

UKRAINE

Legislation Pertaining to Terrorism

The Penal Code of Ukraine provides for punishment with five to ten years in prison for committing a terrorist act. Seven to 12 years prison will be imposed on the perpetrators of repeated conduct or conspirators if they cause substantial damages to property or other serious consequences. If their conduct results in death, the penalty is raised to ten to 15 years or life in prison. Eight to 15 years in prison is the penalty for creating a terrorist group or organization, leading or participating in it, and providing any kind of support for the creation or activity of such a group. A participant, not an organizer or leader, can escape criminal liability if he or she voluntarily reports the prohibited activity to law enforcement and cooperates to end the activity or existence of the group, or if such a person admits any crimes committed in the context of the creation of conduct of the group, provided that the person did not commit other crimes.

The Criminal Code applies to foreign citizens and stateless persons not permanently resident in Ukraine, as well as citizens and permanent residents who have committed criminal offenses outside the country [or serious or very serious crimes against Ukrainian citizens or the State], and such persons “incur criminal liability for the commission of crimes under national legislation in the cases provided for by Ukraine’s international obligations” and unless binding international agreements provide otherwise (extraterritorial jurisdiction). The draft Act “on combating terrorism” prohibits international organizations or groups from engaging in any activity in Ukraine if the organization is considered a terrorist organization under existing law. This instrument will make the provision of material support to terrorist organizations a type of terrorist activity of itself and will allow the confiscation of property belonging to groups known to be involved in terrorism.

Counter-Terrorism Measures and Organization

Intelligence services participate in the control of international organized crime and terrorism, and local state organs “assist in the development of international cooperation in the sphere of counter-terrorism.” Because many terrorist acts are covered by the Criminal Code, law enforcement bodies address certain terrorist crimes. The Anti-Terrorist Centre of the Security Service, made up of the interdepartmental coordinating commission and the regional organs of the Security Service, operates as a coordinating system for counter-terrorism. The Centre and its regional and local coordinating groups have to “coordinate the activities of the executive bodies in the prevention and interdiction of terrorist acts against State officials, facilities vital to public welfare and particularly hazardous facilities, which threaten life and health of a significant number of people.” The Centre, along with the Ministry of Foreign Affairs, has the task of “coordinating the fulfillment by the executive” branch of the country’s international obligations.

The Security Service of Ukraine is at the heart of anti-terrorism efforts. It is made up of the Central Directorate of the Security Service, the regional bodies under its authority, the Security Service of the Autonomous Republic of Crimea, military counter-intelligence agencies, military units and various training, research and other establishments. The Ministry of the Interior is in charge of the national police force, “a unified system of agencies within the structure of the Ministry of the Interior which performs...administrative, preventive, operational-search, criminal-procedure, executive and security functions.” The Ministries of Foreign Affairs, of Economy and European Affairs, of Defence, of Transport, and of Industrial Policy, as well as the State Committee for Protection of the State Border, the State Customs Service, the State Company for the Export and Import of Military and Special-purpose Production and Services with help of the Security Service are instructed to ensure that no support for terrorism, including recruitment of members and the supply of weapons is provided. The State Department for Financial Monitoring under the Ministry of Finance is in charge of financial control and the fight against money-laundering.

Supply of weapons to terrorists

The Ukrainian Criminal Code penalizes “theft, misappropriation and extortion of firearms, ammunition, explosive substances [and devices] or radioactive materials”. The punishment for such offenses is imprisonment for three to seven years. Furthermore, the “carrying, storage, acquisition, manufacture, repair, transfer, or sale of firearms, ammunition,” and explosives without legal authorizations are criminal offenses punishable with two to five years prison.

The Ministry of Defense systematically monitors weapons supplies, explosives, ammunition, radioactive materials that could be used to produce weapons of mass destruction, and materials for chemical or biological warfare. It calls up forces and equipment from the subdivisions of the Security Service and the Ministry of the Interior to suppress terrorist acts against military targets, checking the safekeeping of weapons, ammunition, explosives and radioactive material, and bringing them into line with regulations, reducing the number of sites for the safekeeping of firearms and ammunition and upgrading these depots, improving the equipment in protected facilities so they comply with norms and laws, checking “the state of readiness of the units responsible for dealing with the consequences of potential accidents and of radiological, chemical and bacteriological monitoring and reconnaissance groups”, and cooperating with other ministries and government agencies to exchange operational information about the “radiological, chemical and bacteriological status of the regions of Ukraine.”

Various ministries and state bodies have the duty to “strengthen control of international transfers of military and dual-use goods which could be used” for terrorist purposes. The Coordinated Action Plan to Strengthen Measures to Prevent Illegal Migration and to Prohibit the Carriage across the State Frontier of Terrorist Devices unites the efforts of the Ministries of the Interior and of Defence, the Security Service, the State Committee for the Protection of the State Border and the State Customs Service, with the goal of preventing the transport of terrorist devices across Ukraine. A presidential decree established a system to control the movement of weapons, explosives and dual-use materials across the Ukrainian border.

The system for the control of the categories of goods that are subject to export controls, including “goods capable of being used of the production of chemical, bacteriological (biological) and toxin weapons,” require that any links between a merchant of goods or services with an international terrorist group have to be reported and can entail verification and suspension measures. The Regulations on State Control of Exports controls the movement of nuclear, biological and chemical materials and prohibits “international transfers of nuclear, biological and chemical weapons and ... materials, equipment and technologies ... that conflict with the international obligations of Ukraine, national security interests or the goals of suppressing terrorism and maintaining mutually advantageous cooperation with the members of the international community in accordance with the generally recognized principle and norms of international law or for which there are no appropriate guarantees concerning the end-user.”

“The Cabinet of Ministers..., conscious that the non-proliferation of chemical and biological weapons is a pressing issue, has approved the ‘Regulations on the procedure for controlling the export, import and transit of goods which could be used to produce chemical, bacteriological (biological) and toxin weapons.’” State and national authorities have to step up physical protection and security in vulnerable facilities and “complete an inventory of articles, materials, equipment and technology which could be used to produce weapons of mass destruction and also conventional weapons and means of delivery” to keep terrorists away from them.

Internationally, Ukraine disposes of “a broad base of treaties and legislation” for cooperation and coordination of efforts to counteract threats of weapons and materials of mass destruction: the Ministry of Interior alone has entered into 160 international treaties and protocols with over 40 countries to combat crime and terrorism, and on information exchange and operational and legal assistance. There are also regular working meetings to facilitate the exchange of information with foreign law enforcement. For example, international cooperation also takes place within the context of the Organization of the Black Sea Economic Cooperation.

Preventing the Financing of Terrorism, and Freezing Assets

Ukraine ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1997. Pursuant to UN Security Council resolution 1373, Ukrainian law obligates state authorities to prevent the “direct or indirect provision by physical and legal persons of any sources, financial assets or economic resources, or of financial or other relevant services” to persons or organizations planning to commit terrorist acts.

The Criminal Code “provides for the confiscation of financial and other economic assets in cases where there is evidence of their unlawful provenance or use,” in the context of “offences in the area of economic relations,” such as smuggling, illegally using foreign currency accounts outside Ukraine and asset or money laundering; and in the context of “offences against public security,” including “gangsterism” and the theft, misappropriation or extortion of firearms, ammunition, explosives or radioactive materials, or the acquisition thereof by fraud or abuse of official position. There is now a law “on measures to prevent and counteract the legalization (laundering) of the proceeds from crime” to prevent money-laundering and financing of terrorism. It defines suspicious “financial operations” and those subject to monitoring by law enforcement. A bill on combating terrorism would provide for “the confiscation of property of an organization which, in a manner determined by law, is deemed to be participating in a terrorist activity.”

The Cabinet of Ministers has instructed government authorities and the Council of Ministers of Crimea to seize funds and economic assets of Osama bin Laden and persons and groups connected with him, and to freeze assets and resources of persons who commit and attempt to commit acts of terrorism. Also, on request by the United States, the Security Service searched for bank accounts that may belong to terrorists. Two bank accounts were found to belong to persons specified, but no transactions had taken place in 2000-2001.

A prosecutor can request to seize bank deposits belonging to terrorists in the investigative proceedings of a crime. Seizing an account can only be done in preparation of a criminal trial or a potential future civil suit. In other circumstances, a decision to seize bank deposits lies with the judiciary: the Minister of Justice can request a court to issue an order to seize terrorist assets.

International Cooperation

Ukraine is a party to eleven of the 12 international conventions related to terrorism. Ukraine is preparing to ratify the International Convention for the Suppression of the Financing of Terrorism. It is a party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Ukraine also entered into the Agreement on Cooperation among CIS Member States in the Fight against Crime and the Agreement between the Governments of member States of the Organization of the Black Sea Economic Cooperation on cooperation in combating crime. Within the CIS, a decision to establish an Anti-Terrorism Centre of the States members of the Commonwealth of Independent States for deeper international cooperation, was ratified by the Parliament.

Domestic law enforcement agencies cooperate with those of over 40 other countries on the basis of 160 international agreements and protocols to combat crime and terrorism and for other matters. The Ministry of the Interior and the Security Service are responsible for providing legal assistance to institute criminal proceedings in the context of counter-terrorism. As part of this cooperation, operational and service-related information and information on legal assistance in criminal matters is exchanged. However, assistance is not obligatory “if the requested State has substantial grounds for believing that the request for mutual assistance in respect of [a specified offense] has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of these reasons.”

BIBLIOGRAPHY OF UKRAINIAN LEGISLATION

Legislation pertaining to terrorism

1. Penal Code, Articles 7, 8, 28, 209, 255, 256, 258, 260, 447
2. Draft Act “on combating terrorism”
3. Security Service draft bill “on revisions to certain legislative instruments of Ukraine concerning combating terrorism”
4. Act “on operational investigations”
5. Act “on the Security Service of Ukraine”
6. Act “on banks and banking activities”
7. Act “on the legal status of aliens”
8. Act “on refugees”

Counter-Terrorism Measures and Organization of Government Authorities

1. Act “on the intelligence bodies of Ukraine”
2. Act “on local State administrations”
3. Presidential Decree of 11 December 1998
4. Presidential Decree of 14 April 1999
5. Bill “on combating terrorism”
6. Cabinet of Ministers Resolution No. 1694, Programme for the implementation of the provisions of the Warsaw Conference on combating terrorism
7. Cabinet of Ministers Resolution No. 1800
8. Act “on the police force,” Article 7
9. Cabinet of Ministers Resolution No. 844
10. Presidential Decree No. 1199 “on measures to prevent the legalization (laundering) of proceeds of crime”
11. Cabinet of Ministers Resolution No. 35
12. Cabinet of Ministers Resolution No. 700 “on definition of the criteria for classifying financial transactions as suspicious or unusual

Supply of weapons to terrorists

1. Criminal Code, Articles 262, 263, 447
2. Act “on the Ukrainian State frontier” (1991)
3. Act “on the use of nuclear power and radiation safety” (1995)
4. Act “on the handling of radioactive waste” (1995)
5. Coordinated Action Plan to Strengthen Measures to Prevent Illegal Migration and to Prohibit the Carriage across the State Frontier of Terrorist Devices
6. Presidential Edict No. 117/98 On the Statute of State Export Control in Ukraine, 13 February 1998 (system for control of the carriage of weapons, explosives or dual-use materials across the customs frontier)
7. Cabinet of Ministers decision No. 563 (1995)
8. Decision No. 302 (1996)
9. Decree No. 384, 22 April 1997 on Changes and Amendments to the Regulations on the Procedure for the Control of Export, Import and Transit of the Commodities that could be used in the Production of Chemical, Bacteriological (Biological) and Toxin Weapons

Weapons of Mass Destruction and Biology

1. Criminal Code, Articles 70, 221, 222, 228, 229
2. Presidential Edict No. 117/98 On the Statute of State Export Control in Ukraine, 13 February 1998
3. Regulations on the system for control of the export, import and transit of goods capable of being used for the production of chemical, bacteriological (biological) and toxin weapons and decision No. 384
4. Cabinet of Ministers Decision No. 1800 “on measures to implement United Nations Security Council resolution 1373 of 28 September 2001” (2001)
5. Draft Act “on State control of international transfers of military and dual-use goods”

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6. Resolution No. 440, 20 June 1995 on Approval of the Regulations on Receiving Permits to Produce, Store, Transport, Use, Bury, Destroy, and Utilize Poisonous Substance, Including Toxin Production Waste, Products of Biotechnology and Other Biological Agents
7. Cabinet of Ministers Decree No. 159 on Creation of a List of Raw Materials, Materials, Equipment and Technologies Which Require Special Permission for Export, 4 March 1993, approving approves control lists prepared by the Cabinet of Ministers of items that could be used in the production of weapons and military hardware
8. Presidential Edict No. 868 On Measures to Enhance the Effectiveness of Military and Technical Cooperation between Ukraine and Foreign States-- creating a new Committee for Policy on Military-Technical Cooperation and Export control with responsibilities that include 'introducing bans on the export, import, and transit of goods subject to export control to comply with Ukraine's international non-proliferation obligations
9. Cabinet of Ministers Decree No. 651, On the Statute of the State Service for Export Control, 12 April 2000-- outlining responsibilities for issuing permits and licensing documents, for the export of military or dual-use goods to states for which there is a partial embargo
10. Cabinet of Ministers Decree No. 920 On the Statute on the Procedure for Issuing Guarantees and for State Monitoring of International Transfers of Military Goods and Dual-Use Goods, 27 May 1999
11. Presidential Edict No. 422/99 On Measures to Improve Military and Technical Cooperation between Ukraine and Foreign Countries, 21 April 1999
12. Presidential Edict No. 283/99 On Amendments and Addenda to Edicts 1279 and 117, 26 March 1999
13. Cabinet of Ministers Decree No. 1217 On the Government Commission for Export Control Policy, 10 November 1997
14. Resolution on Approval of the Regulations on Receiving Permits to Produce, Store, Transport, Use, Bury, Destroy, and Utilize Poisonous Substance, Including Toxin Production Waste, Products of Biotechnology and Other Biological Agents
15. Presidential Edict On the Statute of State Export Control in Ukraine --outlining the objectives and procedures for the country's export control system
16. Cabinet of Ministers Decree On Procedures for Controlling the Export, Import, and Transit of Certain Items, Equipment, Materials, Software and Technologies that Can Be Used to Create Weapons, Military or Special Equipment, later amended, -- establishing new export procedures and a new export control list for dual-use goods and technologies
17. Cabinet of Ministers Decree On the Statute on the Procedure for State Monitoring of International Transfer of Dual-use Goods Contained in Control Lists -- listing conventional weapons and related technologies that require and export license
18. Cabinet of Ministers Decree On the Government Commission for Export Control Policy defines the Commission's responsibilities, including introducing restrictions on the export, import and transit of goods and granting permits for military or dual-use goods;
19. Decree on Changes and Amendments to the Regulations on the Procedure for the Control of Export, Import and Transit of the Commodities that could be used in the Production of Chemical, Bacteriological (Biological) and Toxin Weapons provides for the trade regulations governing listed agents including toxic chemicals, pathogenic organisms and their genetically modified forms and fragments of genetic material and toxins, and is another of the country's five national control lists.

Measures To Prevent Terrorist Financing

1. Constitution of Ukraine, Articles 113, 117
2. Cabinet of Ministers Decision No. 1800 "on measures to implement United Nations Security Council resolution 1373 of 28 September 2001" (2001)
3. Act "on financial services and State regulation of financial service matters," article 18

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4. National Bank Order No. 95 “on the lapsing of the Instruction on the procedure for the opening and operation of coded accounts by physical persons (resident or non-resident) in foreign currency or the national currency of Ukraine”
5. Instruction on the opening by banks of accounts in the national or foreign currency, confirmed by National Bank Order No. 527
6. National Bank Order No. 164 on the Procedural Recommendations on the development by Ukrainian banks of programmes to combat the laundering of proceeds of crime
7. Cabinet of Ministers Resolution No. 700 “on definition of the criteria for classifying financial operations as suspicious and unusual”
8. Presidential Decree No. 532 “on additional measures to combat the laundering of proceeds of crime”
9. Cabinet of Ministers Order No. 386
10. Act “on entrepreneurship”
11. Act “on enterprises in Ukraine”
12. Act “on business corporations”
13. Act “on external economic activity”
14. Cabinet of Ministers Resolution No. 1124 on the introduction of the Forty Recommendations of FATF
15. Cabinet of Ministers Order on intensifying the effort to combat the legalization (laundering) of proceeds of crime
16. Draft programme for counteracting the legalization (laundering) of proceeds of crime for 2002 and Resolution No. 676 of the Cabinet of Ministers
17. Cabinet of Ministers Resolution No. 351 “on the implementation of the United Nations Security Council resolution regarding the Taliban movement (Afghanistan)”
18. Cabinet of Ministers resolution No. 749 “on the implementation of the United Nations Security Council resolutions regarding Osama bin Laden, the Al Qaidah organization and the Taliban movement (Afghanistan)”
19. Criminal Procedure Code, Articles 126
20. Security Service draft bill “on revisions to certain legislative instruments of Ukraine concerning combating terrorism”
21. Penal Code, Articles 201, 208, 209, 257, 258, 262
22. Code of Criminal Procedure, Article 126

International Cooperation

1. Orders of the President “on the Anti-Terrorist Centre” and “on the regulations of the Anti-Terrorist Centre and its coordination groups in the regional organs of the Security Service of Ukraine”
2. Order of the President “on the procedure for cooperation with international anti-terrorist organizations”
3. Constitution of Ukraine, Articles 9, 25
4. Act “on international agreements to which Ukraine has acceded”
5. Criminal Code, Article 10
6. Act “on legal succession of Ukraine”
7. Act “on criminal investigation activities” of 18 February 1992
8. Act “on the Security Council of Ukraine” of 25 March 1992
9. Act “on nuclear energy use and radiation safety” of 8 February 1995
10. Act “on regulations governing garrison and guard service in the armed forces of Ukraine” of 24 March 1999
11. Act “on the legal regime in an emergency situation” of 16 March 2000
12. Act “on the defence of Ukraine” in the version of 5 October 2000
13. Act “on the physical defence of nuclear facilities, nuclear materials, radioactive wasters and other sources of ionizing radiation” of 19 October 2000
14. Act “on the intelligence services of Ukraine” of 22 March 2001
15. Merchant Shipping Code