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**INEVITABILITY OF CRIMINAL LEGAL  
RESPONSIBILITY FOR FORMATION  
OF TERRORIST ORGANIZATIONS  
AND IT'S ASSISTANCE: ON MATERIALS  
OF JUDICIAL PRACTICE OF UKRAINE**

**NIEUCHRONNOŚĆ KARNEJ  
ODPOWIEDZIALNOŚCI PRAWNEJ  
ZA STWORZENIE ORGANIZACJI  
TERRORYSTYCZNEJ I POMOC JEJ:  
NA PODSTAWIE MATERIAŁÓW  
PRAKTYKI SĄDOWEJ UKRAINY**

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**Abstract:**

The question of the inevitability of criminal legal responsibility for the formation and assisting terrorist organizations in Ukraine is considered in this article. Based on statistical, deductive, and inductive research methods, an analysis of Ukraine's jurisprudence in this part is shown. The shortcomings of the current legislation of Ukraine are revealed and the ways of its improvement

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are suggested. The decision of the Verkhovna Rada of Ukraine on the prevention of terrorist acts is analyzed and proposals for improvement of activity of this legislative body are put forward.

**Keywords:** terrorist organization, criminal responsibility, terrorism, crime, punishment

**Streszczenie:**

W artykule poruszona została kwestia nieuchronności karnej odpowiedzialności prawnej na Ukrainie za stworzenie organizacji terrorystycznej i pomoc jej. Na podstawie statystycznych, dedukcyjnych i indukcyjnych metod badawczych przeprowadzono analizę praktyki sądowej Ukrainy w tym zakresie. Ukazane zostały wady prawa obowiązującego na Ukrainie i zaproponowano sposoby jego poprawy. Przeanalizowano decyzję Rady Najwyższej Ukrainy w celu zapobiegania aktom terrorystycznym i wysunięto propozycje poprawy działalności tego organu ustawodawczego.

**Słowa kluczowe:** organizacja terrorystyczna, odpowiedzialność karna, terroryzm, przestępstwo, kara

**Statement of the problem in general outlook and its connection with important scientific and practical tasks.**

The issue of preventing terrorist acts is rather important nowadays, especially through the prism of its needs to consolidate the efforts of the world in general and Ukraine in particular. According to the international group of experts, Ukraine has a fairly high level of terrorism. In 2019, Ukraine occupied 24th place [1] in the Global Terrorism Index. This index was developed under the auspices of the Institute of Economics and Peace by experts from the University of Sydney (Australia) and is a comprehensive study that measures the level of terrorist activity in the world and illustrates which countries and to what extent face a terrorist threat.

According to this index, Ukraine occupied:

2018 - 21st place [2];

2017 - 17th place [3];

2016 - 11th place [4];


2015 - 12th place [5];

2014 - 51st place [6].

This issue is important for the analysis through the prism of the inevitability of legal responsibility in Ukraine for the formation of terrorist organizations and assistance to them.

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**Analysis of latest research where the solution of the problem was initiated.**

Considerable attention has already been paid to the study of the problems of criminal liability for the commission of terrorist crimes in general and the formation of a terrorist organization in particular. However, the aim has not yet been to investigate the implementation of the principle of inevitability of criminal law responsibility in Ukraine for the formation of a terrorist organization and its assistance. Without such an analysis, it is impossible to effectively pursue a state policy on the prevention of terrorist acts.

More specifically, currently available scientific works mainly deal with the issue of the inevitability of criminal law responsibility for crimes in general, without due regard for the specifics of the realm in which they are committed. Thus, in their works, O. V. Kozachenko, V. M. Kuts, M. I. Khavroniuk, P. V. Khriapinskyi, A. M. Yashchenko and others analyzed modern trends of the State's response to the commission of a crime, characterized individual measures of criminal law responsibility, and highlighted their pros and cons. Without undermining the significance of these works, it should be noted that they do not address the issues of criminal liability for terrorist crimes; besides, these works are not of the application nature and this has a negative effect on law application practice. To a certain extent, the issue raised was discussed in the works by O. V. Bantyshev, V. P. Yemeljanov, A. E. Izetov, O. O. Knyzhenko, V. A. Lipkan, S. M. Mokhonchuk, O. V. Shamara, and others. Such a situation makes it hard to identify the existing shortcomings in the mechanism of criminal law response to terrorist crimes and, primarily, to the formation of a terrorist organization. Statistical data provided in this publication indicate an increase in this category of crimes, once again being another proof that this topic is of relevance. Today, it is crucial for Ukraine to bring the terrorism index down. And this goal may not be achieved without clarifying the application aspects of the issues concerned, which can only be disclosed on the basis of the analysis of judicial practice materials, in symbiosis with the analysis of the specifics pertaining to the application of criminal law measures to a respective category of crimes. The scientific novelty of this publication lies particularly in the coverage of these issues.

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### **Aims of paper. Methods**

Purpose: based on the analysis of official statistical data on detected terrorist crimes committed in Ukraine, as well as data on the number of persons prosecuted, to draw conclusions on law enforcement practice in Ukraine from this category of crimes.

Methods: statistical and analytical methods were used during the analysis of statistical data, the logical-legal method was used in the study of the legislation of Ukraine, as well as the legal decisions of the Verkhovna Rada of Ukraine. Besides, the dialectical method is applied; this method uses the rules and categories of dialectics in the study of such specific provisions of criminal law which relate to the definition of a criminal organization or a terrorist organization. The systemic method used in the process of researching into the issues of criminal liability for terrorist crimes made it possible to show the arrangement of the system of criminal law rules which establish liability for the category of crimes analyzed, the relationship and interdependence of elements within the system, as well as with other criminal law categories and concepts. Owing to the use of this method, contradictions and gaps in criminal legislation are identified and proposals for its improvement are formulated. Besides, this method allows avoiding simultaneous use of conflicting criminal law rules, and also makes it possible to timely fill in the gaps in criminal law. This method has an important role to play in the methodological apparatus of scientific research of the issues pertaining to criminal law protection of public security.

### **Exposition of main material of research with complete substantiation of obtained scientific results. Discussion.**

To calculate the global terrorism index, several indicators are taken into account, including the total number of terrorist incidents that took place in a given year.

According to the reporting data submitted in Form № 1 "Unified Report on Criminal Offenses", approved by the order of the Prosecutor General's Office of Ukraine dated October 23, 2012, № 100 in agreement with the State Statistics Service of Ukraine [7] from 2013 to 2019 recorded the following number of crimes terrorist orientation (for ease of perception, the data are displayed in a table):

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**Table 1. The number of recorded crimes.**

Years / Article of the Criminal Code of Ukraine	Article. 258	Article. 258-2	Article. 258-3	Article. 258-4	Article. 258-5
2019	909	2	164	1	33
2018	950	5	175	-	51
2017	1385	-	277	2	74
2016	1865	2	391	-	1
2015	1295	4	849	7	138
2014	1499	4	478	11	54

Source: Statistical information on criminal offenses for the period of 2014-2019 [Electronic resource]. – Online access :[https://old.gp.gov.ua/ua/stst2011.html?dir\\_id=110381&libid=](https://old.gp.gov.ua/ua/stst2011.html?dir_id=110381&libid=) (date of online search: 27.01.2020).

Illustrated statistics show that the largest number of registered crimes occurred in 2015 and 2016. However, only a small proportion of these proceedings were reported to individuals, and therefore the number of convicts differs significantly from these figures. Data on convicted persons can be obtained on the official web portal "Judiciary of Ukraine" by referring to the "Report on Persons Prosecuted and Types of Criminal Punishment" for 2018 and to the "Report on the number of persons convicted, acquitted, cases in respect of which are closed, insane, to whom coercive measures of a medical nature and types of criminal punishment have been applied" [8].

In particular, during the period of 2018-2014 were convicted:

**Table 2. The number of convicted persons.**

Years/article of the Criminal Code of Ukraine	Article. 258	Article. 258-2	Article. 258-3	Article. 258-4	Article. 258-5
2018	9	-	87	-	8
2017	14	-	63	1	4
2016	7	1	59	1	4
2015	1	1	12	1	2
2014	-	-	-	3	-

Source: Court statistics [Electronic resource]. – Online access: [https://court.gov.ua/insh/sudova\\_statystyka](https://court.gov.ua/insh/sudova_statystyka) (date of search: 27.01.2020).

As we can see, the difference between the number of registered proceedings and those prosecuted is impressive, especially in the case of a terrorist act (Article 258 of the Criminal Code of Ukraine). This gap is somewhat smaller in the commission of such a crime as the formation of a terrorist group or terrorist organization (Article 258-3 of the Criminal Code of Ukraine).

It should be noted that Art. 258-3 of the Criminal Code of Ukraine ("Formation of a terrorist group or terrorist organization") covers not only the creation of a terrorist organization but also its assistance. Analysis of case law shows that often acts that one court assessed as aiding a terrorist organization, another court qualifies as participation in non-statutory paramilitary or armed groups (Article 260 of the Criminal Code of Ukraine) or the formation of a criminal organization (Article 255 of the Criminal Code), or as an encroachment on the territorial integrity and inviolability of Ukraine (Article 110 of the Criminal Code of Ukraine) or treason (Article 111 of the Criminal Code of Ukraine).

To illustrate, here are a few examples, noting that the inequality of qualification of similar actions is pervasive and can be verified by referring to the Unified State Register of Judgments of Ukraine and it has been going on for several years. This has already attracted the attention of the authors of this publication [9].


Thus, the person was convicted under Part 1 of Art. 258-3 of the Criminal Code of Ukraine due to the fact that for some time she was in the ranks of the "People's Militia of the Luhansk People's Republic", which is a court ruling was called an armed formation of the terrorist organization "Luhansk People's Republic" [10].

During the pre-trial investigation and the court of the first instance, the actions of the person, which consisted of transmitting by telephone to a participant of the unforeseen armed formation "DNR" information on the location of military equipment of the Armed Forces of Ukraine and the results of artillery shelling by members of illegal armed formations "DNR" under Part 2 of Article 260 of the Criminal Code of Ukraine. Subsequently, this sentence was revoked and a new one was passed, which found this person guilty of committing a crime, the responsibility for which is established by Part 1 of Article 258-3 of the Criminal Code of Ukraine [11].

For part 1 of Art. 110 of the Criminal Code of Ukraine assessed the actions of a person who passed to a participant in a terrorist organization (author's discharge) "DNR" information on the location of the Armed Forces of Ukraine in the area of the anti-terrorist operation [12].

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Often courts, bringing a person to criminal responsibility under Art. 258-3 of the Criminal Code of Ukraine, indicate that "LNR" and "DNR" are recognized as terrorist organizations by the Verkhovna Rada of Ukraine, as well as other similar decisions of the Verkhovna Rada of Ukraine. Interesting in this context is the verdict, which is placed in the Unified State Register of Judgments in Russian [13], despite the fact that according to Part 1 of Art. 29 of the Criminal Procedure Code of Ukraine, criminal proceedings are conducted in the state language [21].

The Verkhovna Rada of Ukraine has indeed repeatedly assessed the situation with regard to LNR and DNR. Thus, on July 22, 2014, the Verkhovna Rada of Ukraine in the Statement "On the tragic death of people as a result of a terrorist attack on the territory of Ukraine" [14], which occurred on July 17, 2014, over the territory of Ukraine near Torets (Donetsk region), where a Boeing passenger plane 777 Malaysia Airlines was shot down, appealed to international and European organizations, world leaders with a proposal to recognize the self-proclaimed organizations "DNR" and "LNR" terrorist organizations.


January 27, 2015, №129-VIII in its address to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, national parliaments of the world on the recognition of the Russian Federation as a state Councils of Ukraine called "LNR" and "DNR" terrorist organizations [15].

This appeal of the Verkhovna Rada of Ukraine is nothing but a political decision and does not affect the fact that it confirms or denies the existence of a crime in the actions of a person. In accordance with Part 1 of Art. 2 of the Criminal Code of Ukraine, the basis of criminal liability is the commission by a person of a socially dangerous act that contains a crime (discharge of the authors), provided by the Criminal Code of Ukraine [22].

In view of the abovementioned information, it is no coincidence that there are acquittals that have already been analyzed by us in previous publications [9]. Once again, we note that neither the Verkhovna Rada of Ukraine addressed the UN nor the Law of Ukraine "On Temporary Measures for the Period of the Anti-Terrorist Operation" of September 2, 2014, № 1669-VII and the Decree of the President of Ukraine "On Decisions of the National Security and Defense Council of 13 April 2014 "On Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine" of April 14, 2014, № 405/2014 does not automatically certify that these normative acts in the legal field recognize "LNR" and "DNR" as terrorist organizations.

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According to Art. 24 of the Law of Ukraine "On Combating Terrorism" requires a court decision [24].

However, judicial practice is dominated by convictions in which courts often point to these regulations of the Verkhovna Rada of Ukraine [16; 17].

It is also worth noting that the Concept of Combating Terrorism in Ukraine, approved by the Decree of the President of Ukraine of March 5, 2019, № 53/2019, states that the actions of illegal armed groups (discharging authors) "DNR" and "LNR" in particular, shelling of civilians, facilities and infrastructure that cause numerous casualties among the civilian population, sabotage, obstruction of the work of observers of international organizations, threats to their lives and health, are characterized in international law enforcement practice as terrorist [23].

The Law of Ukraine "On the Special Procedure of Local Self-Government in Certain Districts of Donetsk and Luhansk Oblasts" adopted on September 16, 2014, does not solve this problem, but rather deepens it. According to the provisions of Art. 3 of this law, the State guarantees the prevention of criminal prosecution, criminal, administrative liability, and punishment of persons - participants in the events that took place in the Donetsk, Luhansk regions. This raises a number of questions. First, for which crimes will the participants of the events in Donetsk and Luhansk regions not be subject to criminal liability? Secondly, who should be recognized as participants in the events in Donetsk and Luhansk regions? Third, what kind of events should be taken into account?

There is a problem in both quantitative and qualitative determination of the composition of a terrorist organization. According to Art. 1 of the Law of Ukraine "On Combating Terrorism" [25] for the presence of a terrorist organization is enough three people, but the current Criminal Code of Ukraine for any criminal organization, and terrorist is a kind of criminal organization, provides for at least five people (Part. 4 Article 28 of the Criminal Code of Ukraine). This conflict can be explained by the fact that at the time of the adoption of the Criminal Code of Ukraine (2001) for a criminal organization was also enough three people, but in 2008 amendments were made to Art. 28 of the Criminal Code of Ukraine (it was this year that the need for five or more persons [26] was established, which was not harmonized with the provisions of the Law of Ukraine "On Combating Terrorism", which was adopted in 2003.

In accordance with Part 3 of Art. 3 of the Criminal Code of Ukraine, the criminality of the act, as well as its punishment and other criminal consequences are determined only

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by this Code [22]. This provision of the law on criminal liability requires that the provisions of the Law of Ukraine "On Combating Terrorism" in terms of determining the quantitative composition of a terrorist organization be consistent with Art. 28 of the Criminal Code of Ukraine.

This does not allow to agree with the conclusion of the Supreme Court, set out in the Resolution of the Board of Judges of the Second Judicial Chamber of 05.07.2018 № 225/6151/15-k that a terrorist organization is sufficient to have a stable association of three or more persons [20]. Otherwise, it will mean that the state is effectively relieved of responsibility for passing quality laws.

It is also impossible to turn a blind eye to the fact that appeals to official Internet sources, which indicate the achievements of the "State Bank of the People's Republic of China" and the "Central Republican Bank of the DNR" [18; 19] shows that a significant part of the funds of these entities with signs of statehood is directed to meet the living needs of the population left in these areas. This causes a problem in determining the quality of the "LNR" and "DNR" as terrorist organizations because it is obvious that the entire population of these regions can not be recognized as members of terrorist organizations, as they work and live in the self-proclaimed "LNR" and "DNR" help these "quasi-states".

### **Conclusions.**

In order to ensure compliance with the principle of inevitability of criminal law responsibility for the creation of a terrorist organization and assistance to such an organization, it is necessary to:


- first of all to eliminate legislative conflicts on determining the number of terrorist organizations, to eliminate other existing conflicts;
- the next step is to conduct training for law enforcement officers on this issue;
- it is necessary to make a number of legislative changes so that the Verkhovna Rada of Ukraine bears political responsibility for its decisions.

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