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**ANTI-TERRORISM LEGISLATION OF UKRAINE—ISSUES OF REFORMATION**

**Abstract.** The article focuses on specific examples of contradictions in the legal system of Ukraine concerning terrorism activity. It does an in-depth analysis of those instances and provides concrete suggestions on how to improve the legislation and eliminate any inconsistencies in legislation. Additionally, this article provides a comprehensive review of the overall state of affairs in the Ukrainian legislation that concerns itself with terrorism activity as well as possible solutions to the inefficiencies that exist within the legal system. Finally, the author compares evolution of legislation of several other states that concerns itself with terrorist activity, and draws a fine comparison between those systems and that of Ukraine.

**Keywords:** legal system, Ukraine, terrorism, reformation  
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**Introduction.** The world continuously changes, improves and advances in its development; unfortunately, such processes are also characteristic for evolution of tactics, means and methods of terrorist activity. It is exactly this reason that induce academic lawyers to revise the current legislation of Ukraine, which is an effective instrument used by the subjects of struggle against terrorism in the sphere of counterterrorism activity. It concerns the Law of Ukraine "On combating terrorism" and Articles 258-258<sup>5</sup> of the Criminal Code of Ukraine. This probably explains why recent scientific literature contains proposals of experts for the improvement of current legislation in the sphere mentioned.

**Literature review and the problem statement.** The stated problem has been in the scope of attention of such scientists as V.F. Antypenko, O.F. Bantyshev, S.B. Havrysh, R.I. Hasanov, V.S. Zelenetskyi, V.P. Yemelianov, Yu.A. Ivanov, V.V. Krutov, V.N. Kubalskyi, S.M. Mokhonchuk, L.V. Novikova, M.V. Semykin, O.V. Shamara.

The aim of this article is an analysis of the existing anti-terrorism legislation of Ukraine and determination of personal opinion on its improvement.

**Research results.** Legal basis for anti-terrorism legislation is incorporated in the Law of Ukraine "On combating terrorism", which defines legal and organizational grounds for fighting terrorism, powers and duties of the executive authorities, public associations and organizations, officials and individuals in this sphere, the procedure for coordination of their activity, guarantees of legal and social protection of citizens in connection with the struggle against terrorism, in order to protect a person, state and society from terrorism, identify and eliminate the causes and conditions that give rise to it. The analysis of the provisions of the aforementioned legislation has shown that it contains some contradictions with other laws of Ukraine, which makes necessary an introduction of appropriate changes to it.

In particular, it concerns Art. 1 (the definition of the key terms) of the Law. I agree with those experts who suggest correcting the conceptual apparatus

and introducing to the mentioned article the concept of “organized terrorist group” (stable association of three or more persons, united with the aim to commit terrorist acts) that will provide opportunity to unify this concept in the Law of Ukraine “On combating terrorism” and the Criminal Code of Ukraine, which will meet the definition of the form of complicity, given in Part 3 of Art. 28 of the General Part of the Criminal Code of Ukraine (crimes committed by an organized group) [Yemelianova, Novikova, Semykin 2007, p. 190; Shamara 2014].

There is a necessity to unify the conceptual apparatus of the Law of Ukraine “On combating terrorism” and the Criminal Code of Ukraine in order to avoid contradiction in the law enforcement practice.

Thus, in the Art. 28 (criminal offense committed by a group of persons, or a group of persons upon prior conspiracy, or an organized group, or a criminal organization) of the Criminal Code of Ukraine (hereinafter – CC of Ukraine) it is stated:

“1. A criminal offence shall be held to have been committed by a group of persons where several **(two or more)** principal offenders participated in that criminal offense, acting without prior conspiracy.

2. A criminal offence shall be held to have been committed by a group of persons upon prior conspiracy where it was jointly committed by several **(two or more)** persons who have conspired in advance, that is prior to the commencement of the offense, to commit it together.

3. A criminal offence shall be held to have been **committed by an organized group** where several persons **(three or more)** participated in its preparation or commission, who have previously established a stable association for the purpose of committing of this and other offense (or offenses), and have been consolidated by a common plan with assigned roles designed to achieve this plan known to all members of the group.

4. A criminal offence shall be held to have been committed by a **criminal organization** where it was committed by a stable hierarchical association of several persons **(five and more)**, members or structural units of which have organized themselves, upon prior conspiracy, to jointly act for the purpose of directly committing of grave or special grave criminal offenses by the members of this organization, or supervising or coordinating criminal activity of other persons, or supporting the activity of this criminal organization and other criminal groups.”

The acting Law of Ukraine “On combating terrorism”, defines the following notions:

– “terrorist group, - a group of two or more persons, united in order to commit terrorist acts”;

– “terrorist organization – a stable association of three or more persons established to perform terrorist activity, where the distribution of the functions is made, particular rules necessary for these persons during preparation and committing of terrorist acts are set. The organizations shall be held to be terrorist when at least one of its structural subdivisions performs terrorist activity with the knowledge of at least one of its supervisor (supervising authorities) from all the organization.”

Taking into account the existing contradiction of the acting legislation it is appropriate to modify the conceptual apparatus used in the mentioned legislative acts. Particularly, it is reasonable to state the notion “terrorist group” in the following wording: “terrorist group – a group of several persons (two or more),

united in order to commit terrorist acts”, and also to add to the Art. 1 of the Law a new concept of “organized terrorist group – a group of several persons (three or more) who have conspired in advance into a stable association in order to commit terrorist acts, united by the single plan with functions distribution of the members of the group, aimed at the fulfillment of the plan, known to all members of the group” and to correct the notion “terrorist organization” by presenting it in the following wording: “a stable association of several persons (five and more), established to perform terrorist activity, where the distribution of the functions is made, particular rules of behavior, necessary for these persons during preparation and committing of terrorist offences are set. The organizations shall be held to be terrorist when at least one of its structural subdivisions performs terrorist activity with the knowledge of at least one of its supervisor (supervising authorities) from all the organization”. This will provide the opportunity to unify these notions in the Law of Ukraine “On combating terrorism” and the CC of Ukraine, in particular, the mentioned definitions will respond to the forms of complicity given in the Art. 28 (criminal offense committed by a group of persons, or a group of persons upon prior conspiracy, or an organized group, or a criminal organization) of the General Part of the CC of Ukraine.

I cannot agree with the proposals of some scientists concerning the introduction of the terminological apparatus which contains substantial contradictions, and is overfilled with terms of blanket character that interpret the same concepts differently [Zelenskyi, Yemelianov 2008, p. 81-88]. This approach can lead to confusion in legal practice. In particular, in the project of the Art. 448 (terrorist act) to the CC of Ukraine, the definition of the term is actually given: “terrorist act, that is performing or threat to perform explosion, arson, taking hostages, transport hijacking, enterprise or institution occupation, or other socially dangerous actions that expose to danger human life or health ...”, which does not coordinate with the definition given in the project of the Art. 1 (main terms definition) to the Law of Ukraine “On combating terrorism”: “terrorist act – direct committing of criminal offense of terrorist orientation” [Zelenskyi, Yemelianov 2008, p. 81, 86].

In the Art. 1 (main terms definition) of the project of changes to the Law of Ukraine “On combating terrorism” the developers define such terms as “terrorism, terrorist act, offenses of terrorist orientation, terrorist action, terrorist offense, terrorist deed”. The sense of some of them is not clear, because most of them in the formulation itself do not explain the notion, but give reference to other term. It can be schematically illustrated as follows: “terrorist action – direct committing of terrorist offense; terrorist offense (offense, committed with terrorist aim) – terrorist deed, the performance of which envisages the responsibility in the Criminal Code of Ukraine; terrorist deed – one or another kind of terrorist activity». It means that in the end everything comes to one or another kind of “terrorist activity”, the definition of which is given in the current Law of Ukraine “On combating terrorism”. Moreover, attention should be paid to the fact, that in the project of the Art. 1 (main terms definition) to the Law of Ukraine “On combating terrorism” the notions of “technological terrorism” and “international terrorism” have been excluded, which seems to us to be a premature decision [Zelenskyi, Yemelianov 2008, p. 85-88].

In addition, it is improper to add to the list of the kinds of terrorist activity the notions of “public calls for terrorism, distribution of the materials with such calls or production of such materials with the aim of their distribution”, as in the

Art. 1 of the Law of Ukraine "On combating terrorism" such kind of terrorist activity as "propaganda and terrorist ideology spreading" has already existed. It is left unchanged in the draft law. Indeed, under the term "propaganda" (from the Latin "propagare" - disseminate, distribute) one should understand the activity that involves the systematic distribution, in-depth explanation of socio-political, economic, legal and other opinions, ideas, theories and that supports a formation of certain attitudes in the society, fixing in the minds of the citizens of certain values, orientations, ideas with the aim of maximal expansion of the supporters of the corresponding value system [Shemshuchenko 2003, p.166]. Under the "ideology" one should understand a system of political, legal, philosophical, moral, religious, artistic views, social consciousness [Suchasnyj slovnyk-minimum inshomovnyh sliv, p. 132]. Therefore, such activity as propaganda and terrorist ideology spreading includes "public calls for terrorism, distribution of the materials with such calls or production of such materials with the aim of their distribution". Actually, here we can see the interpretation of such type of activity as propaganda and terrorist ideology spreading.

Certain correction is needed to be made to the notion of terrorist activity, which the lawmaker defines as:

- 1) planning, organization, preparation and implementation of terrorist acts;
- 2) abetting to commit terrorist acts, violence against individuals or organizations, destruction of material objects for terrorist purposes;
- 3) organization of illegal armed groups, criminal groupings (criminal organizations) organized crime groups for committing terrorist acts, as well as the participation in such acts;
- 4) recruitment, arming, training and use of terrorists;
- 5) propaganda and terrorist ideology spreading;
- 6) financing the terrorist groups (organizations) knowingly or other assistance to them.

In the author's opinion, the changes to the Law of Ukraine "On combating terrorism" should be made comprehensively, in particular, the existing contradictions concerning the definition of authorities of certain subjects to combat terrorism should be removed. Thus, the Law of Ukraine "On combating terrorism" contains a list of subjects, which directly participate in combating terrorism within their authority, and those subjects which are involved on demand and take part in the actions connected with the prevention, detection and deterring the terrorist activity. In this regard the question appears as for the place of Foreign Intelligence Service of Ukraine (hereinafter – FIS of Ukraine) in the state system of combating terrorism, which is dictated by the rules contradiction that exists in the mentioned law and which prevents clear understanding of the issue. Thus, in the Art. 4 (subjects of combating terrorism) it is defined that FIS of Ukraine is involved on demand to take part in the actions connected with the prevention, detection and deterring the terrorist activity. Nevertheless, in the Art. 5 (authorities of the subjects, which directly participate in combating terrorism) of this Law it is defined that intelligence agencies of Ukraine (which include FIS of Ukraine) shall perform gathering, analytical processing and providing in the established order of the intelligence data on the activities of foreign and international terrorist organizations outside Ukraine and also execute immediate measures against terrorist threats to the life and health of citizens of Ukraine, institutions and state establishments of Ukraine in the case of involvement of the intelligence agencies of Ukraine to participate in anti-

terrorist operations outside Ukraine. Therefore, it is not clear into which of the subjects defined by the Law of Ukraine "On combating terrorism" the legislator classifies FIS of Ukraine: into those subjects, which directly participate in combating terrorism, or those subjects which are involved on demand and take part in the actions connected with the prevention, detection and deterring of terrorist activities. It is clear that this issue needs resolving. Also, it is appropriate to define the criteria and to develop an effective mechanism for determining the criminal organizations and organized criminal groups as terrorist, which should also be reflected in the changes to the Law of Ukraine "On combating terrorism." Thus, the Art. 24 (responsibility of organization for terrorist activities) of the Law of Ukraine "On combating terrorism" envisages "the organization responsible for the commission of a terrorist act and recognized as terrorist by the court, shall be liquidated and its property confiscated." However, the Law does not specify what kind of criteria and (or) materials of the appropriate law enforcement or intelligence agencies of Ukraine the court shall consider and on what kind of basis the court shall decide on the recognition of an organization as terrorist, and also why the Law does not provide for the recognition of an organized criminal group as terrorist. To this effect, it is appropriate to define those criteria or to make a reservation in the Law stating that the procedures for submitting the relevant materials of law enforcement or intelligence agencies of Ukraine, on the basis of which the court will decide on the recognition of an organization as terrorist, shall be determined in the order agreed with the Supreme Court of Ukraine and approved by the President of Ukraine. Moreover, from the regulation, it cannot be understood whether it refers to the organization in the sense of criminal law or to the organization as a subject of economic law.

To improve the criminal legislation of Ukraine it is appropriate to use the institution of exemption from criminal responsibility for actions provided in Part 1 of Art. 258 of the CC of Ukraine. The analysis of the criminal legislations of foreign countries shows different approaches to the application of the institution of exemption from criminal responsibility for participation in terrorist activities. Most countries of the former Soviet Union in their national legislations apply the institution of exemption from criminal responsibility only to the person who participated in the preparation of a terrorist act, on condition of timely warning of the authorities or otherwise contribution to preventing an act of terrorism. Thus, according to the note to the Art. 205 (terrorism) of the Criminal Code of the Russian Federation "a person who participated in the preparation of an act of terrorism is exempted from criminal responsibility if they by a timely warning of the authorities or otherwise contributed to the preventing an act of terrorism and if the actions of the person do not contain other formal components of a crime". Under "timely warning" prof. S.V. Diakov understands such a warning of the authorities, that they have the opportunity to prevent the commitment of a terrorist action or aftereffects mentioned in the Art. 205 of the CC of the Russian Federation [Skuratova, Lebedieva 1996, p. 245]. In the authors' opinion, it is appropriate to borrow the existing positive experience of these countries and to make changes to the Art. 258 (terrorist act) of the CC of Ukraine by completing it with the fourth part in the following wording:

«4. A person who participated in the terrorist act preparation and willingly warned the authorities about it, supported the prevention of the terrorist act shall be exempted from criminal responsibility if the actions of the person do not contain other formal components of a crime".

It is obvious that the proposed changes to the anti-terrorism legislation of Ukraine are not exhaustive and they shall be further researched and assessed by the specialists in the corresponding sphere. This will allow, in the nearest future, to build an effective system of anti-terrorist regulations, aimed at prevention of possible emergence of terrorism in our country.

**Conclusions.** In this article I will attempt to define a personal position on necessity of transformation of the Antiterrorism Legislation of Ukraine and provide some concrete examples of how it can be improved by eradicating inconsistencies and contradictions with other legislation of Ukraine as well as improving definitions of the terminology used in the Ukrainian legal system. In order to do this, I will start by presenting specific examples of inadequate definitions that are used in the Ukrainian legislation that is concerned with antiterrorism. Specific changes will be described that can eliminate all the inadequacies in the presented cases. To follow, I will describe how specific clauses of the Ukrainian legislation in relation to antiterrorism contradicts other legislation. As a result, dual legal acts exist that deal with the same things in different manner, which should not be present in any legal system. To conclude, I will use an example of changes that were made in other former Soviet states that allowed to bring consistency to their legal systems in relation to legislature that is concerned with antiterrorism and describe how the same or similar changes could be adopted in the Ukrainian legislation.

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