

# Теорія та історія держави і права; історія політичних та правових учень. Конституційне право; муніципальне право. Філософія права

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## Theoretical and legal aspects of concepts, types and forms of terrorism as a dangerous social phenomenon

*The article deals with theoretical and legal aspects of terrorism, as a negative social phenomenon, through the prism of concepts, types, forms.*

*Keywords: terrorism, negativity, features, multidimensionality, destabilization.*

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## Теоретико-правові аспекти понять, видів і форм тероризму як небезпечного суспільного явища

*В статті розглядаються теоретико-правові аспекти тероризму як негативного суспільного явища крізь призму понять, видів, форм.*

*Ключові слова: тероризм, негативізм, особливості, багатоплановість, дестабілізація.*

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## **Теоретико-правовые аспекты понятий, видов и форм терроризма как опасного общественного явления**

*В статье рассматриваются теоретико-правовые аспекты терроризма как негативного социального явления через призму понятий, видов, форм.*

*Ключевые слова: терроризм, негативизм, особенности, многоплановость, дестабилизация.*

### **Challenge problem**

The modern period of the Ukrainian State is characterized by instability, crisis in virtually all areas of life in society, foreign and domestic policy, economy, ethnic and religious relations in the field of law and morality, which contributes to the spread of extremism, and its extreme forms of terrorism.

The sharp rise in conflict began with the beginning of the third millennium, practically in different spheres of life of world society, and in particular our state. An active feature of the realities of today is the use of violence to solve new and existing social contradictions. It is terrorism that has become a weapon of intimidation in everyday life and the destruction of opponents in many spheres of public life (from political and to everyday). This is observed today in the realities of Ukraine's life, and not only.

### **A review of recent studies and papers**

Undoubtedly events of the last years in the east of Ukraine demand cardinal changes to approaches of need of a research of problems of counteraction to terrorism, the level of its relevance and danger, the accurate theory of counteraction of terrorism which has to come out its criminalistic characteristics, to search of ways of localization of its criminal manifestations. These questions were the subject of scientific and legal analysis in studies of individual domestic and foreign authors, in particular, V. F. Antipenko, V. S. Zakalyuk,

V. P. Zelinskaya, V. N. Emelyanova, V. A. Lipkan, O. V. Nadena, J. Bella, L. Bonant, P. Viackenson, H. Gasser and many others. At the same time, noted questions were studied mainly by representatives of other branches of legislative science – international law, criminology, criminal process, investigation and search operations, and so forth, whereas from the point of view of the theory of the state and law they were remembered only collaterally. There is a need of the solution of a scientific task which consists in scientific-theoretical substantiation of counteraction to terrorism.

### **Remaining challenges**

The urgency and importance of this problem is the lack of its development in science. It predetermines the need to solve a scientific problem in countering terrorism, deeper and thorough research.

### **Draw the objectives of research**

The scientific-theoretical study on terrorism in everyday practice, theoretical-legal issues in determining the concepts, types, forms of terrorism as a dangerous social phenomenon.

### **Discussion**

The study of trends in the development of such a negative phenomenon, as terrorism at the present stage of development of society, shows that since the early 80's of the XX century, it acquires particularly dangerous properties in its dynamism. It turns into a very

planned and extremely dangerous and long-term factor that actively influences the development of a modern society, has a significant destabilizing effect on it, jeopardizing the most necessary conditions for the progressive development of mankind.

Of the three known forms of terrorism (terrorism as a means of “compulsory diplomacy”, as a war and as a “forerunner of the new world”), until recently, the form of compulsory diplomacy played a prominent role. Now, as V. Yu. Bogdanovich notes, “the transformation of views on the terrorist struggle in the direction of perceiving it as a way of direct achievement of the goal is viewed. Moreover, only the organizers of a terrorist act, which also defines its anonymity, can know the purpose. Moreover, there has been a shift from isolated acts of targeted terrorist campaigns, comprehensive in nature, more often than not limited the actions of one group that many times reduces the ability to effectively confront this new form of terrorism”. [1, p. 34].

Terrorism has become a factor in the militarization of several regions of the modern world. Unfortunately, Ukraine has not become an exception in terms of terrorism, which was to this time relatively “calm”. If there was a more distinct line between the war and terrorism, today it is becoming more conditional – occurs some kind of integration of terrorism with the war. Modern realities make it possible to view terrorism as a new kind of economically cheap warfare, hybrid war. The militarization of the Donetsk-Luhansk region has led to a situation in which the ATO has all the signs of a full-scale war that only resembles a counter-terrorist operation. This is a new form of war, the name of which today is by many researchers outlined as a “hybrid war”.

World wars and open conflicts between states as a tool to redistribute the world or usurpation of the territories extending into the past. Apart from all this are the actions of the Russian Federation, which led to the annexation of the Crimean Autonomous Republic, which is an integral part of the state of Ukraine. However, the main factor in globalization is the struggle for spheres of influence

and markets for sales, for leadership in the global world system, but it takes on a local character. To do this, along with the economic aspects of some states are using terrorist methods, which are known as “low-intensity war”.

Unlike in the past, when single revolutionaries who were fanatically confident in the legitimacy of the violent actions personified terrorist activities, today terrorist groups are numerical organizations, politicized terrorist formations of the left, ultra-right, nationalist, religious, and other. They have been involved in this activity (as well as transnational terrorist associations such as Al-Qaeda).

Terrorist activity in a number of countries has become a system of professionally managed acts with well-organized and equipped groups, often with complex and extensive infrastructure. For material and technical support, modern terrorists are far ahead of their predecessors, whose arsenal was mainly homemade explosive devices and small arms of a military standard. The realities of counteraction to terrorist activity in the east of Ukraine testify to the high degree of organization of terrorist organizations that oppose the National Guard and the Armed Forces of Ukraine, other military formations engaged in carrying out the antiterrorist operation, as well as the presence of the most up-to-date examples of small arms in the illicit military formations (including the anti-aircraft missile, the man-portable infrared homing surface-to-air missile “Igla”, the salvo fire system “Grad”, armored vehicles, etc.). Every day there are reports in the national media space of detecting facts that confirm the origin of these weapons from the territory of the Russian Federation. Revealed and numerous cases of smuggling weapons from neighboring territory not only through the so-called “green line boundary” that taking military action in the region is protected not in all areas, but because of checkpoints across the state border, including “Dovzhansky” “Izvaryne” and so on.

According to the conclusions of the former (till 07.07.2014) the head of ATO in the East of Ukraine – ATC head at the SS of Ukraine V.V. Krutov, the tendency of transforming

terrorism into a criminal industry appeared. It can turn into a decisive factor in international relations and global order as a whole. In his opinion, it looks quite logical chain of development of this criminal phenomenon, which evolutionarily brings it into a category of professional activities [2, p. 9-11]. Unfortunately, nothing practically besides theory, he did not invest in the localization of this negative phenomenon in the East of Ukraine.

One example of such an evolution is the ever-closer cooperation of international terrorism with mercenarism. Of course, this relationship existed before, but mercenarism, like terrorism, undergoes significant changes. Single or individual mercenaries (like terrorists) have gone past. To change them come well-organized and equipped with the latest technology private criminal-military groupings.

The magnitude and variety of forms of modern terrorism activity requires enormous material resources. According to some expert assessments, the minimum budget of terrorist groups is about 20 billion USD. It is clear that the sponsoring countries of terrorism are not able to provide such financial support. Moreover, they either disappeared or lost their former ability to finance terrorist activities. Terrorism needs a strong economic base. Therefore, it virtually switched to “self-financing” and develops its “own” economy, which generates revenue that sometimes reaches 1000%. This economy is based on criminal activity. Thus, in spite of military actions in Donetsk and Luhansk oblasts, cases of violent crime of self-interest are constantly recorded. The money gained from this, funding terrorist activity. These include attacks on the branch offices of banks (Oschadbank in Donetsk), located in the region, robbery of stores (the METRO network in Lugansk), as well as attempts to put in control (unjustified payment of unjust remuneration) the activity of private entrepreneurs.

Unlike the terrorists of the 20th century, the terrorists of the new formation use modern means of computing, computer programs of encryption, satellite communications, cellular telephones, technically sophisticated equipment for counterfeiting of money and documents, modern weapons and explosives,

possessing the special knowledge that are used in The practice of special services and law enforcement agencies. The application of science and technology advances expands the capabilities of terrorists, allows them to concentrate on the general attention, to keep the world community in political fear.

The danger is the possibility of terrorists using materials that are components for creating weapons of mass destruction – chemical, biological, bacteriological and nuclear. Such well-known facts as attempts at poisoning the water supply system in Chicago in 1972, the threat of use of tortilla gas by terrorists and anthrax bacilli in Germany and the United States, attempts to disperse radioactive substances in Australia, the production of a bottle of toxin in an underground laboratory in Paris, poisoning passengers of the Tokyo metro gas Zarin in 1995, the Japanese sect Aum Shinrikyo clearly showed that the threat of terrorism with the use of weapons of mass destruction and other high-tech means is now more than real. Modern high-tech terrorism can cause a systemic crisis of the entire world community. Attacks in computer and telecommunication networks may lead to such unfortunate consequences.

The social base of terrorism is also expanding. Not only individual organizations, political, nationalistic, religious and criminal entities, and sometimes entire nations or their significant strata resort to its ideology and methods. Particularly dangerous in this regard is the merger of terrorism and organized crime. “Transnational drug cartels, international terrorist organizations, non-traditional sects of antisocial orientation, criminal structures that carry out illegal trade in weapons, strategic raw materials, people, increasingly establish criminal ties, create centers for coordinating their activities in different countries of the world” [3, p. 10].

The integration of society and crime N. A. Dryomina names “the internationalization of terrorism” [4, p. 335]. This concept covers two trends: firstly, the emergence of terrorism as a form of criminal activity beyond the boundaries of national borders; and secondly, the establishment and strengthening of ties between criminal terrorist orga-

nizations, the formation of a “world terrorist community”. From this, the phenomenon of modern terrorism, according to N. A. Dryomina, is the existence of international terrorism – a kind of “terrorist International”, closely related to drug trafficking, trafficking in human beings and weapons, and other types of criminal activity [3, p. 335].

The international character of modern life, new means of communication and informatization, new types of weapons reduce the significance of state borders and other means of protection against terrorism. Growing diversity of terrorist activity, which is more associated with national, religious, ethnic conflicts, separatist and liberation movements. Most vividly this process is expressed in the regions with special sharpening inter-ethnic, confessional, regional and clan disputes. In Ukraine, it has become the eastern regions of the state – Donetsk, Luhansk, as well as the Autonomous Republic of Crimea. Outside of our country – in some republics of Transcaucasia, Tajikistan, in the Russian Federation – in the North Caucasus, and others. The structures of organized crime in these regions for a long time act as one of the most influential factors for the instigation and support of nationalist and religious extremist groups and unlawfully politically motivated violent, including the terrorist activity, which they take against legitimate power or other political opponents.

The list of modern features of terrorism cannot be considered exhaustive. However, the main feature of modern terrorism is that it is used much more widely than ever, in the political struggle both in the international arena as a whole and between individual states. If we paraphrase the famous statement of K. Clausewitz, then we can assume that modern terrorism is a continuation of politics by other violent means. Terrorism becomes the method of future wars, being an active form of secret wars and an effective instrument of foreign policy.

The effectiveness of the tasks of countering terrorism depends largely on how correctly understood the essence of this phenomenon.

This issue is central to the study of any

problem of terrorism, both in terms of jurisprudence and in other sciences. Thus, the clarification of the essence of terrorism determines the reliability of the results of the study.

There are now more than 200 definitions of the term “terrorism”. However, none of them can claim the imprint of its entirety, characteristics and motivation, forms and methods. At the same time, each of these definitions is of great theoretical significance, since it reveals the significant features of terrorism.

The definition of terrorism as a socio-political phenomenon is extremely complex. This is the view of N. A. Zelinskaya, “over the task”, which is complicated by a complex of political and legal problems that determine the plurality and ambiguity of approaches to its solution [4, p. 256].

Indeed, terrorism in the current context cannot be separated from the political sphere. In the broadest sense, terrorism is a criminal instrument for solving political issues, including in the struggle for political power and for its maintenance. In the opinion of many researchers of terrorism, the motives and purpose of terrorist manifestations create a decisive limit, which separates them from the outside of the objective side and the form of committing criminal acts [5, p. 357].

Both a terrorist and an ordinary criminal use violence to achieve certain goals. However, with the external similarity of the acts of violence themselves – explosions, assassinations, arson, hostage taking – the purpose and motivation are different. The offender applies violence exclusively in his/her own interests and for his/her own material or other benefit. However, he/she does not set him/herself the task of influencing the general population.

In contrast, the terrorist, as noted by American analyst Bruce Hoffman, does not pursue purely his/her own interests, his actions are always altruistic – he/she is sure to serve a certain idea for a better destiny for a wide range of supporters whose interests he/she represents [6, p. 46].

The analysis gives grounds to argue that terrorism is not only a criminal behavior, but also a certain terrorist ideology. At the same

time, such an ideology is a system of political, legal, philosophical and other views and ideas. They justify the use of a special type of violence, in which the destruction of innocent people is the tool of influence on the political opponent. This ideology justifies the purpose of terrorist activity and, as a rule, determines the mechanisms for its achievement.

The emergence of terrorist ideology is associated with the face of the Italian revolutionary democrat Carlo Pisacane, who actively defended the theory of “propaganda action”, the main idea of which had a tremendous impact on the consciousness of terrorists of subsequent generations. “Propaganda of an idea is an inaccessible goal,” wrote Pisacane. Ideas are born from action, and not vice versa. Knowledge does not give people freedom, but freedom is capable of giving knowledge.” According to Pisacane, the use of violence is needed not only to attract the attention of society or the spread of a certain action, but for the sake of enlightenment, education and unity of the people in the name of revolution. He also argued that the moralizing effect of violence far exceeds the effectiveness of publishing pamphlets, posters or organizing assemblies [7, p. 12].

Terrorist ideology may have a relative integrity in the form of certain theories, doctrines, and concepts or can be an integral part of the general internal political theories of individual states, political movements, parties, socio-political associations. Such an ideology is expressed in concrete actions – the practice of influencing political decisions by power structures and international organizations. The public character of its execution characterizes terrorist violence. From other violent crimes, which are usually committed without complaints of widespread publicity, terrorist actions are distinguished by their demonstrative, audacious, cruelty.

Terrorism, as V. V. Krutov is a special unlawful form of violence, the essential feature of which is intimidation, the intention to create an atmosphere of horror, the situation of social insecurity, destabilize the political situation in order to force the authorities to take advantageous for terrorists’ decision [2, p. 36].

Undoubtedly, any violent crime includes

the effect of intimidation. However, the subjective side of the criminal terrorist campaign differs from other violent crimes by the fact that intent (direct or indirect) aimed at “intimidation” is its constructive element.

Fear created by violence becomes a powerful means of conquest, ensuring humility and control. This subjugation is based on the high probability of a new, more rigorous act of terrorism, which could be the object of intimidation. Terrorism does not exist apart from psychological influence and content. Terrorism, according to Y. M. Antonyak, is a violence that involves the threat of another, equally brutal violence, in order to provoke panic, to break and even to destroy the state public order, to force the enemy to make the desired decision, to cause political and other changes [8, p. 10].

Some authors argue that terrorism manifests itself as a disorderly violence, mainly directed against casualties, in order to spread in the masses of ideas that the purpose justifies the means: the more terrible crime, the better from the point of view of the terrorists [9, p. 26]. “Terrorism is the unlawful use of force against innocent people to achieve political goals,” said Professor of History of Georgetown University, U. Laker [10, p. 72].

The notion of “innocent victims”, according to the national scientist V. F. Antipenko, is one of the main criteria that distinguishes “fighters for the freedom of revolutionaries” from terrorists. With this in mind, the author gives the following definition to this phenomenon: “Terrorism is the use of violence in order to violate the inviolability of national and supranational institutions through intimidation carried out through the induction of innocent victims, as well as damage to material assets that cause other socially dangerous consequences or constitute a threat their offensive” [11, p. 76]. Without denying the position of V. A. Antipenko regarding the existence of “innocent victims” in the case of terrorism, we note that terrorism can be expressed not only in disorderly (in relation to victims) violence, but also in a selective form. If, in the first case, the intimidation is achieved by accidental casualties, “not selectivity” of violence that threatens practically every member

of society, then the victim is otherwise chosen according to the political orientation of the terrorist campaign, and the effect of horror is achieved through a resonance associated with a certain social status (personification) of the victim. As N. A. Zelins`ka notes, “demonstration violence against politically significant people (for political reasons or in a political context) and not selective violence against so-called “innocent victims” – two sides of the same phenomenon [4, p. 262]. In our opinion, when it comes to committing a terrorist attack against a public figure (political, religious, public, etc.), it is necessary to speak about a “special victim”. In the case of the use of violence against citizens who happened to be in the place of a terrorist attack, we believe that the use of the term “casual victims”, which is not the ultimate goal of such an offense, will be more correct, and serve only as a means to achieve terrorist goals for their political goals.

Already mentioned B. Hoffman points out that terrorism can only be considered a violence committed by an organized group with a conspiracy structure and a clear system of governance, rather than an individual acting on his own accord. “As one person can not be called a political party and a single killer should not be considered a separate terrorist group” [6, p. 45].

In our opinion, the list of subjects of terrorism should be expanded: these are other persons who are involved by members of the terrorist organization in committing one or more terrorist crimes. Such engagement in terrorist activities can take place in various ways: for reward, by deception, by the use of physical violence by a person, etc. The main thing is that a terrorist offense committed by a non-member of a terrorist organization, but with its knowledge and initiative, fit into the overall strategy of its activities, should contribute to the achievement of the political goal set by this organization. In each case, this outsider acts not as an independent subject of terrorist activity, but only as a means of implementing the general criminal plan of a terrorist organization. He/she does not make an independent decision on the method, time, place and other details of the terrorist campaign, and acts only

within the limits defined by the terrorist organization. In addition, the subjects of terrorism may also act as special state bodies or “isolated” organizations created by them, designed to massacre political opponents or opposition to the existing regime. For example, The Islamic Revolutionary Guard Corps of Iran has trained more than 40000 suicide bombers; The United States, in essence, formed Al-Qaeda to resist the Soviet Army in Afghanistan; “death squads” in Latin America.

The above positions reflect the real and significant signs of terrorism, but their set in each case solves the specific tasks that researchers put themselves and include features of professional training of scientists, national and historical traditions, the level of democracy, the degree of stability of the political situation in one or another country, peculiarities of law schools. Nevertheless, a comprehensive analysis of different views on the definition of the concept of “terrorism” makes it possible to distinguish its characteristic features, components, the totality of which is capable of giving a fairly objective view of the essence of such a socio-political phenomenon, as terrorism.

The signs of terrorism, as a socio-political phenomenon, are as follows:

- terrorism is the unlawful use of violence or the threat of violence;
- this is a certain ideology, a way to achieve political, religious, separatist, national goals;
- the purpose of terrorist actions is to force state bodies and international organizations to commit certain actions or refuse to commit them in favor of terrorists;
- terrorism differs in the public character of its implementation;
- the characteristic feature of terrorism is the deliberate creation of a situation of fear, the tension is not on the individual (or narrowly grouped), but on the social (mass) level;
- terrorism may be committed by a member of a conspiratorial and structured organization (political, religious, extremist, specially created by public authorities) or by other persons involved in such an organization for committing one or more terrorist actions;

- necessarily the presence of a “special” or “accidental” victim, who acts only as a means of achieving a political goal.

In the absence of a single definition of terrorism, the above list of features provides an opportunity to distinguish this phenomenon from a general set of socially dangerous actions and create the basis for the accumulation of accurate statistical information on the number of terrorist actions and further conceptual analysis of the main parties, forms and mechanisms of implementation, and also for ‘ the elimination of those specific features that they acquire, depending on the conditions, place and time. It seems that only in this way can it be avoided that today the use of the definition of terrorism for the dissemination of a relatively wide variety of violent crimes, criminal “demolition”, extremist and other actions is avoided.

The above criteria may serve as a kind of litmus test for separating terrorism from other negative social phenomena.

The logical conclusion of this list of criteria would be the presentation of a new own definition of the concept of terrorism, but in the opinion of the author there is no need to propose another definition, since its appearance in the scientific circle is unlikely to contribute to the development of a single universal concept of terrorism.

In the context of addressing the issue of finding a single definition of terrorism as a socio-political phenomenon, scientific research is of interest to Alex Schmid, who, in his paper “Political terrorism: the methodology of the study”, analyzed more than a hundred definitions of terrorism, formulated by scientists and experts in this field, but did not approach the goal of the study – to find a more complete and exhaustive definition of this phenomenon.

At the same time, developed by Schmid the table of recurrence of defining elements (22 in total) gives the definition of “terrorism”

in 109 determinations. Thus, the terms “violence”, “use of force” are found in 83.5% of the examined definitions; “political” – in 65%, “stressed horror, terror” – in 51%; “psychological effect and expectation of reaction” in 41.5%; the difference between the “victim-goal” is 37.5%; “intentional, planned, systematic, organized action” at 32%; “method of struggle, strategy, tactics” – in 30,5%; “exclusivity, violation of generally accepted rules, absence of any restrictions from the standpoint of humanity” – in 30%; “coercion, extortion, calls for approval” – in 28%, and others. [90, p. 5-6].

At the end of his research scientist asked whether this list contains all the elements needed for a clear definition of terrorism, gives the answer: most likely, no.

### **Conclusions**

It is impossible to find a definition of terrorism. Unthinkingly try to collect from this puzzle the definitions of these elements and a clear definition of this term. Can we conclude that the phenomenon of terrorism is not subject to a clear and even understandable definition? Despite numerous statements about the impossibility of developing a universal definition of terrorism, its terminological delimitation of related concepts, there is still a certain methodology for finding an answer to this question. In our opinion, this is a legal consolidation of the external and internal features of terrorism made by science, internationally and internally, and its essential criteria.

The main factor complicating the single approach to the definition of terrorism and its legal formulation and, as a consequence, the development of coordinated, universal international means to combat it, is the extreme politicization of assessments in this area. As long as terrorism will be an effective tool in the framework of the conflict between developed states and the states of the “third world”, there will be a mutually unacceptable definition of the concept of terrorism proposed by the parties (or their apologists).

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