

Experience of Foreign Countries in Regulating Liability for the Financing of Terrorism

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Annotation: The article analyzes the regulation of criminal liability for the financing of terrorism in foreign countries and the issues of implementing international standards into national legislation. Despite the existence of the UN International Convention for the Suppression of the Financing of Terrorism and FATF recommendations, many states face difficulties in applying them due to differences in legal systems, lack of transparency in financial flows, and insufficient control mechanisms. Using the examples of Russia, Kazakhstan, Germany, Belarus, the USA, and the UK, the paper highlights specific features of criminalization of terrorism financing. It is noted that in some jurisdictions effective measures have been introduced, including targeted sanctions, asset confiscation, various forms of criminal liability, and severe penalties such as imprisonment. The study emphasizes the importance of examining foreign experience for improving national systems of countering terrorism financing.

Key words: terrorism financing, international convention, FATF recommendations, criminal liability, Russia, Kazakhstan, Germany, Belarus, USA, UK, national legislation, confiscation, financial sanctions.

And the implementation of international standards for combating terrorist financing remains a difficult task for many states. Despite the existence of universal instruments — the International Convention for the Suppression of the Financing of Terrorism and the FATF recommendations — their implementation at the national level is complicated by differences in legal systems, weak coordination of agencies and limited resources. As G. Vakhrushev rightly notes[1], effective counteraction is possible only with the joint use of available means and methods by states, which requires not only the creation of legal norms, but also their actual application.

The main difficulties are related to the heterogeneity of national legislation, insufficient transparency of financial flows and the absence of effective control mechanisms. Nevertheless, positive dynamics are observed in a number of countries: legal frameworks are being created that are consistent with international standards, and law enforcement practices are being strengthened. For example, Russia has a system of targeted financial sanctions for financing terrorism and proliferation of WMD, recognized by the FATF as compliant with international requirements[2]. This demonstrates the desire to improve even in the presence of problems.

Thus, although implementation difficulties remain, foreign experience shows the possibility of successfully developing mechanisms to combat terrorist financing. In order to increase the effectiveness of the national system, it seems appropriate to study the practice of various states, paying attention to both countries of the Romano-Germanic and Anglo-Saxon legal traditions. It is logical to begin with an analysis of states belonging to the Romano-Germanic legal family.

The Russian Federation classifies crimes related to the financing of terrorism (FT) under Article 205.1 of the Criminal Code of the Russian Federation "Assistance to terrorist activity". However, in terms of implementing the requirements of the International Convention for the Suppression of the Financing of

Terrorism, the legislation has limitations: not all types of terrorist acts, the financing of which should be recognized as a crime, are fully covered.

The current law covers the financing of 15 crimes provided for by the Criminal Code of the Russian Federation, the key one being Article 205 "Terrorist Act". It is comprehensive in nature and establishes that terrorism is expressed in actions aimed at destabilizing the activities of government bodies, international organizations or intimidating the population. To qualify, it is necessary to establish that the perpetrator has terrorist goals. Resolution No. 1 of the Plenum of the Supreme Court of the Russian Federation (2012) specifies that explosions or arson without terrorist motivation (for example, out of revenge) are not considered terrorism. Thus, the norm complies with paragraph 2(1)(b) of the Convention, but causes contradictions in part with paragraph 2(1)(a)[3].

The Criminal Code of the Russian Federation also provides for liability for individual conventional crimes (for example, Articles 211, 360, 206, 220, 221), some of which are covered by Article 205. However, a number of offenses require proof of a terrorist purpose, which complicates the practice. Thus, the hijacking of an aircraft is classified separately, without the need to prove a terrorist focus, which complies with international standards. At the same time, crimes related to bomb terrorism or violence at airports fall under Article 205 and require the establishment of specific terrorist intent.

Terrorist financing is classified under Article 205.1 (facilitation of terrorist activity), Article 208 (financing illegal armed groups) and Article 361 (financing acts of international terrorism). The objective side includes the provision or collection of any resources (money, transport, materials, equipment, services), which is consistent with the FATF approach. The subjective side is expressed in knowledge of the final terrorist use of funds or the intention to finance them. However, Russian legislation requires proof of a person's knowledge, which does not always coincide with international standards, which allow for the alternative of "knowledge or intent".

Additionally, terrorism is regulated by Articles 205.3–205.5 and 361 of the Criminal Code of the Russian Federation, covering participation in illegal armed groups, financing trips to participate in terrorist activities, and acts of international terrorism. But the latter is limited to cases of threats to the interests or citizens of Russia.

Penalties for FT vary: under Article 205.1 — imprisonment for 8 to 15 years and a fine of up to 700 thousand rubles or income for 2-4 years, and for particularly serious crimes, life imprisonment is possible. Conditional release is provided for assistance in preventing terrorist activity (Note 2 to Article 205.1).

A special feature of Russian law is the distinction between financing terrorism and extremism. The latter is covered by a separate article 282.3 of the Criminal Code of the Russian Federation, "Financing Extremist Activity." Terrorism is defined as a violent ideology aimed at intimidating the population and pressuring authorities, while extremism covers actions to incite social, racial or religious hatred, including propaganda of the superiority of certain groups. The Federal Law "On Combating Extremist Activity" clearly establishes prohibited actions and activities of organizations.

Thus, Russian legislation demonstrates significant progress in the area of combating FT, including the system of sanctions and the distinction between terrorism and extremism. However, gaps remain related to the need to prove a terrorist purpose, which makes it difficult to comply with the requirements of Article 2(1)(a) of the Convention. The Resolution of the Plenum of the Supreme Court of the Russian Federation partially compensates for this shortcoming, but does not eliminate it completely[3].

In the Republic of Kazakhstan, the financing of terrorism (FT) is singled out as a separate crime and is enshrined in Article 258 of the Criminal Code, based on the provisions of the UN Convention for the Suppression of the Financing of Terrorism. It is considered a special form of aiding terrorism and

extremism and covers the provision or collection of funds, property, property rights or benefits. Such actions may be expressed in gifts, donations, exchange, charitable or financial assistance, as well as in the provision of information and other services to individuals or legal entities, including groups.

A mandatory condition is the awareness of the perpetrator of the terrorist or extremist nature of the activities of persons or organizations to whom funds are provided, as well as the intended use of resources for the preparation or commission of terrorist attacks, or for the support of terrorist groups and illegal armed formations. These provisions are consistent with the Law "On Combating Terrorism" and the UN Convention. The subject of the crime may be any person who has reached the age of 14, participating in the financing of the organization, planning or implementation of terrorist acts.

The peculiarity of the legislation of the Republic of Kazakhstan is that criminal liability occurs not only for direct financing (money, property), but also for indirect assistance (information and other services). According to Art. 258 of the Criminal Code, financing is recognized as a crime even in cases where the funds were not actually used for terrorist attacks and were not associated with a specific act. This position is reflected in the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated 08.12.2017, which states that FT also includes the provision of uniforms, medicines, communications equipment, transport and premises.

Financing terrorism is classified as a deliberate crime, and the intent must be supported by objective data. Crimes under Article 258 of the Criminal Code of the Republic of Kazakhstan are classified as serious, and the punishment provides for imprisonment for 5 to 9 years.

Federal Republic of Germany. German criminal law does not provide for a separate provision directly establishing liability for the financing of terrorism. Instead, the fight against this act is carried out through mechanisms aimed at combating the legalization of funds and property obtained by criminal means, as well as organized crime.

The elements of terrorist financing can be found in § 129a of the German Criminal Code, which establishes liability for the creation of terrorist associations. This crime provides for liability for providing material or other support, including financial assistance. However, the sanctions provided for in this paragraph include imprisonment for up to five years, which, in our opinion, does not sufficiently reflect the degree of public danger of terrorist financing, especially in comparison with the criminal legislation of countries such as Russia, the USA and Great Britain.

In 2002, a new provision was added to the German Criminal Code - § 129b ("Creation of terrorist communities abroad"), introduced after the terrorist attack on the United States on September 11, 2001. According to this article, assistance in committing terrorist acts abroad is also classified as a crime, and sanctions for this act include imprisonment for up to five years. Within the framework of this provision, additional measures can be applied, such as deprivation of the legal capacity to hold public office and deprivation of rights obtained as a result of public elections. In our opinion, this is a good provision that can be borrowed for use in our legislation, since part two of article 155-3 of the Criminal Code of the Republic of Uzbekistan provides for the liability of officials for committing the financing of terrorism. In this case, changing the sectional list of this article to a punishment in the form of deprivation of a certain right was appropriate.

In addition, under current German law, "extended confiscation" may be applied for crimes related to the financing of terrorism. This is an innovation that reflects the recommendations of the international community on combating terrorism. Unlike regular confiscation, extended confiscation reduces the requirements for evidence. V. V. Ulyanova agrees with this, noting that this instrument more effectively disrupts the economic foundations of terrorist organizations[6]. Although extended confiscation may only be applied to items directly intended for the commission of terrorist acts, in our opinion, this does not diminish its significance as a measure of influence.

In this regard, we cannot agree with Ulyanova. Recognizing the financing of terrorism as a separate type of crime was aimed at taking away the financial basis from terrorists. In this regard, in our opinion, confiscation of terrorists' property is an effective method of combating this phenomenon.

Taking into account the above, we propose to introduce into the criminal legislation of the Republic of Uzbekistan the confiscation of property as another measure of legal influence, which is applied along with the imposition of punishment.

Republic of Belarus. The Criminal Code of the Republic of Belarus includes Article 290, which provides for liability for financing terrorist activities. In general, the concept laid down in this article corresponds to world standards of criminalization of terrorist financing. However, the Belarusian legislator went further, expanding the subject of the crime. Unlike most international norms, Article 290 of the Criminal Code of the Republic of Belarus covers not only monetary funds and material assets, but also property rights, as well as exclusive rights to the results of intellectual activity.

In addition, unlike other legislative acts, Article 290 of the Criminal Code of the Republic of Belarus includes an incentive norm, which provides for exemption from criminal liability if a person voluntarily reported his/her participation in a crime and/or contributed to the prevention of an act of terrorism and the detection of a crime. This exemption from liability is possible provided that a timely appeal is made and active assistance is provided in solving the crime. We believe that such a norm is an extremely effective tool in the fight against the financing of terrorism, since it helps prevent terrorist activity at an early stage, which, in turn, reduces the likelihood of terrorist acts.

Another distinctive feature of Article 290 of the Criminal Code of the Republic of Belarus is the presence of a qualified crime, which is provided for in Part 2 of this article. It includes punishment for committing a crime on the basis of repetition. We fully support this decision of the Belarusian legislator and believe that a similar approach should be used in Russian criminal legislation. Already now in the Criminal Code of the Russian Federation one can see a tendency to take into account the repetition of crimes, for example, in Part 5 of Article 131 and Part 5 of Article 132 of the Criminal Code of the Russian Federation, which allows expanding the scope of liability for repeated crimes and increasing the punishment for them.

Regarding the Anglo-Saxon legal system, we decided to consider the legislation of Great Britain and the USA as some of the most effective systems for combating terrorist financing. This is also shown by the FATF Assessment Reports, where both countries received maximum marks for criminalization of FT (P5) and effectiveness of combating FT (HP9)[4].

The US counter-terrorism financing legislation includes several key acts and regulations that criminalize the financing of terrorist activities. The main document in this area is the USA PATRIOT Act of 2001, which was passed in response to the terrorist attacks of September 11. This law significantly expanded the powers of law enforcement agencies and changed the approach to combating terrorism, including the financing of terrorist groups.

Criminalization of terrorist financing

Basic Provisions

1. **Penal Code** : Under Title 18 of the United States Code, Sections 2339A and 2339B criminalize the provision of material support to terrorist organizations. This includes not only direct funding, but also any form of assistance that may facilitate terrorist activity.
2. **Anti-Money Laundering Legislation** : Bank Secrecy Act (Bank Secrecy Act) requires financial institutions to report suspicious transactions, which helps identify possible terrorist financing. Financial institutions are responsible for complying with these requirements and can be held liable for failure to be vigilant.

Expanded definitions : The laws also include expanded definitions of what constitutes terrorist financing. For example, legislators consider not only the direct transfer of funds, but also any actions that could contribute to the financing of terrorist activity, such as fundraising under the guise of charity.

Features of criminalization

Tough Penalties : Laws provide for severe penalties for terrorist financing, including long prison terms and significant fines. **For example, statutes of limitations for prosecution may be waived for terrorist financing crimes**

- **Financial Sanctions** : In addition to criminal penalties, the United States imposes financial sanctions against countries and organizations suspected of supporting terrorism. These measures include freezing assets and prohibiting financial transactions with certain individuals or organizations.
- Thus, the US legislation on countering the financing of terrorism represents a set of measures aimed at strict criminalization of such actions and active cooperation at the international level to prevent terrorist activity.

The UK counter-terrorism financing legislation is a complex system of rules and regulations aimed at criminalising actions related to the financing of terrorist activities. The main provisions are regulated by a number of laws, the most significant of which is the Terrorism Act 2000 (Terrorism Act 2000).

Under the Act, terrorism is defined as any act intended to cause harm to people or property with the intention of intimidating the public or compelling a government to take action. This definition covers both domestic and international terrorist acts. Terrorist financing is an offence under section 15 of the Terrorism Act 2000 and includes soliciting funds for terrorist purposes, receiving or giving funds with the intention of using them for terrorist activities, or knowing that the funds are likely to be used for such purposes. The legislation also provides for prosecution of persons who had reasonable grounds to believe that their actions would contribute to the financing of terrorism[5].

One of the key features of the UK's terrorist financing criminalisation is its broad scope. The legislation covers not only the direct funding of terrorist groups, but also any actions that may contribute to their activities. This creates the potential for prosecution of a wider range of actions, which significantly strengthens counter-terrorism efforts.

The UK actively cooperates with international organisations to combat terrorist financing. This includes information sharing and joint operations to identify and disrupt financial flows linked to terrorism. Penalties for terrorist financing in the UK are severe, with maximum penalties of up to life imprisonment, particularly for leading terrorist organisations. There are also significant fines.

The system of penalties for terrorist financing includes maximum terms of imprisonment and the possibility of applying mitigating circumstances when sentencing. The court may take into account the degree of involvement of the accused in terrorist activities and the presence or absence of previous offenses. In addition, the legislation includes measures against money laundering related to terrorist financing. Individuals and organizations can be held liable for insufficient vigilance regarding suspicious financial transactions.

The UK's counter-terrorist financing legislation therefore takes a comprehensive approach to criminalising such activities. It combines strong criminal penalties with opportunities for international co-operation and active monitoring of financial flows.

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