

FIGHTING TERRORISM: LEGAL ANALYSIS

Volodymyr Harasymiv

Head of Police Department No. 4 (Zbarazh) of the Ternopil District Police
Department of the Main Department of the National Police in the Ternopil Region
ORCID: <http://orcid.org/0009-0007-1003-0878>
email: linko32@ukr.net

The article considers terrorism as a complex socio-political and scientific problem, the solution of which requires the use of a systemic and complex interdisciplinary approach. The author emphasizes that terrorism as a social phenomenon requires research in the field of criminal, administrative, constitutional, international law, criminology, political science, sociology, psychology and other sciences. It was proven that activity of international institutes to combat terrorism is impossible without the functioning of special national bodies authorized to carry out anti-terrorist activities, which in the EU take the form of special law enforcement institutes. It is pointed the described approach to limiting police units exclusively to operational powers in the field of combating terrorism on the territory of Ukraine is unjustified and contradicts the above practice of foreign countries. An author believes that in order to modernize and strengthen the functions of the National Police in the field of combating terrorism, it is advisable to implement the best experience of foreign countries in this field. Key aspects of the best experience of foreign countries in the field of operation of special units for combating terrorism, in order to strengthen the role of the special unit of the National Police «KORD» in the specified area are suggested.

Key words: terrorism, National police, combating terrorism, KORD, state policy

Problem's setting. Awareness of the importance of the problem of terrorism is evidenced by the significant attention to this phenomenon in international law and national legislation of most countries of the world. The national legislation of Ukraine no. 177 is an exception, containing a special Law «On Combating Terrorism», in Article 1 of which this phenomenon is defined as follows: «Terrorism is a socially dangerous activity that consists in the deliberate, purposeful use of violence by taking hostages, arson, murders, torture, intimidation of the population and authorities or committing other attacks on the life or health of innocent people or threatening to commit criminal acts in order to achieve criminal goals» [1].

The state of the problem's research. Considerable attention was paid to the problem of combating terrorism in the scientific studies of O. Bandurka, D. Bezzubov, N. Bortnyk, A. Dolgova, S. Dikaeva, V. Yemelyanova, Yu. Ivanov, V. Kovalenko, V. Kolpakov, A. Komzyuk, V. Krutov, V. Luneeva, V. Petrishcheva, V. Trubnikov, V. Uschapovskyi, O. Khramtsov, D. Shestakov and many others.

The objective of the research is analysis of the process of combating terrorism as well as the provision of practical proposals and recommendations for improving the order of its understanding.

The main part. The system of public authorities that, in accordance with the law, conduct anti-terrorist activities includes: the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine, the Ministry of Defense of Ukraine and a number of other institutions that, to one degree

or another, implement state policy in the field of combating terrorism.

Despite the significant variety of state institutions entrusted with the implementation of state anti-terrorist measures, the clarification of the role of the National Police in this area still remains outside of special scientific investigations, which is obviously determined by the existing legal anomie of the national legal system.

It must be stated that, in addition to general declarative references to the nature of the participation of this law enforcement agency in the field of combating terrorism, neither the forms nor the organizational and procedural aspects of the involvement of units of the National Police in systemic anti-terrorist activities are detailed by domestic legislation.

Regarding the role of the National Police in anti-terrorist activities, the Law of Ukraine «On Combating Terrorism» only establishes the following 178 prescription: «The Ministry of Internal Affairs of Ukraine, together with the National Police, organizes the fight against terrorism by preventing, detecting and stopping crimes committed with a terrorist purpose, the investigation of which is assigned by the legislation of Ukraine to the competence of the National Police; provides the Anti-Terrorist Center under the Security Service of Ukraine with the necessary forces and means; ensures their effective use during anti-terrorist operations» [2].

Summarizing the normative dimension of the reflection of the researched issue, we come to the conclusion that the level of quality of normative and legal support for the integration of police units into

the sphere of implementation of the state anti-terrorist strategy is insufficient, which creates the need to update the doctrinal dimension of compensation for this legal gap.

The proven experience of foreign countries proves the necessity and effectiveness of creating a highly specialized unit within the law enforcement system, the powers of which include identifying terrorist threats, monitoring and countering terrorist activity, solving operational tasks to counter organized criminal groups that can use their own resources to initiate terrorist attacks. The experience of the European Union is decisive in this matter.

V. Chumak, investigating the issue of the organization of the anti-terrorist model of individual EU member states, notes: «To protect the member states of the European Union from organized criminal and terrorist structures and improve cooperation in the fight against terrorism between countries, the implementation of coordinated measures that would guarantee a high level of security international organization ATLAS was created. The purpose of which is cooperation and providing mutual support and assistance in the fight against terrorism and increasing skills, knowledge and experience in countering terrorism among law enforcement agencies of the member states of the European Union» [3].

It is obvious that the activity of international institutes to combat terrorism is impossible without the functioning of special national bodies authorized to carry out anti-terrorist activities, which in the EU take the form of special law enforcement institutes.

For example, the model of such an institution within the experience of Lithuania and Sweden is defined in the work of L. Novikov: «The special unit of ARAS in Lithuania and US4 in Sweden perfectly demonstrate the need to remove the anti-terrorist institution from the general system of the public apparatus, since the specifics of their activities imply the inadmissibility of applying the activity template, characteristic of law enforcement units of the general type. The selection into the special forces of these states is made from among persons with combat experience, high physical, moral and psychological indicators and exceptional intelligence, which allows to carry out highly effective operations without losses for more than 10 years» [4].

The international dimension of the cooperation of the EU countries in the field of combating terrorism was formalized by the creation of a special international organization «ATLAS», which structurally covers the heads of special units of the anti-terrorist direction, allowing to promptly agree on the issue of joint activities regarding the conduct of special operations, which, due to the complexity of the activity model of terrorist groups, is difficult or even impossible to implement by the forces of only one state. The key tasks of this organization are: planning of joint anti-terrorist practice of states, determination of priority operational tasks and measures of each of the participating states, which are carried out for their

implementation, approval of temporary measures with the participation of employees of specialized law enforcement institutions on the territory of a foreign state with determination of the limits of operational cooperation with national law enforcement agencies, exchange of best practices in the field of combating terrorism.

Partial implementation of the experience of the EU countries was carried out in the practice of Ukraine, as a result of which the 180th special purpose police unit «KORD» was created and staffed, which is part of the general system of the National Police of Ukraine. According to the order of the Ministry of Internal Affairs of Ukraine dated 04.12.2017 No. 987, the competence of this unit includes: «...prevention, detection and termination of administrative and criminal offenses; ensuring public safety and order during meetings, rallies, marches, demonstrations and other mass events; ensuring the safety of persons taken under protection, their family members, protection of administrative, state buildings and other objects on the grounds and in the manner determined by the legislation of Ukraine; participation in anti-terrorist operations conducted in accordance with the Law of Ukraine «On Combating Terrorism» [5].

As can be seen from the functional principles of the activity of this institute, the fight against terrorism is not the main direction of its functioning, which raises questions about the possibility of effective and specialized performance of tasks related to responding to terrorist challenges.

Given the provisions of national legislation, special police units are called upon to perform only operational, force functions, while investigation, strategic planning or information compilation measures regarding potential terrorist-type threats should be carried out by other public authorities, namely the Security Service of Ukraine (hereinafter - SSU). However, given the broad competence of the Security Service of Ukraine, it is difficult to identify this body as specialized in relation to the problem of combating terrorism.

In our opinion, the described approach to limiting police units exclusively to operational powers in the field of combating terrorism on the territory of Ukraine is unjustified and contradicts the above practice of foreign countries. We believe that in order to modernize and strengthen the functions of the National Police in the field of combating terrorism, it is advisable to implement the best experience of foreign countries in this field.

A selection of indicators of the effectiveness of the fight against terrorism in certain foreign countries, carried out by S. Dryomov testifies to the high effectiveness of special units of countries such as Germany, Israel, and the United States of America, based on the experience of which a compilation of proposals will be built, regarding their further introduction into the domestic model of integration of National Police units in the field of combating terrorism.

Analyzing the experience of the Federal Republic of Germany in the field of counter-terrorism, O. Kozerod noted the following: «The Federal Intelligence Service of the Federal Republic of Germany structurally includes: an information and situational center (permanent monitoring of potential terrorist threats in the world, monitoring and organization of response to crimes against citizens of the Federal Republic of Germany abroad, intelligence measures); technical and information department (providing technical support and detection and neutralization of cyber terrorism); department for combating organized criminal groups (detection and neutralization of drug trafficking, illegal migration, money laundering); central department (summarization of data, resolution of issues related to ensuring the activities of subdivisions, introduction of legislative initiatives in the Bundestag)» [6].

The experience of the Federal Republic of Germany proves that a special body for combating terrorism should be specialized in terms of areas of jurisdiction. This fact calls into question the validity of the domestic approach, in which, as noted, the special police unit functions exclusively within the framework of providing an operational response to single episodes of terrorist activity, while the main part of the involvement of employees of this unit is the maintenance of public order. At the same time, the analytical and strategic functions of the domestic special forces are not performed at all.

In Alex Schmidt's study, dedicated to clarifying the organization of anti-corruption practices in Israel, features were noted that made it possible to significantly strengthen the practice of this country's special forces: of the «MATAM» police. The distribution of competence between these units was carried out by establishing the powers to resolve domestic issues of countering terrorism to the first and transnational or external terrorist threats to the second of the specified units» [7].

The practice of combating terrorism under the legislation of Ukraine shows that, regardless of the circumstances, in the event of the need to carry out urgent response measures related to the detection and counteraction of 185 terrorist threats, an official of the Security Service of Ukraine or another law enforcement agency must follow a number of formal procedures, which determine the legality of the measures taken through the prism of the provisions of the criminal procedural legislation:

1) Entering information about the opening of proceedings in a criminal case into the Unified Register of Pretrial Investigations;

2) Preparation of a petition to the investigative judge of the relevant appeals court from among the courts of general jurisdiction to grant consent to conduct an undercover investigation or investigative action;

3) Agree on the prepared request with the procedural manager (prosecutor in charge of the investigation) or a group of prosecutors (in case of

creation of a group of prosecutorial supervision in the case);

4) Obtain a decision on granting consent to conduct the relevant event after consideration of the petition by the investigating judge.

It is obvious that in the event of an urgent need for an operational response to a terrorist threat, compliance with the specified algorithm may lead to inefficiency or even the impossibility of operational response measures, which, given the specifics of terrorist activity, may pose a real threat to institutions and social values protected by law. Therefore, in our opinion, along with the introduction of detailed regulation of the status of the special police unit «KORD», it is necessary to carefully review the mechanism of implementation of their functional competence by employees of this unit, in particular, by optimizing and simplifying the procedure for authorizing operational intelligence and other covert measures for obtaining information about potential terrorist activity.

Conclusions. Summarizing the results of this analysis taking into account the key aspects of the best experience of foreign countries in the field of operation of special units for combating terrorism, in order to strengthen the role of the special unit of the National Police «KORD» in the specified area, we suggest:

1) Review the system and significance of the activity of the special unit «KORD». As noted, the literal interpretation of the provisions of the current legislation allows us to come to the conclusion that the special unit «KORD» is characterized exclusively by the implementation of operational measures of an anti-terrorist nature, i.e. the execution of orders and decisions of the Security Service of Ukraine, therefore even the structure of this unit does not provide for the possibility of carrying out analytical, strategic and other similar processes that would allow conducting independent anti-terrorist activities within the full cycle of proceedings in cases (from the opening of the proceedings to its transfer for consideration by judicial authorities).

We believe that in order to fully ensure the status and acquire the features of an autonomous and effective mechanism for combating terrorism, it is appropriate to integrate the analytical support service, the terrorist activity monitoring department and the international anti-terrorist cooperation unit into the structure of the KORD special unit.

2) By means of legislative changes to the departmental regulations of the Ministry of Internal Affairs of Ukraine, ensure the functional specialization of the «KORD» unit through the exclusion of public order functions from the spheres of this unit, due to their actual implementation by law enforcement units of general competence and taking into account the priority need to focus the activities of this unit precisely in the field of combating manifestations of terrorism.

3) Make changes to the order of the Ministry of Internal Affairs of Ukraine dated December 4, 2017 No. 987 «On approval of the Regulation on special purpose police units», in terms of the detailing of powers in the field of anti-terrorist activities, given the actual absence of any detailing of this area of activity of the special unit in the current legislation;

4) By analogy with the experience of the operation of the US FBI, to simplify the procedure for approval of procedural decisions of officials of the special unit «KORD» (by conducting approval with the head of the special unit or its territorial department), which form the legal basis for conducting special operations in cases of potential or actual terrorist activity.

5) Introduce the practice of integrating the leadership of the special unit «KORD» into the process of functioning of international organizations to combat 188 terrorism («ATLAS», «Berne Club», «UN Council on Combating Terrorism») in order to solve current issues of transnational cooperation and attract best

practices of foreign countries in the field of combating terrorism;

6) Carry out a clear demarcation of the competence of the Security Service of Ukraine and the special unit «KORD» in the field of combating terrorism, by assigning to the units of the SBU the authority to proceed in cases of crimes related to terrorism, which are of a transnational nature, instead giving the special unit of the police «KORD» exclusive competence in the field of conducting cases related to countering domestic manifestations of terrorist activity.

Taking into account the above proposals will allow the transformation of the special unit «KORD» from one of the ordinary bodies for the protection of public order into a full-fledged and specialized institute of anti-terrorist activity, which will meet the requirements of the international community and will allow to significantly strengthen the importance of the National Police in the field of combating terrorism.

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