and degree of criminal behavior, regards behavior as the essential feature of crime, and the freedom of the actor's will is the basis of moral responsibility. Therefore, according to the classical criminal law, the criminal legislation often carries on the concrete investigation to the behavior structure, the harm behavior, the behavior result and causation and effect relationship are the important factors of the objective structure, conform the char-

[10] *Zhao Yandong*. Risk society and Risk governance // Study Times. 2004 (3).

[11] *Ashworth A. & Zedner L.* Prevention and Criminalization: Justifications and Limits (2012) // New Criminal Law Review 2012. Vol. 15. N. 4. P. 546.

[12] *Chen Jinlin*. Reflectionon the path of preventive anti-terrorism criminal legislation // The Procuratorial Daly Newspaper. 2016. 8. 2.

[13] *Guan Zhefu*. The subject of legal interest theory in modern society / translated by Wang Chong // Law Press. 2008. P. 339.

acteristics of the objectivism criminal law. The enactment of criminal law in China in 1997 basically revolves around objectivism, and the criminal structure is also built around objective behavior. Therefore, social harmfulness is the essential feature of crime, consequential crime is the main type of crime, the attempted crime and preventive crime are not dealt with in principle, causality is an important factor to analyze the objective constitution, and intentional or negligent is the normative mode of responsibility.

With the deepening of social transformation, social risks are showing a trend of diversification and complexity. In view of the development of network technology, many criminal acts carried out through the network will infinitely magnify their harmful effects. Moreover, in the context of risk society, the social risks of many behaviors are characterized by uncertainty, unpredictability, and uncontrollable harm.

According to traditional criminal law theories and ideas, criminal legislation is often used to control and govern social risks. It is not ideal and cannot produce positive results. In addition, under the impetus of risk society theory, the policy value orientation of social problem governance has also changed, and it has become an important shift in criminal legislation from regulatory behavior to discipline of actors.

Based on this, domestic criminal law theories have begun to transform their knowledge, and German and Japanese criminal law theories have been favored. Criminal structure and accountability have changed accordingly. Traditional behaviorism has turned to actor humanism. Active general prevention has become the era of criminal policy. Both criminal legislation and criminal justice began to develop to a subjective criminal law model.

The subjectivism of criminal law is clearly manifested in criminal legislation, and the emphasis on personal danger has also begun to be manifested, and the main body of legislation is used as the legislative foundation to formulate criminal law clauses. In recent years, the UK has issued a series of preventive prohibitions for perpetrators of terrorist organizations, violent offenders and sex offenders as supplementary measures for criminal punishment, which restrict the freedom of action or qualification of the perpetrators in a period of time based on the illegal and criminal acts that have committed or will occur. Preventive prohibition is a kind of auxiliary prohibition, which is aimed at subjects who have not yet implemented new criminal acts or who have only dangerous personalities.[14]

As a result, we can see changes at the level of criminal legislation. For example, the harm result gradually disappeared in the constitution of many crimes, causality was no longer a constituent element, and the traditional principle of guilt began to waver. Based on this, preparatory behaviors, holding behaviors, abstract dangerous behaviors, and helping behaviors that reflect personal danger have become the content favored by legislators, and new criminal structures and types are constructed accordingly to achieve the purpose of early intervention in criminal regulation. Of course, these contents fully reflect the status and role of personal danger in criminal legislation. In general, the change from the harmfulness of the behavior to the danger of the perpetrator is the era attribute and social reflection of the development of criminal law, and it has positive significance for embodying preventive criminal law policies and values.

Review on Terrorism Crime Legislation

The effects of terrorism crime legislation are obvious, and the scientificity and rationality of legislative provisions are gradually improving, which is of positive significance for effective management of terrorist activities and has laid a good foundation for terrorism crime legislation. It should also be noted that the provisions on terrorist crimes still have room for development in the design of penalties, and the connection with the Anti-Terrorism Security Law still needs to be improved. In other words, preventive manifestations[15] not only include changes in the criminal justice system such as criminal law and criminal procedure law, but are also reflected in the increase in supplementary prohibitive measures closely related to this.

4.1. The analysis of the penalty provisions of terrorist crimes

Through the analysis of the seven provisions of terrorism crime in the criminal law, we can see that the design of penalty categories basically conforms to the relationship between the principles of criminal law and crime and punishment, which reflects the advanced and scientific nature of legislation. However, there is still room for further development in the design of penal measures, which is not conducive to embodying the coordination and rationality of the criminal law. The specific manifestations are as follows:

First of all, the statutory penalty for the crime of organizing, leading, and participating in terrorist organizations in Article 120 of the Criminal Law lacks provisions on confiscation of property. Except for the

[14] Supplementary injunctions are stipulated by different separate criminal laws, such as the Criminal Justice and Court Service Act of 2000, the Sexual Offences Act of 2003, the Serious Organized Crime and Police Act of 2005, and the Criminal Justice and Criminal Justice Act of 2008. The Immigration Law, etc., authorize different courts, including Magistrates' court and County court, to issue injunctions to perpetrators to meet different judicial needs.

[15] *Zedner.* Security. Routledge, 2009. 81—82.

crime of compulsory wearing of terrorist clothing, terrorist marks, and the crime of illegal possession of terrorist objects, other legal punishments for terrorist crimes include confiscation of property.

From the harmfulness of the act, the harmfulness of the crime of organizing, leading and participating in terrorist organizations is obviously more serious than other charges, but the severity of property punishment is lower than other charges, which violates the principle of balance of crime and punishment and the principle of integrity of criminal law. In particular, the crime of organizing, leading, and participating in terrorist organizations is often inseparable from financial support. Therefore, it is necessary to consider the confiscation of property in the allocation of penalties.

Secondly, the crime of advocating terrorism, extremism and inciting to carry out terrorist activities in Article 120 ter of the Criminal Law and the crime of forcing people to wear the clothing and symbols of advocating terrorism and extremism in Article 120 quv of the Criminal Law do not stipulate the deprivation of political rights. From other terrorism charges, deprivation of political rights as supplementary punishments are incorporated into the legal punishment, at the same time, the terrorism crime is often against the legitimacy of the government and social stability of terrorism, mostly with a strong political purpose and intention, are extremely destructive to national security and social stability. In view of this, it is not in line with the spirit of legislation not to impose deprivation of political rights on terrorist crimes, nor is it conducive to the governance of terrorist crimes.

Thirdly, there is no provision on life imprisonment for the crime of organizing, leading and participating in terrorist organizations in Article 120 of the Criminal Law. The provision of life imprisonment was added into the amendment of the provisions of the crime of corruption in the Amendment to Criminal Law (IX), which actively promoted and improved the penalty system of our country and had a great deterrent effect on corrupt personnel, which was in line with the spirit of active prevention of criminal policies in modern society. However, compared with the subjects of corruption crimes, terrorist criminals need to apply the criminal measures of life imprisonment to give full play to the special preventive function of the criminal law. Therefore, it can be considered to add the provision of life imprisonment to the provisions of the crime of organizing, leading and participating in terrorist organizations, so as to increase the punishment for terrorist criminals and the deterrent effect.

4.2. The value analysis of placement education in the pre-regulation

Article 30 of the Anti-Terrorism Security Law stipulates that for criminals of terrorist activities and extremist criminals who are sentenced to imprisonment or more, prisons and detention house, shall before they are released, based on their criminal nature, circumstances, and degree of social harm, and their performance during their sentences. And release, conduct social risk assessment on the impact on the community where they live. If the prisoner is assessed to be dangerous to society, the prison or detention house shall make suggestions on placement and education to the Intermediate People's Court of the place where the prisoner is serving his sentence, and shall send a copy of the proposals to the People's Procuratorate at the corresponding level.

The Intermediate People's Court of the place where a terrorist criminal serves his sentence shall, before his release from prison after serving his sentence, make a decision to order him to receive placement education after his release. If the decision on placement for education disagrees with the decision, the person may apply to the People's Court at the next higher level for reconsideration.

Placement education is a judicial measure to allow offenders to return to society based on the evaluation of the correction effect during the period of the sentence. Therefore, the placement education system is based on the assessment of the offender's personal danger and is the basis for judging whether the offender will be released after the execution of the sentence. To a certain extent, placement education is similar to the security measures in the criminal law of Western countries. They are more consistent in system settings, policy demands, and values. which conform to the value demands of social prevention and play a positive role in social security.

"As long as the perpetrator is not in danger of repeating the crime, or the danger disappears, security measures cannot be allowed or must be stopped. On the contrary, if the danger persists, security measures will be necessary. Personal danger is the essential element and foundation of security punishment, which also determines the implementation period of security punishment is often uncertain."[16]

In this sense, the provisions on placement education in the Anti-Terrorism Security Law are undoubtedly reasonable and meet the actual needs of the current state in dealing with terrorist crimes. In addition, from the perspective of legislative technology, the legislative mode of resettlement education is relatively scientific and reasonable.

To put it simply, this provision is to provide a full explanation for the actual effect of the education and reform of terrorist criminals during their imprisonment, that is, if the prison reform fails to meet expectations, the criminals are still in considerable personal danger and will bring unstable social effects once released. In other words, placement education

[16] *Otani M.* Gereral Essay on Criminal Law (New Version 2) / translated by Li Hong, China People's University Press, 2008.

is essentially an afterthought after the execution of the penalty, and is a security measure aimed at preventing terrorism.

The decision criterion of placement education is the personal danger of the perpetrator. The decision stage runs through the whole process of custody of the offender and can be made at any time. Therefore, in criminal justice, for criminals sentenced to fixed-term imprisonment, judicial organs should conduct social risk assessments before they are released. If they are assessed to be socially dangerous, they shall be ordered to receive the inevitable placement education after their release.

Therefore, the positive effect of placement education is beyond doubt, but the practical effect is not obvious. The reason is that there are still problems in the system setting, which leads to gaps in its practical application, and the placement education system hardly plays a practical role. To some extent, the provision of placement education in the Anti-Terrorism Security Law conforms to the principle of legal system and integrity, but there is no provision on placement education in the criminal law, that is, the legislative body does not include the placement education system in the criminal law norms. Therefore, it is worth thinking about how to activate the placement education system from the perspective of criminal justice, which can be considered from the following two aspects:

First, include the placement education system in the general provisions of the Criminal Law, clarify the operating procedures and applicable subjects of the placement education system, and refine the application time, application process, and applicable subjects of the system, so that the judicial organs can initiate and apply the placement education system. In other words, the placement education system should be used as an effective supplement to penalties and play an active role in preventing terrorist crimes;

Second, set up a reasonable mechanism for personal risk judgment. Placement education cannot play a role. One of the obstacles is the lack of normative standards for personal risk judgments, which causes judicial subjects to take a negative attitude toward personal risk judgments. In order to actively promote the specific application of the judicial subject's choice of placement education system, it is necessary to build a proper evaluation mechanism for personal risk judgments. The evaluation elements include criminal behavior, reform effects, prison opinions, community suggestions, etc., which together constitute criminals the personal risk evaluation system.

"Only in countries with sound legal systems, strict substantive and procedural applicable conditions are set for such measures to prevent their abuse."[17]

According to the evaluation mechanism, a comprehensive assessment and judgment of the degree of physical danger of the offender can be made to determine whether the placement education system should be applied to the offender and, if so, for how long.

REFERENCE

1. *Ashworth A.* & *Zedner L.* Prevention and Criminalization: Justifications and Limits (2012) // New Criminal Law Review. — 2012. — Vol. 15. — N. 4.
2. *Blair T.* Britain Must Never be Afraid to Fight Terrorists // The Independent. — 13 March 2004.
3. Chen Jinlin . Reflectionon the path of preventive anti-terrorism criminal legislation // The Procuratorial Daly Newspaper . 2018.
4. *Comford A.* Preventive Criminalization // New Criminal Law Review . — 2015 .
5. Guan Zhefu . The subject of legal interest theory in modern society // Law Press . 2008 .
6. Guo Zhilong. The Chinese Realm of Preventing Sexual Criminalization: From the Perspective of the Comparison between Terrorism and Cybercrime // Legal Science . — 2017 (2) .
7. *Horder J.* Harmless Wrongdoing and Anticipatory Perspective on Criminalization // Seeking Security : Pre-Empting the Commission of Criminal Harms, Oxford and Portland, — 2012 .
8. Ji Ying. Evaluation and Enlightenment of Preventive Criminal Justice in the UK // Politics and Law . — 2014. — N 9 .
9. *Otani M.* Gereral Essay on Criminal Law (New Version 2) // China People's University Press, 2008.
10. *Ulrich G.* Qi Bai. Criminal Law in Global Risk Society and Information Society. — China Legal Publishing House, 2012 .
11. *Xiao Wu.* Continuous Improvement of China's Anti-terrorism Legal System // People's Daily . — October 15 2018.
12. Zhao Bingzhi. Selection of Latest Foreign Anti-terrorism Laws. — China Legal Publishing House, 2008 .
13. Zhao Yandong. Risk society and Risk governance // Study Times . — 2004. — N 3.

[17] *Shi Yan'an*. The Termination of the Reeducation through Labor System and the Legalization of Security Measures // Chinese Law. 2013 (1).