

# EUROPEAN STRATEGY AGAINST TERRORISM AND REFORMS IN ALBANIA

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## **Abstract**

The fight against organized crime and terrorism has been one of the most important issues of European Union legislation till September 2001. With the adoption the EU Action Plan on combating terrorism and EU Strategy against terrorism, European Union members are forced to adopt measures in critical sectors of the fight against terrorism such as police and judicial cooperation, border control, combating the financing of terrorism and defense against biological, chemical, radiological or nuclear attacks. In order to the new developments a various number of national strategies on fighting terrorism have been adopted by the Albanian government on the basis of obligations deriving from international conventions. One of the latest efforts in the harmonization of domestic legislation to international and European legislation has been the draft law approved by the Albanian Council of Ministers dated January 4, 2013 which contained measures against the financing of terrorism. The main purpose of this bill has been the fight against the crime of terrorism and persons who support terrorism by blocking the funds or their assets on the basis of the Security Council resolutions (United Nations). The draft also had set which should be the organs or organizations which had to interact between them to achieve the objectives of the law. Based on Law no. 9917/2008, the Albanian government had to collaborate with the competent institutions of the European Union but also with international ones in order to fight effectively the terrorist financing.

**Keywords :** *Terrorism, European Union, strategy, terrorist financing, legislation.*

## Introduction

Historically, the international community has considered the phenomenon of terrorism as a threat to society, democracy and preservation of peace and has always provided legal instruments to prevent and punish it<sup>1</sup>. Most of the international instruments in the global war counter-terrorism are implemented under the United Nations initiative. Standing on the declaration of the United Nations, the crime of terrorism is referred counter the democracy and the rule of law so the fight against it is an important goal in protecting this values of the society.

The international doctrine has given different definitions about the phenomenon of terrorism, for this reason they encounter difficulties in formulating a universally agreed upon and legally binding definition of the crime of terrorism. This is considered also as a luck or inability of the international community in agreeing on a universal definition of terrorism or on a single counter-terrorism theory<sup>2</sup>. As a consequence of this lacunae, there are different kinds of definitions given by each state and based on different principles.

## United Nations Strategy against Terrorism

After the 2001, the implementation of counter terrorism legislation in global and regional level has increased considerably. The United Nations legislation against terrorism is composed of thirteen international convention, three protocols and other Security Council resolutions, principles and other instruments governing international humanitarian law and respect for human rights<sup>3</sup>.

The General Assembly and Security Council of the United Nations have issued a number of resolutions related to the fight against terrorism. Security Council resolution no. 1373/2001 is the basic document by which all Member States are forced to realize an international legal and police cooperation, to sign UN conventions against terrorism, to cooperate in the fight against the financing of terrorism and to cooperate in order to strengthen the capacity of Member States to act<sup>4</sup>. Simultaneously this resolution established the Counter Terrorism Committee (CTC) with the primary task of monitoring and control of operations against terrorism.

The fight against terrorism was intensified with UN Global Counter-Terrorism Strategy adopted by the Member States in September 2006. Based on this strategy the United Nations have strongly condemned terrorism in all its forms and manifestations committed by whomever, wherever and for whatever purposes as it constitutes one of the most serious threats to international

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<sup>1</sup> J. PRADEL, G. CORSTENS, G. VERMEULEN, “*E Drejta Penale Europiane*”, Papirus, Tirane 2010, pg. 199.

<sup>2</sup> “*Theoretical treaties on counter terrorism approaches*”, 19 October 2007, pg. 5, <http://www.transnationalterrorism.eu/tekst/publications/WP6%20Del%2010.pdf>.

<sup>3</sup> Security Council resolution S/RES/1373 (2001) adopted in 28 september 2001, Which established the CTC (Counter-terrorism Committee), Art. 3/f, makes one reference to human rights: “*the states shall take the appropriate measures in conformity with the relevant provisions of national and international law, including international standards on human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts*”, pg. 3, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>.

<sup>4</sup> *Ibid*, Art. 3/b, 3/c, 3/d, 3/e.

peace and security<sup>5</sup>. In the scope of taking urgent actions to prevent and combat terrorism in all its forms and manifestations the United Nations resolutions have taken measures to prevent and combat such activities as organizing, instigating, facilitating, participating in financing, encouraging or tolerating terrorist activities. Based on this strategy states are also forced to take the appropriate measures in ensuring that the respective territories are not used for terrorist installations or training camps or for the preparation or organization of terrorist acts intended to be committed against other States or their citizens. In order to fulfill those objectives it is important a fully cooperation between UN members in accordance with all the obligations under international law. On June 2012 the UN General Assembly adopted the fourth review of the UN Global Strategy on Counter-Terrorism<sup>6</sup>.

### European Strategy against Terrorism

The majority of European Union Member States have provided different strategies against terrorism in their national legislation as a result of terrorist attacks. The United Kingdom after the terrorist attacks of 2005 and 2007 has strengthened measures against terrorism with a series of legislative acts ranging from *The Terrorism Act* of 2001. Other countries of the European Union are seen to adequate their internal legislation to the United Nations resolutions and other normative instruments adopted by European Union. Italy in response to the terrorist attacks has adopted the Law no. 438/2001 which provides emergency measures to prevent terrorist attacks and other criminal acts related to them (Article 270/*bis* of the Italian Criminal Code).

In order to create an “*area of freedom, security and justice cooperation*”<sup>7</sup> the Amsterdam treaty specified the measures that all member states should take for such purposes. The treaty established a closer cooperation between police, judicial forces and other authorities<sup>8</sup> with the aim of combating terrorist attacks in the European Union.

The EU has elaborated its own definition of terrorism, while its Member States have their own definitions which are different in each of them. The European Union’s definition of terrorism, adopted on the 13th of June 2002 is based primarily on a list of terrorist offences<sup>9</sup>.

*Shall be deemed to be terrorist attack:*

- a) *attacks upon a person’s life which may cause death;*
- b) *attacks upon the physical integrity of a person;*
- c) *kidnapping or hostage taking;*

<sup>5</sup> *The UN action to counter terrorism*, published by the peace and security section of the department of public information. DPI/2439B/Rev.4 - March 2009, pg. 1, [http://www.unis.unvienna.org/pdf/factsheets/Counter\\_Terrorism\\_Factsheet\\_0309.pdf](http://www.unis.unvienna.org/pdf/factsheets/Counter_Terrorism_Factsheet_0309.pdf).

<sup>6</sup> *The United Nations Global Counter-Terrorism Strategy Review* (A/RES/66/282), United Nations, General Assembly on 21 June 2012, A/66/L.53 of 26 June 2012, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/L.53](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/L.53).

<sup>7</sup> Article 4, par. 2 j, and article 67 of the TFEU, “*The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States*”, in Consolidated Version of the Treaty on Functioning of the European Union, Official Journal of the European Union C 115/47, 9.5.2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>.

<sup>8</sup> Z. HORVÁTH, “*Handbook on the European Union*”, IV Edition, Budapest, 2011, pg. 512-513.; Z. HORVÁTH, B. ÓDOR, “*The Union after Lisbon: the treaty reform of the EU*”, Budapest, 2010, pg. 263-266.

<sup>9</sup> Art.1, Framework Decision of 13 June 2002 on combating terrorism, Council of the European Union, Official Journal L 164, 22/06/2002 P. 0003 - 0007, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0475:EN:HTML>.

- d) causing extensive destruction to Government or public facility including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- e) seizure of aircraft, ships or other means of public or goods transport;
- f) manufacture, possession, acquisition, transport supply or use of weapons, explosives or nuclear, biological, chemical weapons, as well as research into and development of biological and chemical weapons;
- g) the release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- i) threatening to commit any of the acts listed in (a) to (h)<sup>10</sup>.

The same definition of terrorist attacks is taken by the Albanian Criminal Code, article 230.

After the Madrid bombings on 2004 and the London terrorist attacks in July 2005, EU Member States intensified the action and cooperation between them and adopted other measures to combat terrorism<sup>11</sup>. On 2005 the European Union has adopted the EU to Counter Terrorism Strategy and on 2007 the Action Plan, adopted by the European Council. Considering the terrorism as a threat to all states and people (society and democracy) the strategy establishes that: *“terrorism phenomenon poses in serious threat to our security, to the values of our democratic societies and to the rights and freedoms of our citizens, especially through the indiscriminate targeting of innocent people. Terrorism is criminal and unjustifiable under any circumstances”*<sup>12</sup>.

One of the challenges of the European Union is combating terrorism while respecting human rights and allowing citizens living in an area of freedom security and justice. The EU Counter-Terrorism Strategy consists in four pillars: prevent, protect, pursue and response<sup>13</sup>. The objectives of this strategy are to prevent the new recruits to terrorism, impeding terrorists' planning, pursuing and investigating members of existing networks, cut off terrorists funding and access to attack materials and also respond to and manage the consequences of terrorist attacks<sup>14</sup>. For this reason it's important for the European Union actions to be coordinated with the United Nations and other international or regional organizations.

According to the European Commission's decision the prevention of terrorism means to prevent and punish persons who tend to recruit people for the purpose of carrying out terrorist acts through stimulation or by providing information necessary for their performance. To prevent the phenomenon of terrorism the European Union has adopted the directive No. 2005/60/EC, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>15</sup>.

Protecting people and transport infrastructure is the secondary objective of the European strategy against terrorism which deals with a series of measures covering many sectors such as infrastructure protection, growth control measures in supplies, transportation and border controls but also in research and elaboration of additional measures to increase security<sup>16</sup>.

In the aim of pursuing the European Union has taken different measures such as strengthening and implementing commitments to disrupt terrorist activity and pursue terrorists across borders or making full use of Europol and Eurojust to facilitate police and judicial

<sup>10</sup> *Ibid*, Art. 1.

<sup>11</sup> *“Theoretical treaties on counter terrorism approaches”*, cit, pg. 3.

<sup>12</sup> *“The European Union Counter-Terrorism Strategy”*, Council of the European Union, Brussels, 30 November 2005, 14469/4/05 REV 4, pg. 6, in <http://register.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf>.

<sup>13</sup> *Ibid*, pg. 3-4.

<sup>14</sup> *Ibid*, pg. 6-7.

<sup>15</sup> Directive No. 2005/60/EC of the European Parliament and European Council, Official Journal of the European Union L 309/15, 25.11.2005, in <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:en:PDF>.

<sup>16</sup> *The European Union Counter-Terrorism Strategy*, cit., pg. 10-11.

cooperation<sup>17</sup>. The May Convention of 2000 on mutual assistance in criminal matters and police and judicial cooperation between the Member States and the additional protocols has changed for the creation of Europol Convention (European Police Office). Europol has competence in the area of organized crime, the fight against terrorism and other forms of serious crimes that concern two or more member states of the EU policies against terrorism and organized crime. Meanwhile the mandate of the European Arrest Warrant has greatly facilitated the transfer of persons suspected of serious crimes as terrorist acts in the countries of the European Union<sup>18</sup>.

Based on the European Strategy, the response to terrorism attacks is related to the ability of the EU to manage and minimize the consequences of possible terrorist attacks with a spirit of cooperation and solidarity. To respond to the terrorist attacks the EU utilizes the Civil Protection Mechanism which is developed to respond to other major European and international crises<sup>19</sup>.

### Counter Terrorism Legislation in Albania

The Albanian Criminal Code contains a special chapter devoted to terrorism-related offences (Chapter VII, articles 230-234). Article 230 of the Criminal Code defines the criminal offence of terrorism as: *“the conduct of the following offenses with the aim of spreading panic to the population or constrain state bodies, Albanian or foreign, to perform or not perform a particular act, to destroy or destabilize seriously, fundamental political, constitutional, economic or social structures of the Albanian state, or another state, international institution or organization. Acts with terrorist purposes include but are not limited to:*

- a) acts against persons, which may cause death or serious injury;*
- b) kidnapping of a person;*
- c) serious destruction of public property, public infrastructure, transport system, information system, fixed continental platforms, private property at large;*
- d) manufacture, retain, purchase, transport or trade of explosives, firearms, biological, chemical, nuclear weapons and research for the production of the above mentioned weapons of mass destruction;*
- e) spreading in the environment of hazardous substances and causing fires, flooding or blast in order to endanger persons' life or causing serious financial damage;*
- f) causing the interruption of water supplies, electricity or any other important source<sup>20</sup>.*

Meanwhile the other articles are referred to the financing of terrorism (article 230/a), fund raising to finance terrorism (article 230/b), recruitment of people with the purpose of terrorist acts (article 231), training for terrorist acts (article 232), public incitement and propaganda of terrorist acts and financing of terrorism (article 232/a), the threat of terrorist acts (article 232/b) and setting

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<sup>17</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), Official Journal L 190, 18.07.2002, pg. 0001-0020, in <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:en:HTML>.

<sup>18</sup> *The European Union Counter-Terrorism Strategy*, pg.12-13.

<sup>19</sup> *The European Union Counter-Terrorism Strategy*, pg. 15.

<sup>20</sup> I. Elezi, *“E drejta penale, pjesa e posaçme”*, Botimet ERIK, Tirane, 2007, pg. 396.

up and participating in terrorist organizations (article 234/a)<sup>21</sup>. The criminal code gives a specific definition of the terrorist organizations.

### **Efforts to harmonize Albanian legislation to European legislation against terrorism**

The Albanian legislation related to the fight counter terrorism consist in a number of legislative acts which are referred to terrorist attacks, or to the financing of terrorism, considering terrorism as a serious threat to people's life and their physical integrity, safety, freedom and democracy. On the basis of Law no. 9917/2008, the Republic of Albania undertakes to collaborate with the competent institutions of the European Union but also international ones in order to fight effectively against the terrorist financing respecting the European standards<sup>22</sup>.

Over the years a series of legislative measures are taken by the Albanian government in the framework of the fight against terrorism and terrorist financing, some of them are:

- Law No. 8865 dated 14.03.2002 "*On the ratification of the International Convention on combating the financing of terrorism*";
- Law No. 9086 dated 19.06.2003 has provided amendments of the Criminal Code the financing of terrorism Article 230/1;
- Law No. 9258 dated 15.07.2004 provides measures undertaken by the government against terrorism and terrorist financing;
- Council of Ministers No. 675 dated 06.07.2011 "*On approval of overall strategy of the war against terrorism and the 2011-2015 Action Plan for its implementation*".
- Law No. 9917 dated 19.05.2008 "*On prevention of money laundering and terrorist financing*".

With the decision No. 1140, dated 30.7.2008 the Council of Ministers of Albania has approved the "*Inter-departmental Strategy to counter Organized Crime, Trafficking and Terrorism*", in the aim of harmonizing the internal legislation to the international obligations arising from the approved regional strategies, also in the aim of a better harmonization of the internal legislation to the specific strategies adopted. In order to implement this strategy the Council of Ministers of Albania has also approved decision No. 1103, dated 14.11.2009 the *Action Plan of the Inter-departmental Strategy to counter Organized Crime, Trafficking and Terrorism*<sup>23</sup>. The Law No. 66 dated 07.06.2012 "*On some amendments to Law No. 9917 dated 19.05.2008 to prevent money laundering and the financing of terrorism*" makes a full approximation of legislation with the Directive of the European Parliament and the Council No. 2005/60/CE, 26 October 2005 "*On the prevention of the use of the financial system for money laundering and terrorist financing*".

One of the latest efforts to harmonize domestic legislation to the International and European legislation is the draft law approved by the Albanian Council of Ministers dated January 4, 2013 in which are established measures against the financing of terrorism. The main purpose of this bill is the fight against organized crime and terrorist attacks or people who support terrorism, by freezing the funds or their assets, based on the resolutions of the Security Council of the United Nations. The draft law also stipulates bodies and agencies who need to interact between them to achieve the objectives of the draft law<sup>24</sup>. It's important for the Albanian internal counter-terrorism legislation to

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<sup>21</sup> Artt. 230/a- 234/a, Criminal code of the Republic of Albania.; I. Elezi, *E drejta penale*, pg. 399-405.

<sup>22</sup> Law No. 10 391, date 3.3.2011, "*For some supplements and changes on Law no. 9917, date 19.5.2008, On prevention of money laundering and financing of terrorism*", <http://njoftime.org/article/Ligj-Nr-10391-Date-03-03-2011.html>.

<sup>23</sup> Information Exchange on the OSCE Code of Conduct on Politico-Military Aspects of Security, 26 April 2011, pg.4, <http://www.osce.org/fsc/77869>.

<sup>24</sup> Draft law of 04.01.2013, Council of Ministers of Albania "*Measures to counter the terrorist financing*", in <http://keshilliministrave.al/?fq=brenda&m=news&lid=17600>.

be guided by the respect for human rights<sup>25</sup>, effective law enforcement and international cooperation in criminal matters.

## Conclusions

The national terrorism is generally linked to international terrorism because over those years it has been evolved and transformed rapidly into an international problem that threatens peace and security in all states. Based on all the instruments counter the phenomenon of terrorism adopted in regional and global level, it is important to notice that the fight against terrorism, like all the other crimes related to it, need a coordinated action and police or judicial cooperation between all Member States of the international and regional organizations, such as United Nations and European Union. Considering that the Republic of Albania is a Member State of the United Nations organization and is trying to achieve the candidate status for the entrance in the European Union, it is important for its internal legislation to be always updated and in harmonization with all the instruments adopted by those two organizations and take part of an international cooperation in order to have a better organization and a high efficiency in the fight against terrorism.

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