

РОЗДІЛ 11 МІЖНАРОДНЕ ПРАВО

UDC 341.236.4

DOI <https://doi.org/10.32782/2524-0374/2019-6/101>

LEGAL MEASURES IN THE FIGHT AGAINST THE FINANCING OF TERRORISM IN THE EUROPEAN UNION

ПРАВОВІ ЗАХОДИ В БОРОТБІ З ФІНАНСУВАННЯМ ТЕРОРИЗМУ В ЄВРОПЕЙСЬКОМУ СОЮЗІ

Drongal A.M., 5th Year Student
Institute of Prosecution and Criminal Justice
of Yaroslav Mudryi National Law University

The article is devoted to the struggle of the European Union with the global problem of terrorism, including its financing. Reveals the concept of the financing of terrorism, its sources and causes of activity of struggle in the early 21st century to the present time. Discusses the initial stages of the adoption and use of normative – legal acts, in particular directives on combating the financing of terrorism, their content. Noted that the European Union, being one of the most important and influential actors in international relations, could not remain aloof from the General efforts aimed at reducing threats from terrorism. Moreover, this integration has become a victim of such criminal action, that to an even greater extent affected the decisions of the Union in combating the international threat posed by the various organizations of radical orientation. Thus, with the passage of time and acquisition of experience in the fight against international terrorism, the European Union, how responsible and focused on peaceful existence participant in the contemporary international relations, developed a strategy to counter this threat and constantly upgrading it. The EU is actively pursuing activities in various areas in the national strategy for combating terrorism. Was strengthened legislative framework in the field of counter-terrorism. Cooperation between countries of the European Union with the support of the European institutions laid the necessary framework in which EU countries have the opportunity to harmonize their policies, to share information on measures made at the national level, to develop appropriate practices and to collaborate on developing new ideas. The EU strategy is based on special tools, the purpose of which is to facilitate mutual legal assistance criminal prosecution authorities of the States parties: for example, Europol, Eurojust, the European arrest warrant and the joint unit of inquiry (consisting of representatives of prosecuting agencies of different States parties, and, if necessary, from employees of Europol). Summing up the article, the author notes on the development of legislation and its conformity with modern realities. Summing up the article, the author notes on the development of legislation and its conformity with modern realities.

Key words: European Union, counter-terrorism, anti-terrorism legislation, the Directive on the fight against terrorism, prevent terrorist financing.

Стаття присвячена питанню боротьби Європейського Союзу з глобальною проблемою тероризму, зокрема його фінансуванню. Розкривається поняття «фінансування тероризму», його джерела та причини активності боротьби на початку XXI століття. Розглядаються початкові етапи прийняття й використання нормативно-правових актів, зокрема директив, щодо боротьби з фінансуванням тероризму, їх зміст. Зазначено, що Європейський Союз, будучи одним із найбільш значущих і впливових суб'єктів міжнародних відносин, не міг залишитися осторонь загальних зусиль, спрямованих на зниження загрози з боку тероризму. Більше того, це інтеграційне об'єднання не раз ставало жертвою таких злочинних акцій, що ще більшою мірою відбилося на рішеннях Союзу в галузі протидії міжнародній загрози в особі різних організацій радикальної спрямованості. Отже, з плином часу й набуттям досвіду боротьби з міжнародним тероризмом Європейський Союз як відповідальний та орієнтований на мирне існування учасник сучасних міжнародних відносин розробив стратегію щодо протидії цій загрози й постійно вдосконалює його. ЄС активно проводить заходи в різних напрямках у рамках стратегії боротьби з тероризмом. Посилена законодавча база в галузі боротьби з тероризмом. Співпраця між країнами Євросоюзу за підтримки європейських інститутів заклала необхідні основи, за яких країни ЄС мають можливість погоджувати свою політику, обмінюватися інформацією про заходи, вироблені на національному рівні, відпрацьовувати відповідну практику і працювати спільно над розробленням нових ідей. Стратегія ЄС спирається на спеціальні інструменти, метою яких є полегшення взаємного надання правової допомоги органами кримінального переслідування держав-учасників: наприклад, Європол, Євроюст, європейський ордер на арешт і спільні групи дізнання (що складаються з представників органів кримінальної переслідування різних держав-учасників, а також за необхідності зі службовців Європолу). Підсумовуючи викладений матеріал, автор зазначає про розвиток законодавства та його відповідність сучасним реаліям.

Ключові слова: Європейський Союз, протидія тероризму, антитерористичне законодавство, директива про боротьбу з тероризмом, запобігання фінансування тероризму.

The level of terrorist threat in the world is now quite high. Suffering from it as a country where armed conflict persists (particularly in the middle East and Africa) and Western countries, which until recently was considered quite safe, given a developed system of law enforcement bodies and special services. To counter this threat is becoming increasingly difficult. International terrorism is a phenomenon that has no geographical boundaries and is not only a danger to individual countries, but also casts doubt on the stability of the international legal order and the ability to face the challenges from international terrorist organizations and quasi-public entities applying for an independent role in the system of international relations [1].

In the context of globalization and interdependence, as well as on the background of the unresolved Syrian crisis, terrorism

has become all the more relevant, giving the terrorists a wide variety of funding sources, channels of movement of funds with the use of modern technology, not only undermining the foundations of international security, but also the integrity of the global financial system.

After the adoption of UN Security Council resolution (UNSCR) No. 1373 in 2001, the international community began to use legal sanctions as the primary tool to combat terrorism.

Anti-terror policy includes a variety of tools, among which are the special legal measures, the development of which was carried out solely or mainly for the purposes of combating terrorism. The main aim of the study special legal tools for combating terrorism that form the anti-terrorist legislation of the EU. Anti-terrorism legislation is a Central component

in the system of measures for preventing terrorism in the EU, it does not replace the relevant provisions of national law in the EU. His task is to develop common standards for the fight against terrorism, as well as to provide on the territory of the EU equal application of international legal means of anti-terrorist activities. Currently anti-terrorist legislation of the EU consists of two key components: measures for the harmonization of criminal and criminal-procedural norms, as well as measures to combat the financing of terrorism. Both areas have been developed in line with international standards to combat terrorism, which, in turn, was a result of the reaction of the international community to terrorism in Western countries. The main impetus for the development of anti-terrorism legislation the EU should be called the events of 11 September 2001 and the increasing terrorist activity in 2015–2018 in the EU.

In recent years, European countries faced with the terrorist threat, as only in 2015, Europe underwent a series of terrorist attacks, the latest of which was a series of actions that took place on 13 November 2015 in France which killed 100 people, more than 300 were injured, and the terrorist attacks in Brussels and London. The European authorities and the media seriously think that these attacks will probably continue. Thus sharply raises the question, how efficiently Europe implemented a policy warning and prevention of such actions of terrorists, and how the suppression of the financing may confront the growing threat of contemporary international terrorism.

The purpose of this article is the outline of a supranational EU regulatory framework in the sphere of combating the financing of terrorism as well as the rationale for their effectiveness and needed improvement.

One of the most dangerous forms of terrorist activity is the financing of terrorist activities. Of course it should be noted that no terrorist group could not exist if she hadn't had those or other funding sources.

So, without financial assistance holistic a terrorist organization, in principle, cannot function, and especially to conduct a successful attack. It can be argued that the intensity of terrorist activities depends on the level of funding and logistics of an organization.

It should be noted that the official direction of the suppression of the financing of terrorism in international politics appeared relatively recently. Despite the initiative back in 1963 (when taking the 14 universal legal instruments and 4 amendments), countering the financing of terrorism officially began in 1999 with the adoption of the International Convention for the suppression of the financing of terrorism [2]

The events of 11 September 2001 affected the implementation of the EU Security Council resolutions relating to terrorist groups that includes al-Qaeda and the Taliban, by imposing sanctions against them. 28 September 2001, the European Union adopted the action plan on combating terrorism, including a wide range of measures to be adopted in various sectors (judicial cooperation, police cooperation, transport safety, border controls and document protection against counterfeiting, combating the financing of terrorism, political dialogue and external relations, to provide protection from biological, chemical and nuclear weapons) [3].

The attacks in Madrid in March 2004 and in London in July 2005 have led to increased cooperation in the fight against terrorism in the European Union, and finalize the action plan by adding more steps to strengthen measures. The Council of Europe, which took place on 25 March 2004 adopted a Declaration on solidarity against terrorism, which in turn imposes the duty to support all available instruments, including military resources of the member States of the Union, the most vulnerable to implementation on their territories of terrorist attacks.

Taking into account the recommendations of international organizations of financial control, in 2005, we adopted the third

Directive on combating money laundering. Also was adopted a number of measures in this area:

- regulation of information required to transfer funds. Banks are required to provide personal information about anyone who sends money outside the EU or get them out of there;
- confiscation of proceeds of crime;
- orders for the freezing of assets;
- control over the transfer of cash outside the external borders of the EU;
- introduction of a code of conduct which prevents the use of charitable organizations by terrorists;
- the signing of the EU Convention of the Council of Europe Convention on laundering, search, seizure and confiscation of proceeds of crime and financing of terrorism.

In December 2005 the European Commission put forward the following two tasks to prevent the financing of terrorism:

- to develop common EU principles for the collection and exchange of information, which can lead to the reduction of sources of terrorism financing;
- strengthening financial transparency and accountability of non-profit organizations by entering an appropriate code of conduct.

In December 2016, the European Commission presented a package of measures to combat the financing of terrorism and strengthening border control, improvement of the Schengen information system (SIS). This set provides for increased control over the movement of cash and gold while crossing EU borders. Persons who are suspect, should be carefully reviewed, even if they are imported into the EU is less than allowed by 10 thousand euros. To improve the effectiveness of controls over cash and Bank cards sent by mail, more powers will receive the customs authorities. The Commission also proposes to introduce common rules to combat money laundering and prevent the financing of extremist organizations. In the framework of such events are invited to contribute to this database:

- persons who are suspected of involvement in terrorist activities;
- persons who are banned entry to the EU;
- migrants in respect of which issued a warrant for deportation.

Also, the EU invites the member States to provide Europol unlimited access to the SIS. According to preliminary estimates, the introduction of these measures will cost about 70 million euros, and their implementation must occur in the period 2018–2020 [5].

In 2019, the EU introduced a new Directive, which contains measures for combating the financing of terrorism and money laundering in third countries. Delegated regulation (EU) 2019/758 of 31 January was published in the journal of the EU on 14 May 2019; entered into force on 3 June this year, and will be implemented in action 3 September 2019.

Presented modifications to the current Directive 4 (EU) 2015/849 regarding standards and procedures for the credit / financial institutions aimed to counter the risks of money laundering in third countries, contain provisions on the following issues:

- actions of financial institutions regarding measures to combat money laundering in case of the established laws of third countries, which is contrary to the policies and procedures under articles 45 (1) and (3) of the Fourth Directive;
- the financial institutions at the level of the subsidiaries established in third countries to prevent financing of terrorism and the illegal movement of cash assets;
- in case of impossibility of acceptance established in the procedural regulations, subsidiaries or branches in third countries must be closed.

A complete list of measures to combat money laundering posted on the official website of the EU.

You should also recall 5 Directive (AMLD5), which amends Directive 4 EU 2015/849 and should be powered by the member States of the Union until the end of 2019 and be fully operational until January 10, 2020. The document contains the following additions to the 4 EU Directive:

- enhance the transparency of trusts, companies and other legal mechanisms by creating a public registry;
- provide access to financial information to the regulatory bodies of the EU to fulfil its tasks;
- provide minimal anonymity of virtual currency, wallets, and prepaid providers of electronic storage;
- expand criteria for evaluating the financial risk in third countries;
- in all member States of the EU to create a single registry of Bank accounts and search engines;
- expand information and increase the level of trust between the Supervisory authorities in combating money laundering [4].

At the moment, the system of measures to prevent the financing of terrorism has two main elements:

- rules relating to the freezing of assets of persons involved in terrorist activities;
- the rules relating to the counter the use of the financial system for terrorist activities.

Analysis of the EU legislation allows to conclude that the freezing of assets of persons involved in terrorist activities, carried out in two stages. In the first stage, the Council takes decisions within the framework of the common foreign and security policy (AWPB) in accordance with article 29 TFEU. In the second phase of measures envisaged by the decision of the Council adopted under AWPB, are enacted at the EU level through regulations of the Council or the Commission in accordance with article 75 and 215 TFEU.

The second activity to prevent the financing of terrorism is implemented in the framework of the internal market and economic and monetary Union by adopting measures against the use of legal financial instruments for terrorist activities.

Anti-terrorist legislation of the EU, in particular in the fight against terrorist financing is only one element in the system of measures to combat terrorism. The fight against terrorism within the EU is carried out through various instruments, among which stand out the special legal measures, which form the anti-terrorist legislation of the EU.

How effective are the above events, which are listed in the Directives it is too early to say, as the cases with the identification of sources of financing of terrorism is sufficiently small. But it should be noted a positive trend in the gradual upgrading of methods of struggle which demonstrates the interest and concern of the member States of the EU about the possible development of terrorist financing through enhanced cooperation of the EU with other States.

The suppression of the financing of terrorism is an extremely important direction in the field of anti-terrorist activities of the EU. The formation of anti-terrorist legislation the EU is implemented within the framework of implementation of norms of international law. However, as a rule, the rules anti-terrorist legislation had no direct effect on the territory of countries – members of EU. The current legal system requires that member States implement these standards at the national level.

In other words, the suppression of the financing of terrorism will be effective only if all countries involved in this work will be to use common tools.

Thus, simultaneously with the development of special legal tools to combat terrorism is to further improve the General activities, which including the fight against terrorism.

REFERENCES

1. Topical issues of counteraction to terrorism in the world and in Ukraine / O.O. Reznikova, A.O. Misyura, S.V. Dreamov, K.E. Voitovsky ; edited by O.O. Reznikova. Kyiv : NISS, 2017. 60.
2. Clarke C. The Financing of Terrorism, Insurgency, and Irregular Warfare. Westport : ABCCLIO, 2015. 289 p.
3. The European Union Counter-Terrorism Strategy. URL: http://e.eu.int/uedocs/cms_Data/docs/pressdata/en/jha/87257.pdf.
4. Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures, credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries (Text with EEA relevance.) C/2019/646. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0758>.
5. Bures O. EU's Response to Foreign Fighters: New Threat, Old Challenges? *Terrorism and Political Violence*. 2018.
6. Voinikov V.V. Legal regulation of the fight against terrorism within the framework of ES. Lex Russica, 2019.