

The World Experience in Investigating Crimes Related to the Creation of Terrorist Bodies

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Abstract

The relevance of studying the experience of countries in investigating crimes related to the creation of terrorist bodies is conditioned by the widespread phenomenon of terrorism in the world and its negative impact on life quality. Therefore, the purpose of the study is a detailed analysis of all aspects that will help to reveal the process of organising terrorist structures in general, track the mechanism for investigating a similar category of crimes. The study results in analysing approaches of many countries to solving crimes using the experience of the US, Great Britain, Australia, Ukraine, etc. The experience of these countries and their tactics served as the foundation for the effectiveness of the use of digital technologies in the investigation of crimes. The results obtained will help highlighting the most effective methods of solving crimes to combat such a world problem as terrorism and reduce the level of its spread.

Keywords: Terrorism; terrorist group; terrorist organisation; world experience; criminal law; tactics; international acts; artificial intelligence

Introduction

The issue of terrorism and terrorist crimes is becoming one of the most dangerous and global problems not only on the territory of individual states, but also for the entire global community. Therefore, an important aspect is the study of methods for investigating terrorist crimes as one of the ways to stop this phenomenon and reduce its spread in the world community (Kushkhatueva & Bekkieva, 2021).

First of all, it is necessary to consider the definition of the concepts of "terrorist group" and "terrorist organisation". The criminal and legal assessment of the signs of these concepts and other forms of manifestation of a criminal formation created with the aim of further development and engagement in criminal activity, was criminalised in the legislative acts of many countries, creating a fairly large number of

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difficulties in the practice of applying the rules of law and causes a significant amount of controversy in the criminal law (Bildirici, 2021; Taran and Tsiupryk, 2017).

Therefore, it is proposed to characterise the definition of these concepts. Thus, a terrorist community (group) is defined as a stable group of persons, the association of which occurred with the purpose of carrying out terrorist activities or for the preparation or direct commission of further crimes, or for the commission of other types of crimes, the purpose of which is propaganda, support or justification of terrorist activities and terrorism in general. What distinguishes a terrorist group from other forms of organising a criminal society is the "stability" of groups of people, and the fact that a terrorist group is not endowed with such characteristic features of a criminal community as being structured in organising its criminal activities and the purpose of committing this type of crime in obtaining financial or other material gains since the key task in creating a terrorist group is to support terrorism (Kobets, 2017).

However, considering the concept of a terrorist organisation, it cannot be, in contrast to a terrorist group, considered in the regard of criminal law a kind of criminal organisation (Parasyuk, 2020). A terrorist organisation is not one of the forms of complicity in the commission of a crime in the organisation of criminal groups. This conclusion is made based on the fact that the signs of a criminal organisation are not indicated in the dispositions. An equally important feature is the absence of such signs as creation and leadership (Kryvoruchko, 2018). With regard to the general definition, the organisation is considered a terrorist one and is subject to liquidation if such an organisation or a person in control, carries out the organisation, preparation or commission of crimes of terrorism. Thus, the activities of a terrorist organisation are exclusively of a criminal nature, and the grounds for defining an organisation as such, which is a terrorist organisation, comes with the establishment of the fact of a crime (Malhina&Gorbanev, 2020).

After analysing the concepts of "terrorist group" and "terrorist organisation", it can be noted that the main difference in the definition of these concepts lies in the presence in the legal decisions of the courts that have entered into force on recognising the organisation as a terrorist organisation or, in the case of a sentence, regarding a person in the creation, participation or leadership of a terrorist group (Smirnova & Teteryatnik, 2018).

Further study of crimes related to terrorism is quite important, since the fight against terrorism is characterised as an important problem of international politics. Terrorist activity represents a sufficiently large number of threats and dangers not

only for individual states, but for the entire global community. Therefore, studying the experience of investigation of crimes related to the organisation of terrorist groups and terrorist organisations will help to identify new methods for national policy in the field of anti-terrorist activities.

Generally, the aim of the study is to analyse the experience of various countries and their tactics in fighting terrorism in order to reduce the level of the mentioned above problem in the modern world.

Material and Methods

This paper describes the experience in the investigation of the creation of terrorist groups and terrorist organisations using theoretical and practical methodological components and approaches. Thus, a theoretical methodological approach allows analysing the concepts of "terrorist group" and "terrorist organisation" in more detail, highlighting the main differences that arise between these concepts from the legal doctrine perspective. Therewith, a formally legal method helps the analysis of the legal norms that are consolidated at the international level to study these legal violations. The functional methodological approach allows highlighting the main goals and objectives that the disclosure of crimes related with the creation of terrorist organisations and terrorist groups, and highlight what the disclosure of such crimes can contribute to. The method of logical analysis is also vital in terms of analysing the studied aspects in the form of consideration of various legislative acts of various countries and their experience in investigating crimes related to the creation of a terrorist group or a terrorist organisation. An equally important role in the study goes to such methods as the method of analysis and comparative analysis, which allow tracking trends in the approaches to investigate crimes and highlight their characteristic features. The method of induction will help focusing attention on the details of the approaches of states in the investigation of crimes to provide an overall picture regarding their legal approaches. However, the deduction, opposite to the induction, singles out specific elements that can characterise the approach of each state to solving crimes. The synthesis, in turn, will help combining the provided theoretical and practical aspects to analyse the experience of the countries in investigating crimes of the creation of a terrorist group or a terrorist organisation.

Thus, based on the foregoing, the study will include several key stages:

1. The first stage is based on the disclosure of the theoretical aspect by explaining the concepts of "terrorist organisation" and "terrorist group",

and comparative analysis in the form of highlighting the differences between these concepts.

2. The second stage reveals the methodological approaches that are used in the investigation of crimes related to organising terrorist groups and organisations.
3. The third stage reveals the consideration of the experience of various countries of the world in investigating crimes for creation of terrorist organisations and terrorist groups, including a comparative analysis to highlight the characteristic features in the approaches of various states to this problem.

Results and Discussion

Comparative Aspect of the Concepts of "Terrorist Organisation" and "Terrorist Group"

The fight against terrorism has been a priority area of activity for the United Nations and other international organisations. In the study of the concepts of crimes on the organisation of terrorist groups and organisations, one should consider in more detail the national policy and legislative acts that regulate the fight against this phenomenon on the example of studying such experience in Ukraine (Bilous, 2018). Thus, the most dangerous of all types of illegal actions are actions related to terrorism, which are set out in the provision of Article 258-3 of the Criminal Code of Ukraine (2001). It is necessary to understand in more detail the provisions of the normative acts of Ukraine for a broader understanding of the concept of terrorist activity in general.

Terrorist activity is a type of illegal activity directed against public safety or the international legal order to achieve political goals through violent coercion of public authorities. Considering the provision of Part 1 of Article 1 of the Law of Ukraine No. 638-IV "On the fight against terrorism" (2003), according to which terrorist activity is an activity that covers many aspects such as planning, organisation, preparation, and implementation of terrorist acts; an incitement to commit terrorist acts, violence against individuals or organisations, destruction of material objects for terrorist purposes; organisation of illegal armed groups, criminal groups (criminal organisations), commission of terrorist acts by organised criminal groups, and participation in such acts; recruitment, arming, training and use of terrorists; and propaganda and dissemination of the ideology of terrorism, financing and other assistance to terrorism.

The term "Terrorist activity" should be related to terrorism itself. The process of crimes investigation substantiates such an approach since there are not enough sufficient grounds for distinguishing between the concepts of "terrorism" and "terrorist activity", because the essential features of both concepts actually coincide, are the same, and therefore, the volumes of their content coincide.

One of the alternative actions in the field of crimes related to terrorism is the participation or creation of a terrorist organisation or a terrorist group. Nevertheless, the term "participation" is narrower than the content of the corresponding concept in the commonly used sense. Indeed, in the common regard, participation implies any form of involvement in the activities of a terrorist organisation, including its creation and leadership (Chorny,2017; Kucheryna and Oleynikov, 2020). However, since in the disposition of Article 258-3 of the Criminal Code of Ukraine (2001) these acts are named alternatively, that is, organisational or other assistance to the creation or activities of a terrorist organisation, this means that the relevant concepts are incompatible, and the content of each of them has an independent meaning and is not included in the content another concept.

The legislator in the regulations that provide for liability for the activities of all criminal organisations, in some cases, also highlights such form of action as participation in crimes committed by the corresponding criminal organisation. Considering that the disposition of Article 258-3 of the Criminal Code of Ukraine (2001) does not single out such a form of carrying out an unlawful act, participation in crimes committed by members of terrorist organisations is covered by the concept of "participation in a terrorist organisation", but not "participation in crimes committed by a terrorist organisation" (Kryvorychko, 2018). There is an opinion that it is more relevant for the legislator to talk about participation in a criminal association than about participation in its activities, because participation in the first case is indicated by a broader meaning than in the second one; thus, at the moment, the position of the legislator is ambiguous, since part 1 of Article 255, Article 257, Article 258-3 of the Criminal Code of Ukraine (2001) provides for this as participation in the corresponding criminal organisation, while in parts 1, 2 of Article 260 of the Criminal Code of Ukraine (2001) is participation in the activities of the relevant formations.

The criminal law distinguishes certain characteristic features which describe terrorist crimes, in particular, in the sphere of their organisation and creation. The first element considered is that they have a special purpose for their creation, which significantly earmarks them from other crimes against life, health, safety, or property.

Based on this element, crimes that are in any way related to terrorist activities are generally serious and represent a high level of threat to public safety. The next characteristic element is the subject of the crime, which is associated with terrorist activities (Bukaev&Vassalatiy, 2019). If earlier there were only private individuals and non-state structures, that is, those that have no power over the objects of violence, then today state structures can act as such. In addition, multi-objectivity discourages the socio-political nature of this phenomenon; this means that terrorist activities have an impact on the entire society, including state bodies. The next element that characterises terrorist activity is the specific goal of a terrorist group or organisation, meaning that in addition to the main goal there are also so-called "intermediate" goals that are aimed at ensuring the existence of the group or organisation; it is important to note that intermediate goals help achieving the larger, global goal that the terrorist organisation or terrorist group sets for itself. The last element worth noting is the ideological motivation of violence, even in cases where the subject of terrorist activity is state structures; terrorist ideology is a set of ideological instructions, which, in turn, serve as a theoretical excuse for the use of violence in various forms on illegitimate foundations to achieve a specific goal by a terrorist organisation or group (Kushkatueva, 2021).

The correct qualification of a crime in accordance with Article 258-3 of the Criminal Code of Ukraine (2001) must include elements of the objective side, namely the creation of a terrorist group or organisation, the leadership or participation in it, organisational or other assistance in the creation or activities of a terrorist group or organisation. In addition, the current provisions of the Criminal Code of Ukraine (2001) need to be amended. For example, it is necessary to remove such signs of this *corpus delicti* "organisational or other assistance in the creation or activities of a terrorist group or organisation", because Article 258-4 of the Criminal Code of Ukraine (2001) already provides for liability for facilitating the commission of a terrorist act, which should only be improved and, in accordance with the requirements of the Council of Europe Convention on the Prevention of Terrorism, the term "terrorist act" should be replaced by the term "terrorist offence". In addition, to avoid different interpretations of these terms, this study considers it appropriate to supplement the specified Article 258-3 of the Criminal Code of Ukraine (2001) with a note with appropriate the terms included. For instance, it is vital to indicate that an organised terrorist group is an internally stable association of three or more subjects of a crime, previously organised for preparation or commission of terrorist crimes or the

commission of only one terrorist crime, requiring long-term preparation. In turn, a terrorist organisation is an internally and externally stable hierarchical association of five or more participants or two or more organised groups, the purpose of which is to commit terrorist crimes or only one crime requiring careful long-term preparation, or the direction or coordination of the terrorist activities of others or the provision of activities as a terrorist activity itself organisation and other terrorist groups. In this regard, it is also necessary to amend the Law of Ukraine No. 638-IV "On the fight against terrorism" (2003), which defines the terms "terrorist group" and "terrorist organisation", to avoid conflicts and ensure the integrity of anti-terrorist legislation.

Methodological Approaches Used in the Investigation of Crimes Related to the Organisation of Terrorist Groups and Organisations

The study of methods of investigating terrorist crimes is vital and relevant, as the threat of committing terrorist crimes is gaining momentum, and the subjects that carry out these illegal acts are looking for new ways and methods to achieve their goals.

For an effective investigation of crimes related to the organisation of terrorist organisations and terrorist groups, it is necessary to study modern tactics for conducting tactically competent investigative actions. These methods are widely used in many countries of the world. When choosing tactics, it is important not to miss a single structural element; such elements are the allocation of goals and objectives of investigative actions, the preparatory process of the investigative action, the definition of tactics for conducting the investigative process, and the implementation of tactics in the activities of the investigative process. Tactical techniques are the main link that can determine the further development of an investigation, since it is tactical technique that can achieve the goals and objectives identified by the investigator (Evstratova, 2021a; Petrychenko, 2022).

Nowadays, investigators use a fairly large number of tactics in the investigation of crimes related to the terrorist activities and the phenomenon of terrorism in general. For the correct choice of tactics in the investigation of these crimes, one should take into account the type and features of terrorist activity. Certain features allow characterising terrorist activity, namely, a high level of training and thoroughness in the secrecy of terrorist organisations and terrorist groups, flexibility and unpredictability in further actions of subjects of terrorist activity, the presence of those who know the methods and techniques of operational-investigative and procedural activities, and a fairly high level of armament by the subjects of terrorist

activities. This method is often used in the investigation of these crimes in countries like Ukraine, Belarus, Kazakhstan, etc. (Maslyuk, 2021)

A tactical operation here is a set of investigative, organisational, and preparatory actions, and operational and search activities with the purpose to solve individual intermediate tasks of the investigative process. After the investigator has established the nature of the terrorist crime, he determines the algorithm for specific actions for further investigation (Petrychenko, 2020).

The initial tactical technique is the scene inspection, which, in fact, is not a separate investigative action, but a full-scale tactical operation, where investigators, operational officers, and specialists from various fields, participate. The structure of this tactful technique includes inspection of the scene, interrogation of witnesses, search of vehicles that could be used by subjects of a terrorist organisation or terrorist group for their illegal activities, and an express-investigation by specialists. However, such operations as polling, identification of individuals, inquiries about the subjects of a terrorist group or terrorist organisation, and billing are also worth mentioning (Evstratova, 2021b). The subjects of a terrorist group or a terrorist organisation are divided into two groups: the first group consists of those who are in a conflict situation, that is, they provide false testimony, or even refuse to provide it; the second group represents those who are in a conflict-free situation, which means that the subjects provide evidence, and also actively cooperate with the investigation.

Another point is an interrogation of suspects and accused persons. This stage is characterised by a rather high complexity and creates a conflict situation. Therefore, when conducting an investigation during interrogation, the investigator must be sufficiently aware that this is verbal communication, so they must analyse which approach is more effective, taking into account the personal characteristics of the interviewees (Milevsky & Milevskaya, 2019). In the previously mentioned countries, namely, Ukraine, Belarus, Kazakhstan, etc., special tactics are used by the investigator during interrogation. These include the presentation of evidence on the crime of creating a terrorist group or a terrorist organisation, both in increasing and decreasing sequence; the investigator creating the appearance of an erroneous impression in the interviewee regarding greater awareness of the circumstances that are subject to proof, and vice versa, creating an erroneous impression regarding less awareness of the circumstances that are subject to proof, which helps, as a result, increasing confidence of the interviewee regarding the invulnerability of his own position, which will help as

a result, to increase the possibility of obtaining sudden presentation of evidence (Semenyshyn, 2020).

Global Experience in Investigating Crimes Related to the Organisation of Terrorist Groups and Terrorist Organisations

Nowadays, countries such as the United States of America, Great Britain, Germany, the Czech Republic, and others implement artificial intelligence in the policy of investigating crimes related to the organisation of terrorist groups and terrorist organisations with greater efficiency. They are often used either by sappers at crime scenes or as autonomous equipment, for instance, a film camera or a crime scene orientation device. Artificial intelligence can also perform other functions, such as recognition, classification, and prediction (von Lampe, 2021).

The recognition feature is quite useful, since it determines the necessary object by any signs; that is, to identify the subject, the car number used in the illegal act, or other objects that are significant enough in the investigation of crimes related to organising terrorist groups. The efficiency of the artificial intelligence recognition function in the investigation has shown itself in practice due to the use of the Watrix tool created by Chinese developers in foreign countries (Bildirici, 2021). This system identifies a person without their face; that is, this artificial intelligence can identify a person using such characteristic features as walking, physique, height, weight, walking speed, and also identifies the subject in the database, which significantly affects the speed and efficiency of crime solving.

Further, an important function in the use of artificial intelligence is the prediction function, since it can predict the behaviour of organising terrorist groups crimes and analyse a certain information system to indicate its future state or other indicators that can qualify a crime of organising a terrorist group (Pelc&Mulák, 2021). The policy of the United States of America, namely the Palantir program, which was held in New Orleans from 2012 to 2018, serves as an example of the successful application of the artificial intelligence prediction function in practice (Wagner, 2021). The purpose of the program was to collect information about the population, like their hobbies, analysis of their social networks, place of work, social circle, and other characteristic features. With its use, artificial intelligence could analyse personalities and determine who could be a potential criminal or a victim.

An equally important function of artificial intelligence in investigating crimes related to the organisation of a terrorist group is classification, which allows distributing information into separate groups according to the request.

An important aspect of the national policy to counter terrorism and reduce the level of crimes related to the organisation of terrorist groups is the active fight against this phenomenon. Most states take a law enforcement approach to deal with terrorism-related crimes, and many of them differ significantly in the division of powers between competent authorities regarding suspects until charges.

For example, in Israel, the Minister of Defence has the right to detain suspects for up to 6 months, provided that the suspects are brought before a senior judge within 48 hours from the moment of detention; furthermore, the period of detention can be extended for an additional period (Bildirici, 2021).

Regarding UK's approach to this issue, its Terrorism Act allows detaining suspects for up to 28 days without being charged (Investigatory Powers Act, 2016). Comparing Great Britain's and Israel's approach, the first one has more legal nature, with a purpose to facilitate the investigation, while the second one has more preventive nature, which does not allow the detainee to continue illegal activities.

Australian policy in this matter is based on state laws. That is, the detention of suspects of terrorist crimes is similar to the procedure for other criminal offences, which means that the detention occurs for a period not exceeding 48 hours. But in some states of Australia, detention is possible for up to 14 days, with the purpose to prevent possible terrorist acts, but not to assist in the investigation of a crime (Movchan and Movchan, 2020; Tin et al., 2021).

In France, pre-charge detention of suspects occurs for up to 6 days for serious threats, including terrorism. After that, the judge has the right to extend the detention for a week, then transfer the case to the magistrate, who conducts the interrogation and investigation of the crime. In France, the investigation of crimes can be carried out by special judges, who are also empowered to extend the period of detention pending formal charges (Ariffin & Hussain, 2020).

Furthermore, the association of services and departments that are actively involved in countering the phenomena of terrorism record the effectiveness of investigations of crimes related to the organisation of a terrorist group or organisation. In the UK, this association is the British Security Service, which is also known as MI5, which investigates crimes and ensures security, but at the same time, does not have law enforcement powers. In Australia, such an association is called the Australian Security and Intelligence Organisation, which closely cooperates with the Australian Federal Police, especially in matters related to the investigation of crimes of a terrorist nature and the prevention of these illegal acts (D'Souza & L'Hoiry, 2021).

Thus, the main characteristic methodological approaches to the investigation of crimes related to the creation of terrorist groups and organisations among the CIS countries and advanced industrial states were identified.

Conclusions

The importance of conducting study of methods for investigating crimes related to the creation of terrorist groups and organisations is conditioned by the global nature and danger of this problem at the world level, as a result of which there is a need to consider methods for its elimination. First of all, consideration of the definitions of the concepts of "terrorist group" and "terrorist organisation" plays a significant role, since the criminal law assessment of the features of these concepts causes a significant amount of controversy in the criminal law. Therefore, it was revealed that this definition consists in the presence in the legal decisions of the courts that have entered into force on recognising an organisation as a terrorist or, in the case of a sentence, regarding a person in the creation, participation, or leadership of a terrorist group.

An important role is played by the study of the Criminal Code of Ukraine, namely Article 258-3, according to which the correct qualification of a crime in accordance should include elements of the objective side, namely the creation of a terrorist group or terrorist organisation, the leadership of such a group or organisation, or participation in it, organisational or other assistance to the creation or activities of a terrorist group or terrorist organisation. The stage, which reveals the main purpose of the study, is devoted to tactics, which are the main methods in the investigation of crimes. Such methods should be understood as a set of methods of an investigative, organisational, and preparatory nature or other actions, operational and search activities that are carried out according to a single plan and the purpose of which is to solve individual intermediate tasks that stand in the general tasks of the investigative process. The paper explored such tactics as examining the scene, interrogating suspects, and presenting evidence which all are to be used often throughout the world. Moreover, choosing tactics requires some special preparations.

The experience of advanced countries demonstrates the use of artificial intelligence in the investigation of crimes, which has shown its efficiency in practice in the United States. It has been recommended to use it more widely in different states, as it has already been done by Great Britain, Germany, and the Czech Republic. In addition, as one of the methods to improve the efficiency of crime investigation, the association of various special services and their cooperation with

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law enforcement agencies was singled out, which effectiveness was shown in the practice of Australia and Great Britain. So, using these countries' experiences can help to solve problems related to crimes in countries that are not involved in using AI this much. It is stated that the globalized world requires more modern solutions when dealing with terrorism. The findings allow evaluating the effectiveness of the identified methods and conducting a comparative analysis.

The results obtained in the course of the study will help highlight new methodological approaches to increase the detection of crimes related to the organisation of terrorist groups and organisations and reduce the level of this problem in the world community.

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