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## EUROPEAN UNION LEGISLATIVE RESPONSE TO THE PROBLEM OF TERRORISM

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*Abstract: In this paper the author defines terrorism as the biggest threat to the security of European Union and analyzes destructive activities of terrorist organizations on the territory of Western European countries in XX century. Until recently, European Union had no legislation that clearly defined the term of terrorism, while only a small number of Member States had incomplete provisions that differed from one country to another. Therefore, European officials began to work on adoption of binding regulations for all Member States, which basically means that the problem of terrorism is now treated equally throughout the territory of the European Union. That is why the latter has won the epithet of one of the most active fighters against terrorism in XXI century by adopting documents in form of Strategies, Directives or Action Plans.*

*Key words: Terrorism, European Union, legislation, harmonization, cooperation.*

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### INTRODUCTION

The term „terrorism” is derived from the French word *terrorisme*, which is related to the Latin words *terrere* (to intimidate) and *deterrere* (to be afraid). Certain historical sources indicate that the term terrorism was first used in the Oxford English Dictionary in 1795, in order to define the abuse of power in France at the time. One of the main protagonists of the French Revolution, Maximilien Robespierre, wrote that if the power of popular government in times of peace is a virtue, then the power of popular government in times of revolution is at the same time virtue and terror. Terror is nothing but prompt, cruel and inflexible justice. Therefore, it represents an emanation of virtue (Polidori, 2006). On the other side, some literary sources testify that the term terrorism was mentioned for the first time in official document in the appendix of the *Dictionnaire de l'Académie française* from 1798 (Bonanate, 2001). Modern Italian dictionary defines terrorism as a mean of extreme and illegal violence in the framework of political struggle (Palazzi, 1965). Viewed from today's perspective, terrorism is a phenomenon that is on a halfway between politics, sociology and criminology (Lamberti 2014: 139). An appropriate, universal definition of terrorism remains elusive because different institutions, organizations and government agencies have different approaches through which they determine their own roles, purposes, and biases (Bruce 2013: 26). Since the individual, or the group

or the government does not want to accept the negative consequences of the term itself, terrorism is always defined as someone else's work (Best & Nocella 2004:59).

Laqueur rightly observes the division between terrorist groups that have a separatist matrix and are driven by purely political reasons, such as the independence of their territory from a nation they do not belong to or changes in social order, and other groups, nationalist and religious, which are actually more dangerous because they are very often deprived of a clearly defined political plan (Laqueur 2002, 102). Corlett defines terrorism as an attempt to establish (or prevent) political, social, economic or religious change by using violence against others or their property (Corlett 2003, 19). It is usually assumed that terrorist attacks are carried out by a well-organized group or formation, however, examples from practice clearly indicate that there are individuals who are ready to carry out very destructive operations without any help. Spaaij defines them as lone wolves or persons acting independently, who do not belong to any organized group or network, whose *modus operandi* is conceived and directed by an individual without direct side command or hierarchical positioning (Spaaij 2010: 855). According to the US State Department, terrorism is defined as premeditated and politically motivated violence directed against non-combat targets and carried out by subnational groups or undercover individuals, whose main intention is to influence the public (Simeunovic 2009, 43).

More than two hundred and fifty definitions of terrorism can be found in the professional literature. During their deeper analysis, there is a clear tendency to single out certain elements, such as causing fear and anxiety among the population and general public, the use of violence, indiscriminate choice of victims or the political connotation of undertaken activities, as being the most important. Although there is still no generally accepted definition of terrorism, the fact that relevant international factors are very active in preventing, combating and sanctioning terrorist acts must not be overlooked. It is quite justified to ask why it would be necessary to define terrorism in the first place, if there is already a consensus on the ways of acting, the main elements or the motivation for its undertaking.

## **1. DOMESTIC TERRORISM IN THE THEN EUROPEAN COMMUNITY**

The European Union is an international organization of supranational character and kind of political project, an area in which law and economy are based on the idea of expanding human and economic freedoms (Totic 2016: 112). On the other side, modern organized crime is, in general, revised, adapted and strengthened by powerful instruments with expressed elements of internationalization, and threatens the harmony of the European Union (Totic & Totic 2013: 547). Looking back in the past, it is obvious that with gradual expansion of the then European Economic

Community to the north and south of the Old Continent, the status of full Member State was granted, among others, to Great Britain and Spain, countries with very expressed terrorist activities on their territories in these days. A different form of terrorism has already gained momentum in the territory of West Germany, France and Italy, where terrorist organizations found justification for their destructive activities in ideological disagreement with existing social order. Interestingly, these mentioned three countries are the biggest that actually formed the European Coal and Steel Community in 1951, with the idea of peace and cooperation among nations in Europe, but later had serious issues with radical movements and finding the right solutions for the troubles the latter have made.

Namely, in West Germany, the terrorist organization called Red Army Faction (also known as the Baader–Meinhof Group) carried out a whole series of terrorist attacks and liquidations. The group's emergence is linked to student demonstrations in which young Germans expressed their resistance to growing American imperialism and human rights abuses around the world. The government of the Federal Republic of Germany, along with most European media and literature sources considered this group to be a terrorist organization. At the beginning of the 1970s, a terrorist organization known as the Red Brigade (ital. Brigate Rosse) began to operate on the territory of Italy. The group's founders are considered to be Renato Curcio and Mario Moretti, while the main goals were directed against capitalist ideology, NATO and the overthrow of the pro-Western Italian government. The main targets of the terrorist attacks were initially large economic giants, while the group financed their actions by carrying out armed robberies. After the arrests of Moretti and Curcio, they defended themselves by remaining silent, denying or attacking traitors, former members or members of their organization who remained at large (Moretti 1994, 2). National Liberation Front of Corsica has been active on the territory of France for four decades, and gained its force from the separatist ideology, which implied the obtaining of independence. Liquidations, planting of explosive devices in public places, primarily on the streets of the largest domestic cities and / or well-known French tourist destinations, racketeering of successful business entities or bank robberies, were the most common forms of their struggle. Today, one of the main reasons for instability is the existence of traditional stereotypes, for which Roux believes that still define Corsica as a place ruled by robbery, violence, blood feuds and tradition (Roux, 2002). Vieille argues that the roots of the problem lie in the fact that Corsican autonomy is dealt with by journalists and statesmen, while academic circles do not give much importance for this issue (Vieille 2009: 2).

The violence perpetrated by the Basque separatist organization ETA (Euskadi ta Askatasuna) has for many years been an anomalous feature of Spain's transition to democracy, given that this organization was responsible for the deaths of more than

eight hundred and forty people over fifty years (Whitfield 2015, 1). At the very beginning (founded in the 1950s), this organization was composed of mostly young Basques who declared themselves to be strong opponents of the Frank regime (Aiertza & Zabalo 2010: 8). The Irish Republican Army (IRA) is one of the most sophisticated terrorist organizations in the world, taking into account *modus operandi*, surveillance systems, operational tactics and technical expertise (Ranstorp & Brun, 2013, 4). The victims of their attacks were members of the British government, well-known politicians, the most prominent police and military officers, as well as facilities of special importance for the United Kingdom defense. The signing of the Belfast Agreement on April 10, 1998 marked the end of decades of conflict, as it provided for the cessation of hostilities and complete disarmament of all paramilitary formations. On the other hand, critics of the signed agreement, such as Dnes and Brownlow, believe that it is in fact a document that enabled the resignation of members of the IRA... who thus profited very effectively from terrorist activities. (Dnes & Brownlow 2017: 707).

## 2. EUROPEAN UNION DOCUMENTS AGAINST TERRORISM

The European Union very actively joined the fight against terrorism as a global threat, immediately after the terrorist attack on the United States of America in 2001. The General Secretariat of the European Council has launched an ad hoc program to speed up the process of adopting the Framework Decisions on Terrorism and the European Arrest Warrant (EAW), which has already been prepared by the European Commission, in line with the 2000 action plan, which provides for a system of recognition of decisions in civil and criminal proceedings (Hayes & Jones, 2013, 22). The European Arrest Warrant is an instrument in the form of a judicial decision on the basis of which a Member State of the European Union makes a formal request for the arrest and / or surrender of an arrested or accused person for prosecution or direct execution of sanction to another Member State. In that way, the procedure of bringing a specific person accused of committing a criminal offense before a court of another Member State has been significantly simplified and accelerated (Ivanovic & Totic 2017: 133). In 2004, European Council adopted the Declaration on Combating Terrorism, which contained fifty seven measures. Declaration introduced the function of Counter-Terrorism Coordinator (CTC), whose main tasks include monitoring the implementation of European Union counter-terrorism strategies, close cooperation with European Council in the field of security, positioning the European Union as one of the global leaders in the fight against terrorism, as well as connecting with third countries in order to conduct joint activities in this specific area. In the same year was adopted the Plan of Action on Combating Terrorism which

included twenty nine measures and was further strengthened by formulation of seven strategic goals. These goals were related to:

- international cooperation,
- terrorist financing,
- detection, investigation, prosecution and prevention of terrorist attacks,
- transport security and border control,
- capacity building for adequate response to terrorist attacks,
- infiltration into terrorist organizations,
- positioning at the epicenter the activities of third world countries in terms of external action (Council of the European Union 2004).

The next adopted document was the Strategy for the Fight against Terrorism entitled "Prevention, Protection, Disruption and Response" in 2005. The unhindered movement of capital within the single market of the European Union enables illegally acquired capital to be transferred very easily from one Member State to another through secret accounts. It has been established that financial institutions (banks, credit organizations...) are widely used for money laundering, which later enables carrying out of terrorist attacks. That is why the European Commission, European Parliament and Council of Ministers have adopted Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The safety of people and property is a *conditio sine qua non* for the establishment of normal living conditions and must be fully guaranteed. Therefore, the abuse of the financial system is quite justifiably recognized as a clear risk to integrity, good functioning, reputation and stability of the European Union economy. This Directive is in fact a reflection of the modern prevailing understanding of the regulation of financial services, which advocates the setting of flexible requirements and facilitates their risky application in practice (Katz 2007: 207). On November 28, 2008, the European Council adopted a new Framework Decision on combating terrorism, which explicitly emphasized that Member States were obliged to take all necessary measures to implement the envisaged regulations by December 9, 2009. This document criminalizes all criminal acts related to terrorist activities, while legal entities, in addition to natural persons, are subject to sanctions in case they can be brought in connection with recruitment or training of terrorists. Also, the Internet was mentioned as one of the basic problems that security structures were (and still are) facing. It has been established that modern technological achievements were (and still are) the driving force of terrorist organizations that gain members through Internet communications, promote their ideologies in search of new supporters and provide practical advices regarding terrorist training. By adopting the Council Decision 2008/615 / JHA of June 23, 2008 on the deepening of cross-border cooperation (Council Decision 2008) the European Union has continued the fight

against terrorism on its territory, in particular in combating terrorism and cross-border cooperation crime. However, it was emphasized that police and judicial cooperation must be in line with basic human rights, in particular the right to respect for privacy and protection of personal data. Member States were required to establish and maintain national DNA analysis databases in order to conduct criminal investigations.

### 3. LEGISLATION IN PREVIOUS DECADE

A significant step forward in the fight against terrorism was made in 2014, when the European Council carried out an additional revision of the Strategy on Preventing Radicalization and Recruitment (European Council 2014). The Strategy emphasized the importance of involving and using the resources of civil society and the private sector in order to strengthen the capacity to resist terrorist ideologies, exchange experiences in order to acquire new knowledge and reintegrate former terrorists. The following year was adopted the Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Directive 2015) which entered into force on June 26, 2017. Its provisions are aimed at preventing activities related to illegally obtained money used to finance terrorist actions. In order to reduce the risk of cash payments, this Directive stipulates that all persons trading in goods by paying or receiving monetary amounts of 10 thousand EUR or more must be subject to strict control regimes, while Member States could set lower amounts and additional restrictions on cash use. The notion of politically exposed individuals is regulated in detail and includes heads of state and governments, ministers, members of parliament and legislative bodies, members of governing bodies of political parties, members of Supreme Courts and high judicial bodies, members of diplomatic corps, persons who managed or supervised by state-owned enterprises, members of international organizations and members of their families (Petronio & Falco 2015, 2). It is also necessary to establish close links with the relevant agencies and bodies of the European Union in charge of the fight against terrorism, led by Europol, whose work was initially greatly weakened due to the fact that Member States did not seriously understand the importance of data transmission (Bures 2008: 501), as well as Eurojust, which functions as an independent group of judges tasked with improving coordination and cooperation between investigators and prosecutors dealing with serious crime (Coolsaet 2010: 863).

In 2017, the European Parliament and European Council adopted Directive on combating terrorism, where assistance to victims of terrorism was highlighted among the main goals. The introductory articles define the term "terrorist group" as a structured group of two or more persons, established over a long period of time and acting in an organized manner to commit terrorism-related crimes, while the term "structured group" is defined as a group not established by chance in order to commit

a crime immediately and which does not have to have formally defined roles of its members, continuity of membership or developed structure (Directive 2017). It also stipulates the obligation of Member States to take the necessary measures so that criminal offenses of terrorism can be punished by imprisonment. At the same time, the highest threatened punishment that can be imposed for leading a terrorist organization must not be shorter than fifteen years, while for participating in terrorist activities, the punishment shall not be shorter than eight years. Article 16 defines mitigating circumstances that lead to reduction in prison sentences, where the waiver of terrorist activities or the provision of useful information to the competent authorities that the latter could not be able to obtain on their own are cited as relevant. Article 29 stipulates the obligation of the European Commission to submit a report to the European Parliament and Council of Ministers assessing the compliance of Member States regulations with the norms of the new Directive. In August 2020, the European Commission sent a report to the European Parliament and the Council based on Article 29(1) of Directive (EU) 2017/541 on combating terrorism. This document was based on the information that Member States gave to the European Commission through notification of their national measures while transposing the mentioned Directive before deadline on September 8, 2018. It must be emphasized that seven Member States have notified transposition of Directive by the deadline, and two did so shortly after, while the infringement procedures were taken against other sixteen Member States. After that, fifteen more Member States declared the transposition to be completed. This document has great importance since it strengthens the Member States criminal justice approach to terrorism and shows the European Union's will to fight for the safety on its territory. While transposing this Directive many Member States had to adopt new legislation, which is the best proof of how their legislators see the problem of rising terrorist threats. It is very encouraging that European Commission stated that transposition of this Directive can be evaluated as satisfactory.

## CONCLUSION

Although terrorism has been present on the territory of the Old Continent in the past, it has mostly endangered the security systems of only some countries, while it has been almost unthinkable on the territory of the others. However, the way the European Union functions greatly affects the expansion of terrorist activities. The security situation on the territory of European Union seems to be more endangered in the last twenty years than ever before, although on the other hand, extensive legislative measures are taken and binding legal acts were adopted. It is quite clear that the problem of terrorism in the European Union culminated when the citizens of the Member States began actively to participate in the conflicts in the war-affected areas around the world. Also, there is no doubt that extremists propaganda in

modern, computerized world represents too easily accessible material, which consequently leads to a reduction in security at all levels, both state and regional. It is completely justified to ask how fight against terrorism must be conducted in order to be characterized as successful. Certainly, there is no universal solution, but sounds very encouraging that concrete results can only be achieved through cooperation at local, regional and international level.

Unfortunately, the cities of the European Union became the target of terrorist attacks just at the time when the "domestic" terrorism of destructive organizations was practically eliminated. The reasons for the current problems can be correctly defined only if a number of factors are taken into account, such as violent globalization relations, religious disagreements, great technological progress, many years of migrant crisis and millions of refugees or the economic crisis that has affected the whole world. Definitely, European Union represents and will remain to be an interesting area for people seeking better living conditions, and unfortunately for terrorists who express their power by carrying out attacks in European cities, knowing that their actions will have a great impact on the public. European officials have wisely recognized that only by establishing uniform rules on the territory of all Member States, the terrorism can be effectively suppressed. Terrorist attacks are signs of the weakness of security structures and indicators that European Union is still a very vulnerable area, despite the undoubtedly great effort made in terms of combating terrorist groups on its territory. However, it is necessary to emphasize that European Union, through a large number of educational programs, cultural and sports events, promotes diversity as a basic postulate, which certainly contributes to reducing all forms of radicalization, especially among young people who are mostly exposed to retrograde and violent groups.

#### REFERENCES:

1. Aiartza U., Zabalo, J. (2010). The Basque Country, The Long Walk to a Democratic Scenario, Berghof Conflict Research, Berghof Foundation, Transition series no. 7, pp. 1 – 77.
2. Best, S., Nocella, A. (2004). Defining Terrorism, Animal Liberation Philosophy and Policy Journal, vol. 2, Institute for Critical Animal Studies, Binghamton, New York, pp. 56 – 72.
3. Bonanate, L. (2001). Terrorismo internazionale, Giunti, Firenze.
4. Bruce, G. (2013). Definition of Terrorism Social and Political Effects, Journal of Military and Veterans' Health, Australian Military Medical Association, Hobart, pp. 26 – 30.
5. Bures, O. (2008). Europol's fledgling counterterrorism role, Terrorism and Political Violence, Taylor & Francis Group, pp. 498 – 517.

6. Coolsaet, R. (2010). EU counterterrorism strategy: value added or chimera?, *International Affairs*, Oxford University Press, vol. 86, pp. 857 – 873.
7. Corlett, A. J. (2003). *Terrorism: A philosophical analysis*, Kluwer Academic Publishers, Dordrecht.
8. Council of the European Union. EU Plan of Action on Combating Terrorism, 10586/04, 15 June 2004. [https://data.consilium.europa.eu/doc/document/ST-10586-2004-INIT/en/pdf.\(10.05.2021\)](https://data.consilium.europa.eu/doc/document/ST-10586-2004-INIT/en/pdf.(10.05.2021))
9. Dnes, A. W., Brownlow, G. (2017). The Formation of Terrorist Groups: An Analysis of Irish Republican Organizations, *Journal of Institutional Economics*, Cambridge University Press, vol. 13, pp. 699 – 723.
10. Hayes, B., Jones, C., (2013). Catalogue of EU Counter-Terrorism Measures Adopted since 11 September 2001, SECILE Consortium. <https://www.statewatch.org/media/documents/news/2013/dec/secile-catalogue-of-EU-counter-terrorism-measures.pdf>.
11. Ivanovic, A., Totic, M. (2017). Evropski nalog za hapsenje kao instrument borbe protiv organizovanog kriminala na teritoriji Evropske Unije, *Strani Pravni Život*, no. 2, pp.127 – 145.
12. Katz, E. (2007). Implementation of the Third Money Laundering Directive – an overview, *Law and Financial Markets Review*, Taylor and Francis Ltd, United Kingdom, pp. 207 – 211.
13. Lamberti, C. (2014). Gli strumenti di contrasto al terrorismo e al cyber-terrorismo nel contest europeo, *Rivista di Criminologia, Vittimologia e Sicurezza*, Bologna, vol. 8, pp. 138 - 162.
14. Laqueur, W. (2002). *Il nuovo terrorismo*, Corbaccio, Milano.
15. Moretti, M. (1994). *Brigate Rosse, Una Storia Italiana*, Intervista di Carla Mosca e Rossanda Rossanda, Anabasi Spa, Milano.
16. Official Journal of the European Union. Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime. Brussels: 6 August 2008. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0616&from=EN.\(30.07.2021\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0616&from=EN.(30.07.2021))
17. Official Journal of the European Union. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. Brussels: 31 March 2017. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0541&from=EN.\(31.07.2021\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0541&from=EN.(31.07.2021))
18. Official Journal of the European Union. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing,

- amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. Brussels: 5 June 2015. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN.\(01.08.2021\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN.(01.08.2021))
19. Palazzi, F. (1965). *Dizionario della lingua italiana*, Garzanti, Milano.
  20. Petronio, F., Falco, F. (2015). *The Fourth Anti-Money Laundering Directive*, Paul Hastings, London. <https://webstorage.paulhastings.com/Documents/PDFs/stay-current-the-fourth-anti-money-laundering-directive.pdf>.
  21. Polidori, C. M. (2006). *Il Terrorismo Internazionale negli Ordinamenti Giuridici dei Paesi Occidentali e i Relativi Strumenti di Cooperazione Giudiziaria e di Polizia*, Centro Militare di Studi Strategici, Roma.
  22. Ranstorp, M., Brun, H. (2013). *Terrorism Learning and Innovation: Lessons from PIRA in Northern Ireland*, Försvarshögskolan, Stockholm.
  23. Roux, C. (2002). *Violent Separatism and Academic Silence: The Case of Corsica, Political Accommodation in Ethnonationally Diverse Societies: Normative and Comparative Perspectives*, ECPR Joint Sessions of Workshops, Turin, Italy.
  24. Simeunovic, D. (2009). *Terorizam*, Pravni fakultet Univerziteta u Beogradu, Beograd.
  25. Spaaij, R. (2010). *The Enigma of Lone Wolf Terrorism: An Assessment*, *Studies in Conflict and Terrorism*, Taylor and Francis Group, pp.854 – 870.
  26. Totic, M. (2016). *Harmonizacija nacionalnih zakonodavstava sa pravom Evropske Unije*, *Pravne teme*, Univerzitet u Novom Pazaru, Novi Pazar, pp. 111 – 127.
  27. Totic, M., Totic, I. (2013). *The Common Market: Paradigm of the Integration Processes Within the European Community and the European Union, Actual Problems of Economies*, National Academy of Management, Kyiv, Ukraine, pp. 542–552.
  28. Vieille, S. (2009). *Nationalism on the island: the legitimacy of Corsican nationalist movements in question*, *Federal Governance*, Institute of Intergovernmental Relations at Queen's University, Kingston, vol. 6, pp. 1 – 22.
  29. Whitfield, T. (2015). *The Basque Conflict and ETA, The Difficulties of an Ending*, Special Report no. 384, United States Institute of Peace. [https://cic.nyu.edu/sites/default/files/whitfield\\_basque\\_conflict\\_eta\\_dec2015.pdf](https://cic.nyu.edu/sites/default/files/whitfield_basque_conflict_eta_dec2015.pdf).