



# Administrative and legal status of public administration subjects regarding countering terrorism

DOI: <https://doi.org/10.46398/cuestpol.4179.39>

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## Abstract

The aim of the research was to make known the administrative and legal status of the subjects of public administration in the field of counter-terrorism. It was found that a rather clear and logical structure of state bodies in the field of organization and coordination of the fight against terrorism has been created in Ukraine. The system of anti-terrorist entities is a set of specific, legally defined institutions that interact with the aim of preventing, detecting, stopping and minimizing the consequences of terrorist activities. The following methods were used in the research: analysis of biographical sources, synthesis, deduction, comparative analysis and meta-analysis, etc. In the conclusions it has been established that the President of Ukraine, the Verkhovna Rada and the Cabinet of Ministers are the key actors in the fight against terrorism in the system of higher authorities. The defining areas of action of the President of Ukraine in the sphere of counter-terrorism, are the activities aimed at regulatory and legal support of counter-terrorism in Ukraine, which implies: creation, liquidation, reorganization and management of relevant counter-terrorism entities.

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**Keywords:** administrative and legal regime; legislation; public administration matters; counter-terrorism; war in Ukraine.

## Situación administrativa y jurídica de las materias de la administración pública en materia de lucha contra el terrorismo

### Resumen

El objetivo de la investigación fue dar a conocer la situación administrativa y jurídica de los sujetos de la administración pública en materia de lucha contra el terrorismo. Se ha comprobado que en Ucrania se ha creado una estructura bastante clara y lógica de órganos estatales en materia de organización y coordinación de la lucha contra el terrorismo. El sistema de entidades antiterroristas es un conjunto de instituciones específicas, legalmente definidas, que interactúan con el objetivo de prevenir, detectar, detener y minimizar las consecuencias de las actividades terroristas. En la investigación se utilizaron los siguientes métodos: análisis de fuentes biográficas, síntesis, deducción, análisis comparativo y metaanálisis, etc. En las conclusiones se ha establecido que el presidente de Ucrania, la Rada Suprema y el Gabinete de ministros son los actores clave en la lucha contra el terrorismo en el sistema de autoridades superiores. Las áreas definitorias de acción del presidente de Ucrania en la esfera de la lucha contra el terrorismo, son las actividades destinadas al apoyo normativo y jurídico de la lucha contra el terrorismo en Ucrania, lo que implica: la creación, liquidación, reorganización y gestión de las entidades pertinentes de lucha contra el terrorismo.

**Palabras clave:** régimen administrativo y jurídico; legislación; materia de administración pública; lucha contra el terrorismo; guerra en Ucrania.

### Introduction

According to the Constitution of Ukraine, Ukraine is a sovereign, independent, democratic, social, legal state and the highest social value of it is the human being, his or her life and health, honor and dignity, inviolability and security. However, today there are certain negative phenomena in Ukraine that encroach on the values proclaimed by the Constitution. One of the most important problems in Ukraine under modern conditions is the fight against terrorism. The system of state response and control in

the sphere of security in connection with the armed conflict in the East of Ukraine, imperfection of the legal framework and lack of a balanced state policy in the social sphere, as well as reduction of the spiritual and moral potential of society are the main factors that contribute to the spread of terrorism.

Counter-terrorism subjects are involved in countering this extremely dangerous phenomenon. Improving the activity of these subjects involves not only improving their organizational structure in order to increase the mobility and flexibility of response to changes in the dynamics of terrorism, but also strengthening relations and interaction of the relevant departments involved in anti-terrorist activities.

### 1. Literature review

The issue of researching the system of activities performed by counter-terrorism subjects has been reflected in scientific works of such legal scholars as Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna etc. (Halaburda *et al.*, 2021).

Within the framework of our research, definition of the concept of “subject” from a legal point of view is of some interest. It is worth noting that in legal encyclopedic literature this notion is defined by the term “subject of law”, which means a participant in legal relations as a bearer of legal rights and obligations (Shemshuchenko, 2007). Based on this, it can be assumed that the concept of “subject” is defined in a combination of such concepts as “person”, “participant”, “group of persons” carrying out a certain activity on the basis of appropriate amount of powers provided to them for this purpose. At the same time, it should be noted that according to Article 1 of the Law of Ukraine dated 20 March, 2003 “On the fight against terrorism”, the fight against terrorism is an activity related to prevention, detection, termination, and minimization of consequences of terrorist activities (Law of Ukraine, 2003). Taking into account the above, counter-terrorism subjects in Ukraine are participants in legal relations in the sphere of combating terrorism, who are endowed with the relevant duties by the specified law.

Based on the defined essence of the concept of “counter-terrorism subjects in Ukraine”, it is possible to define the concept of the system of these subjects. The word “system” comes from the Greek word *systema*, which is translated as “a whole that consists of parts; combination”. In the modern Ukrainian language, the word “system” is used in the following meanings: the order caused by the correct, planned arrangement and mutual connection of parts of something; form of organization, structure of something (state, political, economic units, institutions, etc.); a set of any

elements, units, parts united by a common feature, purpose; a structure that is a unity of regularly arranged and functioning parts (Busel, 2009).

At the same time, taking into account the status of dynamic changes in this area, the indicated issues require a more comprehensive analysis including in particular, analysis legal and organizational principles of activities performed by counter-terrorism subjects in Ukraine within the framework of the national system of combating terrorism.

## **2. Materials and methods**

The research is based on the works of foreign and Ukrainian researchers regarding the administrative and legal status of public administration entities in the procedure of countering terrorism, etc.

With the help of the epistemological method, the administrative-legal status of public administration subjects regarding counter-terrorism activities, etc. was clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened, the administrative-legal status of public administration subjects regarding counter-terrorism activities, etc. was determined. Thanks to the existing methods of law, we managed to analyze the essence of the administrative-legal status of public administration subjects regarding countering terrorism, etc.

## **3. Results and discussion**

The system of counter-terrorism subjects is a set of subjects (entities) defined at the level of legislation which interact with each other in order to prevent, detect, stop and minimize consequences of terrorist activities. In order to reveal the essence of the system of counter-terrorism subjects in Ukraine, there is a need to find out the essence and place of each of them in this system.

The President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine occupy the leading place in the system of counter-terrorism subjects among the higher state authorities in Ukraine. However, it is worth noting that for these subjects the function of combating terrorism is not specific, but without their participation, a comprehensive system of countering terrorism cannot exist.

In particular, the legal status of the President of Ukraine as a counter-terrorism subject is defined in Article 103 of the Constitution of Ukraine, which describes the principles of his activity as a counter-terrorism subject in Ukraine and Article 106 defines areas of activity of the President of Ukraine as a counter-terrorism subject in Ukraine (Law of Ukraine, 1996).

The functions performed by the President of Ukraine in the fight against terrorism are presented in the Regulation “On the procedure for the preparation and introduction of draft acts by the President of Ukraine”, approved by the Decree of the President of Ukraine dated 15 November, 2006. Within the limits of his competence, the President of Ukraine also issues orders regarding the regulatory and legal provision of countering terrorism in Ukraine and establishing the legal status of other subjects of this activity.

Based on the above, it is worth pointing out that the President of Ukraine, as a counter-terrorism subject in Ukraine, alongside with the Verkhovna Rada and the Cabinet of Ministers of Ukraine, implements functions of normative and legal regulation of the fight against terrorism. His powers also include establishment, liquidation, reorganization and management of specified counter-terrorism subjects.

The Verkhovna Rada of Ukraine is the next entity responsible for combating terrorism in Ukraine. In particular, 75 of the Basic Law of Ukraine it is determined that the only body of legislative power in Ukraine is represented by the parliament - Verkhovna Rada of Ukraine, and Article 85 of the Constitution of Ukraine defines directions of activity of this legislative body (Law of Ukraine, 1996). Alongside with this, it should be noted that functioning of this counter-terrorism body is carried out through adoption of the relevant laws. The Verkhovna Rada of Ukraine, as a counter-terrorism subject in Ukraine, directs its activities to the regulatory and legal support of this sphere, as well as on creation, liquidation, reorganization of other subjects and exercising control in this sphere.

In accordance with Article 4 of the Law of Ukraine “On Combating Terrorism”, the Cabinet of Ministers of Ukraine, as the highest executive body, shall organize the fight against terrorism in Ukraine within its competence and provide it with the necessary forces, means and resources (Law of Ukraine, 2003). We should point out that according to Article 113 of the Constitution of Ukraine the Cabinet of Ministers of Ukraine is the highest body in the system of executive authorities (Law of Ukraine, 1996).

The key areas of activity of the Cabinet of Ministers of Ukraine, characterizing this highest body of executive power as a counter-terrorism subject in Ukraine, are defined in Article 116 of the Constitution of Ukraine (Law of Ukraine, 1996) and Article 19 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” dated 27 February, 2014 (Law of Ukraine, 2014).

When implementing its functions in the fight against terrorism the Cabinet of Ministers of Ukraine issues relevant normative legal acts, creates, liquidates, and reorganizes relevant entities, coordinates and controls their activities. This body also implements regulatory and legal support and monitors implementation of legislative acts, in particular those, related to

the fight against terrorism, and it performs functions of ensuring legality and preventing illegal encroachments on the interests of people and the state.

At the same time according to Article 4 of the Law of Ukraine “On Combating Terrorism”, the specified counter-terrorism subjects (entities) form an integrated system consisting of two groups. The first group includes subjects (entities) that directly fight terrorism within the scope of their competence: the Security Service of Ukraine; the Ministry of Internal Affairs of Ukraine; the National Police; the Ministry of Defence of Ukraine; the central bodies of executive power that ensure formation and implementation of state policy in the sphere of civil protection; the central body of the executive power which implements state policy in the sphere of protection of the state border; the central body of the executive power, which implements state policy in the sphere of execution of criminal punishments; State Security Office of Ukraine; the central body of the executive power, which implements state tax policy, state policy in the sphere of state customs affairs(Law of Ukraine, 2014).

The second group includes entities that, if necessary, are involved in implementation of measures related to prevention, detection and termination of terrorist activities: the central body of the executive power, which implements state policy in the sphere of prevention and countermeasures against the legalization (laundering) of proceeds obtained through crime or financing of terrorism; the Foreign Intelligence Service of Ukraine; the Ministry of Foreign Affairs of Ukraine; the State Service of Special Communications and Information Protection of Ukraine; the central bodies of executive power, which ensure formation and implementation of state policy in the sphere of health care; the central bodies of executive power, which ensure formation and implementation of state policy in the electric power, coal, industrial and oil and gas complexes; the central body of executive power implementing state policy in the sphere of managing state-owned objects; the central bodies of executive power, which ensure formation and implementation of state policy in the spheres of transport; the central bodies of executive power ensuring formation and implementation of state financial policy; the central bodies of executive power that ensure formation and implementation of state policy in the sphere of environmental protection; the central bodies of executive power that ensure the formation and implementation of the state agrarian policy (Leheza *et al.*, 2022).

Other central and local bodies of executive power, local self-government bodies, enterprises, institutions, organizations regardless of subordination and form of ownership, their officials, as well as citizens may with their consent be involved in anti-terrorist operations by decision of the management of the anti-terrorist operation in compliance with the requirements of this law (Law of Ukraine, 2003).

It is worth noting that the successful provision of countering terrorism in Ukraine requires joint participation in this activity of state structures, counter-terrorism subjects, and civil society. In this regard, it is important to establish a flexible constructive interaction of state bodies with public institutions, mass media for the purpose of carrying out coordinated activities in prevention of crimes and rendering help in eliminating threats to the safety of a person, society, and the state.

In the context of the investigated issue, it should be noted that the main body in the national system of combating and countering terrorism is represented by the Security Service of Ukraine. In accordance with the Law of Ukraine “On the Security Service of Ukraine”, the Security Service of Ukraine is a special state law enforcement agency that ensures the state security of Ukraine (Law of Ukraine, 1992).

Under the Security Service of Ukraine there is the Anti-Terrorist Center; in accordance with part 7 of Article 4 of the Law of Ukraine “On Combating Terrorism” and Article 1 of the Regulation “On the Anti-Terrorist Center and its Coordination Groups at the Regional Bodies of the Security Service of Ukraine”, approved by the Decree of the President of Ukraine dated April 14, 1999 No. 379/99, it is a permanent body under the Security Service of Ukraine which coordinates activities of counter-terrorism subjects (entities) in preventing terrorist acts against government officials, critical infrastructure objects of life support for the population, objects of increased danger, as well as in preventing acts that threaten the life and health of a significant number of people, and in their termination

According to p. 7 of the specified Regulation, the Center is structurally composed of the Interagency Coordinating Committee (ICC), headquarters, as well as coordination groups and their headquarters created under the regional bodies of the Security Service of Ukraine. In accordance with clause 8, the Center is headed by a manager who is appointed from among the first deputies of the Chairman of the Security Service of Ukraine and is relieved of his duties by the President of Ukraine.

In its activities, the Center accumulates and analyzes information, which makes it possible to determine the strategy and tactics of combating terrorism within the state and at the international level. Professional training of special forces and means included in the Anti-Terrorist Center (ATC) from specified ministries and departments is carried out on a single methodical base (within the competence defined by the Constitution and laws of Ukraine).

For the purposeful performance of the specified tasks (clause 5 of the Regulation), the Center has the appropriate powers primarily relating to coordination and organization of preparation and implementation of measures intended to stop terrorist manifestations, as well as related to

actions performed by units and forces involved in implementation of these measures, provision of methodical assistance and recommendations to counter-terrorism subjects in identifying and eliminating causes and conditions that contribute to the commitment of terrorist acts and other crimes committed with a terrorist purpose. The Center also develops proposals concerning improvement of legislative and other normative legal acts, it participates in preparation of draft international treaties of Ukraine in the sphere of combating terrorism (Leheza *et al.*, 2022).

According to Clause 9 of the Regulation and Part 3 of Article 7 of the Law of Ukraine “On Combating Terrorism”, the composition of the Center’s Interagency Coordination Committee is determined. In the course of its activity, the ICC as a collegial advisory body of the ATC coordinates conceptual foundations and projects of anti-terrorism programs, recommendations on functioning of the general national system of combating terrorism, joint projects of ministries and agencies aimed at preventing and stopping terrorist crimes, plans of regional coordination groups; it organizes and conducts anti-terrorist operations, command-staff exercises and special tactical training exercises, etc. (Matviichuk *et al.*, 2022).

The headquarters of the Anti-Terrorist Center is the executive working body of the Center, which carries out current organizational work to fulfill the tasks assigned to the ATC. In particular, the headquarters developed proposals for the current Law of Ukraine “On Combating Terrorism”, as well as a number of decrees, orders of the President of Ukraine and Government resolutions in the sphere of combating terrorism. An information and analytical group functions as part of the headquarters to analyze current risks and threats in the sphere of combating terrorism, and representatives of counter-terrorism subjects (entities) can be involved in the work on a voluntary basis in accordance with the established procedure (Zhukova *et al.*, 2023).

Composition of the coordination groups at the regional bodies of the Security Service of Ukraine and the organizational support for their activities is determined in accordance with Article 7 of the Law of Ukraine “On Combating Terrorism” (Law of Ukraine, 2003), the Regulation on the Anti-Terrorist Center and its coordination groups at the regional bodies of the Security Service of Ukraine and Provisions on the unified state system of prevention, response and termination of terrorist acts and minimization of their consequences.

Regional coordination groups have the following functions: collecting, generalizing, analyzing and evaluating information about the state and trends of the spread of terrorism in the region; developing recommendations aimed at improving the national system of combating terrorism, creating preventive anti-terrorist plans regarding probable objects of terrorist tendencies; carrying out anti-terrorist operations, as well as performing



education and training, coordinating activities of representatives of counter-terrorism entities in the region, etc. (Leheza *et al.*, 2023).

In addition, military-civilian administrations can be created and they can operate as part of the ATC under the Security Service of Ukraine - temporary state bodies that are appointed to ensure activity of the Constitution and laws of Ukraine, ensure the safety and normalization of the population's life, law and order, participation in countering acts of sabotage and terrorist acts, preventing a humanitarian disaster in the area of performing anti-terrorist operations.

However, it is worth noting that until now there has not been sufficiently effective coordinated cooperation of state authorities (in particular, counter-terrorism subjects) with public and other institutions of civil society, and this has a negative effect on the process of creating additional conditions and opportunities for the accumulation of both state and social organizational and intellectual potential in the sphere of countering terrorism. Productive interaction of state bodies and the public would contribute, on the one hand, to the strengthening of guarantees of compliance with the law, the rights and freedoms of citizens in the context of advancing Ukraine along the path of European integration, and on the other hand, it would contribute to the implementation of innovative projects for the public prevention of terrorism and extremism and to the establishment of civil control over the state national security system.

## Conclusion

Thus, we can establish that the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine are the key actors in countering terrorism in Ukraine in the system of higher authorities. The defining areas of activity of the President of Ukraine in the sphere of countering terrorism are the activities aimed at the regulatory and legal support of countering terrorism in Ukraine creation, liquidation, reorganization and management of the relevant counter-terrorism subjects.

The Verkhovna Rada of Ukraine, as a counter-terrorism subject, implements functions related to the regulatory and legal support of the fight against terrorism in Ukraine, regarding creation, liquidation, reorganization of relevant counter-terrorism subjects (entities), as well as regarding control over their activities.

For the purpose of countering terrorism in Ukraine the Cabinet of Ministers of Ukraine creates, liquidates, reorganizes the relevant counter-terrorism subjects (entities), and also coordinates, controls and manages their activities; it carries out regulatory and legal support and inspection of

implementation of legislative acts, in particular, those related to the fight against terrorism; it also directs activities to ensure legality and prevent illegal encroachments on the interests of people and the state.

The Anti-Terrorist Center under the Security Service of Ukraine implements the national anti-terrorist policy and interdepartmental tasks for organization and coordination of the fight against terrorism mainly through functionally oriented members of the ICC. There are coordination groups functioning under regional bodies of the Security Service of Ukraine. A system of legal norms has been developed; this system regulates activities of the named institutes at the domestic and international levels.

In their activities counter-terrorism subjects are primarily guided by those normative legal acts that determine their place in the system of executive authorities. Their professional activity is aimed at counteracting the relevant terrorist manifestations, namely, identifying and stopping terrorist acts, detaining and arresting persons who have committed such acts, bringing them to administrative or criminal liability, indemnifying the victims, etc.

It is also worth noting that combating modern terrorism requires a systematic approach, where, along with a complex of state and legal measures an active activity of civil institutions of our society should be an important component. In connection with this, there is a need to consolidate various public currents in order to support the global strategy for combating terrorism and to create a multi-functional and multi-level system for combating this phenomenon. Such a system should combine the optimal use of the intellectual potential of the nation, the universal human factor of the state and mobilization of this factor in order to solve issues of combating terrorism.

In view of the above, we note that the Anti-terrorist system of Ukraine is equipped with flexible and operational use of forces and means, as well as a normatively justified scheme for managing anti-terrorist measures. However, in our opinion, it is advisable to direct its further improvement to the following: optimization of activities performed by regional coordination groups of the Anti-Terrorist Center at the Security Service of Ukraine, whose competence covers the tasks and functions of combating terrorism in the direction of strengthening their organizational and management component; improving qualifications of representatives of counter-terrorism subjects in the areas of activity with the aim of improving resource and personnel support; development and approval of the state Program on promotion and development of the interaction between counter-terrorism subjects (entities) and the civil society; determination at the legislative level of the Procedure for participation of public organizations in combating terrorism, etc.

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# CUESTIONES POLÍTICAS

Vol.41 N° 79

*Esta revista fue editada en formato digital y publicada en octubre de 2023, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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