

Terrorism: between the need for funding and obtaining funding sources

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Abstract

The beginning of the 21-st century is characterized by globalization, instability, uncertainty, but also by the recrudescence of terrorism, which has become one of the main threats to human society and democracy.

An analysis of the evolution of international terrorism reveals that the actions taken are more and more dangerous due to the easier access of terrorist groups to financial resources, resources that enable them to acquire more and more sophisticated weaponry, technological and propaganda tools.

The number and severity of acts of terrorism varies depending on the financial infrastructure of the terrorist organization, which is why finding and attracting new sources of funding, new money-laundering methods and new ways of transferring funds has become an important objective.

The ways in which terrorist groups collect and transfer funds needed to fund their operations reveal that modern technologies that are in line with new trends (cryptovalute and darknet) but traditional means (zakat and hawala) are also used.

This paper examines the dependence of terrorists on financial funds, the methods of collecting and transferring these funds, and the efforts of the international community to counteract the phenomenon, for the fight against terrorism means, among other things, fighting in order to stop its funding.

Keywords: terrorism, financing, financial funds, financing sources, legal instruments.

I. Methods of Setting up and Transferring Funds used by Terrorist Organizations

We can talk about the financing of terrorism when someone, by any means, directly or indirectly, with illicit and intentional purpose, provides or collects funds in order to use them or knowing they will be used to commit a terrorist act.

As a result, investigating terrorism financing means tracking funds from the starting point to the destination, in other words, from the origin and up to those who use them to commit terrorist attacks, namely terrorist organizations or groups, lone terrorists or terrorist cells.

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In terms of obtaining financial funds, terrorists can use both legal sources, such as: charities, nonprofit organizations, business sources, or even self-financing, but also illegal sources such as drug trafficking, oil trafficking, credit card frauds, extortion, kidnapping for ransoms, various taxes, and so on.

The success of a terrorist group means building and maintaining a strong financial infrastructure that can be achieved by finding sources of funding, money laundering and, last but not least, by finding methods for these funds to be used in order to obtain the necessary logistics for committing terrorist acts.

As a result, in the constant attempt to prevent and combat terrorism, stopping its funding could be one of the most powerful weapons.

That is why dismantling the financial networks of terrorist organizations and blocking their sources of funding has become the number one priority of anti-terrorism experts. Instead of intelligent bombs, explosive materials, commando troops and unmanned drones – economic sanctions, financial restrictions, and cyber-programs to detect and block money can be the most powerful weapons. This is the reality of the modern financial war².

In 2003, Dr. Rachel Ehrenfeld, a researcher in the terrorism funding field and director of the American Centre for Democracy, published the book entitled *„Funding Evil - How Terrorism is Financed - and How to Stop It,”* which for many years became the subject of intense legal controversy at international level and which has generated a series of libel judicial proceedings against the author. The book described the activities of various individuals, charitable organizations, banks, drug trafficking networks, or money laundering schemes. The book also discussed the involvement of certain groups, organizations and individuals, but also mentioned officials that were bribed in order to obtain the funds needed to finance the „evil”.

Rachel Ehrenfeld paid special attention to the involvement of Iran, Hezbollah and Al-Qaeda organizations in drug trafficking, claiming that *„Bin Laden managed the drug trafficking profits for the Taliban and arranged money laundering operations with the Russian Mafia.”* The author urged the entire international community to take firm measures against terrorist financing, including imposing economic sanctions on states that fund or encourage terrorism, such as Saudi Arabia, Iran, Syria, Sudan, Indonesia, Libya, North Korea and Malaysia³.

It is clear that the commission of international terrorist acts requires important financial resources that terrorists, terrorist groups and organizations have to obtain by

² Tom CW Lin, *„Financial War Weapons”, Minnesota Law Review, volume 100, p. 1377, Temple University, article available on papers.ssrn.com - accessed on May 20, 2019.*

³ In *„Funding Evil - How Terrorism is Financed – and How to Stop It”,* Rachel Ehrenfeld claimed that the Saudi billionaire Khalid bin Mahfouz has funded al-Qaeda through the bank and his charitable organization. Mahfouz denied the allegations and filed a lawsuit for libel. Although Rachel Ehrenfeld was a US citizen residing in New York, he was sued in London and although he refused to recognize the jurisdiction of the British courts, the British Court delivered a decision against her. In December 2004, before the end of the libel trial in London, Ehrenfeld sued bin Mahfouz at the District Court of the United States for the South District of New York on the grounds that the English court decision could not be enforced in the US, and that the allegations claimed could not be considered as „defamatory” under American law. In his complaint, she claimed that the rights conferred by the first amendment to the Constitution of the United States had been violated. As a result of these disputes, on April 29, 2008, the *„Rachel's Law”* was adopted, its goal being to provide to New York citizens greater protection against libel lawsuits settled in countries whose laws are incompatible with the freedom of expression granted by the Constitution of the United States. <https://www.amazon.com/Funding-Evil-Terrorism-Financed>, accessed on May 20, 2019.

various methods, given that each operation means costs that may be higher or lower depending on its magnitude.

On the other hand, terrorist organizations need large budgets to function as such. And because nowadays terrorism has become „global”, its sources of funding have also acquired a global coverage.

1. The Need for Funds

The terrorist organizations have a constant need for funds, starting with the propaganda of ideology, recruitment of volunteers, preparing terrorist attacks, helping families of those who died in terrorist operations or those in prison, and so on.

Thus, the preparation of terrorist attacks (so-called pre-operational surveillance) involves the purchase of vehicles, weapons, explosive devices, the purchase of false identity documents, and travel and subsistence expenses.

Then, the terrorist organizations invest important funds in complex propaganda operations such as the publication of magazines and newspapers, or the acquisition of Internet domains and the management of web sites for the production and distribution of recruiting materials in order to disseminate their ideology and to attract new volunteers.

Other terrorist organizations use television and radio to promote their messages and ideas around the world. By way of example, *As-Sahab Media Foundation* represented, since 2000, the production facility dealing with the recording and transmission of Al Qaeda messages⁴. All these productions are either in English or subtitled in English, which shows that the terrorist organization is targeting a broader audience.

It is obvious that terrorists are willing to invest in the media to undermine the security of the population, to shortcircuit the daily routine of the people, but also to direct public opinion to state leaders, exerting pressure to meet or promote terrorist wishes and demands⁵.

Another segment of the activity of terrorist organizations that requires serious financial resources is that of training and instructing the operational members in the use of weapons, the manufacture of craft bombs or clandestine communication. Also, the money is spent on buying buildings and land for training camps, for virtual training of members via the Internet, paying salaries for the leaders of groups and terrorist organizations, providing assistance to the families of those in prison or providing compensations for the families of the deceased⁶.

At the same time, many terrorist organizations, in order to modernize their methods of action and to use the latest technologies, hired specialists such as: engineers, cybernetics, IT experts, economists, managers, physicians, former officers, which also, implied other costs.

Furthermore, a number of reports noted that Al-Qaeda and its affiliated groups use the anonymity provided by TOR encryption protocols⁷.

⁴ <https://news.siteintelgroup.com/Jihadist-News/al-qaedas-as-sahab-media-launches-website.html>, accessed on May 23, 2019.

⁵ Cristian Delcea, *Ad Terrorism - The Relationship of Symbiosis between Terrorism and the Media*, A.S.C.T Publishing House, Cluj Napoca, 2007, p. 22.

⁶ FATF Report, *Emerging Terrorist Financing Risks*, Paris Cedex, October 2015, pp. 9-10.

⁷ Software tool that provides the highest degree of anonymity on the Internet and allows anonymity to be maintained using a routing algorithm across a worldwide network of 5000 servers to

Last but not least, terrorist organizations need financial resources to support different social institutions that provide health and education services to population. With such actions, they seek to obtain local population support for the recruitment of new members within the terrorist organization.

In conclusion, it can be argued that terrorists have a permanent need for financial means to carry out their plans and to support the full range of activities that these plans involve and the destruction of terrorist financial resources is one of the most effective means of counteracting acts of terrorism.

I would also like to mention that on 12 February 2019, in a press release, the European Commissioner Dimitris Avramopoulos said the following: „*In order to catch criminals and terrorists, we must be able to track their money (...) fast access to financial information and better cooperation throughout Europe, makes any offender or suspect unable to evade our vigilance or hide away dirty money*”⁸.

2. The Sources of Terrorism Financing

In regard to the sources of terrorism financing, they are also very diverse, and they may be legal or illegal.

2.1. Illegal Sources of Financing

Money for terrorist financing may come from a range of illegal activities, from minor crime to organized crime, such as drug trafficking, arms or human trafficking, extortion (threats, blackmail, use of violence) on the population in the areas in which they operate, or credit card frauds.

Another source of funding is the kidnapping activity, for ransom. The ransom value is based on the size of the terrorist group that the kidnappers are part of and the economic conditions in the geographical region where the terrorist operations are organized⁹.

However, it is possible that the „origin” of money is sometimes legitimate in the sense that funds can be provided by means of donations of charitable organizations and non-profit organizations, given that such organizations benefit from public confidence, have large sources of funds, manage large amounts of cash and provide the necessary framework for financial transactions, both at national and international level.

Often, terrorists divert donor money and direct them to finance terrorist activities.

2.2. Obtaining Sources of Funding Through Means Specific to the Muslim Culture

Monetary practices embedded in Muslim culture, such as donating a portion of income to charities and various informal bank transfer centers, have complicated the already difficult task of tracking terrorist financial ties.

Thus, one of the pillars of Islam, *zakat*, refers to the mandatory granting of a certain percentage of each person's wealth for charity¹⁰.

hide source and destination - Raphael Cohen-Almagor, *In Internet's Way*, International Journal of Cyber Warfare and Terrorism, 2, no. 3, July-September 2012, pp. 39-58.

⁸ 12 February 2019 Brussels; Security Union: *The Commission welcomes agreement on strengthening anti-terrorism financing rules* - europa.eu/rapid/press-release_IP-19-1049_en.pdf; accessed on May 12, 2019.

⁹ Financial Action Task Force –FATF-, Groupe d'action financière-GAFI-, Terrorist Financing, Paris Cedex, pp. 11-19.

¹⁰ *Zakat* is a voluntary charity tithe, normally 1/40 of income, paid as a religious obligation - *Tracking Down Terrorist Financing | Council on Foreign Relations* <https://www.cfr.org/.../tracking-down-terrorist-financing> - accessed on May 22, 2019.

In the Islamic world, there are tens of thousands of charitable organizations and among them only a few hundred may sponsor terrorism, but these are some of the richest charitable organizations¹¹.

While most of these Muslim world charitable organizations are created to help the poor and to spread the message of Islam, they have also been used, especially in the rich Middle East countries, to finance jihad.

2.3. Financing Terrorism by the use of Modern Technology

In recent years, terrorist organizations have discovered that they can also make money in the online environment, so they have begun to emerge themselves into the virtual environment.

Thus, US security services discovered a global financial network in 2017 that collected money, even from the US, to support „jihad.”

Joseph Fitsanakis, a security expert at Carolina University, highlighted the fact that, as of now, terrorist organizations have learned to use the crypto-currencies and the so-called darknet and to develop creative means to collect as much money as possible¹².

Today, modern technologies allow fast money transfers outside the international banking system and the use of virtual identities with a high degree of anonymity.

This has attracted the attention of many terrorist organizations interested in concealing illicit financial transactions and activities.

Therefore, the virtual decentralized currency or „crypto” are not only a new method of payment but also a potential instrument for terrorist funding entities due to anonymity, the absence of a centralized supervision body and global coverage.

At the same time, as I have shown above, the crypto currencies such as Bitcoin are a very modern method of transferring funds, making it almost impossible to track the financial flow of such funding¹³.

Another method used for financing terrorism is „crowdfunding”.

Crowdfunding is an alternative form of financing that creates a direct link between those who can give, borrow or invest money and those who need funding for a particular project. It usually refers to online public calls to help fund a personal project or adventure and consists in requesting the public openly to deposit funds online. Being an alternative way of financing, terrorists can easily access the money due to the fact that crowdfunding platforms rely on the anonymity of online presence and the global coverage of these platforms¹⁴.

¹¹ J. Millard Burr, Robert O. Collins, *Alms for Jihad: Charity and Terrorism in the Islamic World*; Cambridge University Press, 2006.

¹² <https://www.coastal.edu/academics/facultyprofiles/humanities/politics/josephfitsanakis/facultyprofile.php> - accessed on 17-th May 2019.

¹³ Bitcoin (BTC) was created in January 2009 by Satoshi Nakamoto and consists of 64 digits. Any interested person can create this coin on specialized sites using a specialized program and performing computers. In order to obtain the BTC, a virtual wallet (Bitcoin wallet) must be created and the transmission of the currency is made via the Internet as simple as sending an e-mail to anyone who has a bitcoin address. Transactions with BTC are not recorded at any central bank or brokerage firm, the currency being created by a peer to peer (peer-to-peer) computer network, so that the BTC does not depend on a central bank but on the importance which people attach to this coin - N. Malik, „*Terror in the Dark - How Terrorists Use Encryption, the Darknet, and Cryptocurrencies*” - article available at <http://henryjacksonsociety.org/wp-content/uploads/2018/04/Terror-in-the-Dark.pdf>, accessed on April 5, 2019.

¹⁴ https://ec.europa.eu/info/business-economy-euro/growth-and-investment/financing-investment/crowdfunding_en, accessed on 21-st May 2019.

3. The Transfer of Terrorist Funds

Funding of terrorist activities often requires the transfer of money and values within states or between different jurisdictions.

There are three main ways in which terrorists transfer money or transfer values, namely: by using the financial system, by official channels of the financial market or by unregulated channels, respectively, by using couriers for cash - which implies the physical movement of money through the international trading system.

The diversification and multiplicity of the organizational structures of terrorist networks and the continuous evolution of the techniques used by them in response to international actions to stop fund transfers for terrorist purposes makes it difficult to identify a preferred or common method for organizations of this kind.

In most cases, in order to transfer funds, terrorist organizations alternately use all three methods of money transfer.

However, as a rule, the funding of a terrorist group is easier to achieve through the conventional banking system – so that money sent from one country to another can go into accounts with false names, charitable organizations or other enterprises meant to hide the final recipient.

Furthermore, the identification and discontinuation of terrorist financing are naturally more difficult to achieve when authorities face „informal” support networks. In such circumstances, the links between the financial activity and terrorism become more opaque and the disruption of funding by the authorities more difficult to achieve. On the other hand, the links between funds and terrorism can be extremely difficult to find in the country of origin, when the terrorist activity occurs in a whole other part of the world.

3.1. Transferring Funds by Means Specific to the Muslim Culture

Since many terrorist groups operate in areas with poor infrastructure, where modern technology and telecommunication tools penetrate harder, and given that terrorists need physical currency, they often use a traditional muslim money transfer method called *hawala*.

In Arabic, „*hawala*” means „*transfer*,” and in certain contexts, the word „*hawala*” is synonymous with „*trust*”, usually expressing the personal link between the participants and the informal nature of transactions that are not officially documented.

In essence, *hawala* is a transfer or hand-over of money from one side to another without the use of a formal financial institution such as a bank or exchange office, as it is an „informal” transaction¹⁵.

Thus, the client contacts the *hawala* broker and gives him an amount of money to transfer it to a beneficiary in a particular country, along with the beneficiary's identification data. The *hawala* broker contacts his counterpart in that country and asks him to remit that amount to the beneficiary. The *hawala* operator in that country contacts the beneficiary on the same day and hands over the amount sent, usually in local currency or another currency accepted by both parties, with a course different from the official one, and the beneficiary is not being identified, being used only a recognition code. The transfer takes from a few hours to a day or two. Usually the

¹⁵ Remus Jurj-Tudoran, *Terrorism Financing - Judicial Theory and Practice* in ProLege Magazine Oct. 10 2018, article available on revisleprolege.ro/finantarea-terorismului-teorie-si-practica-judiciara/ - accessed on 25-th May 2019.

customer is in touch with the beneficiary and sends him the contact person's name, that is, the name of the hawala broker. For this transfer, the hawala broker charges a fee from the amount so transferred, which is lower than the bank fee and which is usually paid on the spot because the costs are minimal¹⁶.

What is specific to *hawala* is that these transactions cross international borders, usually involve more than one currency and involve middle men who usually hold financial positions¹⁷.

3.2. The Reaction at the European Level

In response to these traditional forms of transfer of funds or to unofficial value transfer systems, the European Parliament and the Council are to adopt a new Regulation on the control of cash entering or leaving the Union and repealing the Regulation (EC) no 1889/2005 of the European Parliament and of the Council of 26 October 2005¹⁸ which establishes an obligation for agents carrying out such transactions to declare to the competent authorities each significant operation carried out through such systems.

In this respect, any middle man and/or person involved in this type of activity (supervisors or exchange agents, middle men and distributors, coordinators, collectors and transmitters) will be required to register with the competent national authority; all operations must be declared and documented in a way that facilitates the transfer of information upon request, and dissuasive sanctions for those middle men and/or other persons involved in undeclared activities are to be instituted and applied. It remains to be seen, however, whether the regulation will have the expected result.

II. Legal Instruments in the Field of Combating Terrorism Financing at International Level

1. The Palermo Convention Against Transnational Organized Crime

At international level, the transatlantic countries, reunited either in the United Nations or in the „Group of Eight” (G8), have been the main factor in uniting global and regional instruments to optimize actions to prevent and combat terrorism financing¹⁹.

¹⁶ *Idem*.

¹⁷ Robert Looney, *Hawala: mecanismul financiar informal al teroristului*; nr.1, Volumul X Hawala: The Terrorist's Informal Financial Mechanism | Middle East... Politici Council, <https://www.mepc.org/.../hawala-terrorists-informal-financial> - accesat la 7 mai 2019.

¹⁸ Published in the Official Journal of the European Union 238-32005R - 1989, L309 / 9) COM / 2016/0825 final - 2016/0413 (COD) - European Parliament legislative resolution of 12 September 2018 on the proposal for a regulation of the European Parliament and of the Council on the control of cash entering or leaving the Union and repealing Regulation (EC) No. 1889/2005 (COM(2016)0825 – C8-0001/2017 – 2016/0413(COD)).

¹⁹ The Group of Eight „(G8) is an international forum of governments of economically, technologically and militarily developed countries. The G8 includes Canada, France, Germany, Italy, Japan, the United Kingdom and Northern Ireland, the United States and Russia, which, although accounting for about 14% of the world's population, account for 60% of gross domestic product worldwide, accounting for about 72% of the world's military spending. France, Russia, the United Kingdom and the United States hold more than 95% of the world's nuclear weapons. In March 2014, after the annexation of Crimea, Russia was suspended temporarily; currently the international forum refers to 7 states, the G7; available on: https://en.wikipedia.org/wiki/Group_of_Eight, accessed on May 29, 2019.

On 13 December 2000, the United Nations issued the Palermo Convention²⁰ against transnational organized crime²¹ the goal of which was to promote cooperation of states in order to prevent and combat organized crime more effectively.

In this regard, article 7 of the Convention, entitled *Measures to combat money laundering*, provides, among others, that each state party shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.

2. Financial Action Task Force on Money Laundering (FATF)

An important role in combating global terrorism financing is the FATF International Financial Action Task Force²².

The Financial Action Task Force on Money Laundering (FATF) is an intergovernmental organization founded in 1989 to develop anti-money laundering policies and, since 2001, it has also been involved in combating terrorist financing.

FATF issues international standards and recommendations in the field of countering global terrorism financing, monitors the legislative, financial and law enforcement activities taken at national and international level. The issued recommendations cover the criminal justice system and law enforcement, international cooperation, the financial system and its regulation.

3. The International Convention on the Suppression of Terrorist Financing

The International Convention on the Suppression of the Financing of Terrorism was adopted under the aegis of the United Nations in New York on 9th December 1999²³.

In the Convention, the offense of terrorist financing is defined in art. 2 par. 1 and refers to „any person who by any means directly or indirectly illegally and deliberately provides or collects funds with intent to use them or knowing that they will be used, in whole or in part, to the commission of: (a) an act constituting an offense within the framework and as defined in one of the Treaties listed in the Annex²⁴; (b) any other act that

²⁰ Published in the Official Gazette no. 813/8 November 2002.

²¹ Available on www.cdep.ro/pls/legis/legis_pck.http_act_text?ldt=38601, Accessed on May 18, 2018.

²² The FATF is an intergovernmental structure, founded in 1989, headquartered in Paris, which sets international standards, develops and promotes policies to combat money laundering and terrorist financing. It currently has 33 members: 31 countries and governments and two international organizations; 20 observers: five FATF regional structures and more than 15 other international organizations or bodies. A list of all members and observers can be found on the FATF website at <http://www.fatf-gafi.org/Members.en.htm>, accessed on 30 May 2019.

²³ Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=en.

²⁴ The Annex to the International Convention on the Suppression of Terrorist Financing includes the following conventions: 1. Convention for the Suppression of Illegal Hijacking of Aircrafts (The Hague, 16 December 1970); 2. Convention for the Suppression of Unlawful Acts against Civil Aviation Security (Montreal, 23 September 1971); 3. Convention on the Prevention and Suppression of Offenses against Persons enjoying International Protection, including Diplomacy Agents, adopted by the General Assembly of the United Nations on 14 December 1973; 4. The International Convention against the Taking of Hostages, adopted by the United Nations General Assembly on 17 December 1979; 5. International Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980); 6. Protocol on the suppression of illicit acts of violence at airports serving international civil aviation, complementary to the Convention for the Suppression of Unlawful Acts against Civil Aviation Security (Montreal, 24 February 1988).

may cause the death or serious injury of a civilian or any other person not directly involved in hostilities in an armed conflict when, by its nature or context, that act is aimed at intimidating the population or forcing a government or an international organization to fulfill or refrain from performing any act”.

On May 16, 2005, in Warsaw, the Council of Europe issued the Convention on the Prevention of Terrorism²⁵. The objective of the Convention, according to its Article 2, was to *„intensify the parties' efforts to prevent terrorism and its negative effects on full respect for human rights, and in particular the right to life, both by means of measures taken at national level, as well as in the framework of international cooperation, taking into account bilateral or multilateral treaties or agreements between contracting states”*²⁶.

4. The additional Protocol to the Council of Europe Convention on the Prevention of Terrorism²⁷

The Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism²⁸ was adopted in Riga on 22 October 2015 in order to complement the provisions of the Council of Europe Convention on the Prevention of Terrorism as regards the criminalization of the deeds described in Articles 2 to 6, thereby enhancing the efforts of states parties to prevent terrorism and its negative effects on the full exercise of human rights, in particular the right to life.

Article 5 of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism criminalizes the act of financing travel abroad for terrorist purposes as follows:

For the purposes of the Protocol, *„financing the travel abroad for terrorist purposes”* refers to the provision or collection in any way, directly or indirectly, of funds which, wholly or in part, facilitate the travel of any person for terrorist purposes abroad as defined in Article 4, paragraph 1, of the Protocol²⁹, being aware of the fact that the funds are wholly or partly intended to serve this purpose, and according to paragraph 1, each Party shall take the necessary measures to regulate as an offense according to its domestic law to fund the travel abroad for terrorist purposes as defined in paragraph 1, when committed with intent.

5. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing the Council Framework Decision 2002/475 / JHA and amending the Council Decision 2005/671 / JHA

Article 11 of EU Directive 2017/541 of the European Parliament and of the Council³⁰ regulates anti-terrorist financing measures as follows: *1. The Member States*

²⁵ Published on 22.06.2018 in the Official Journal of the European Union.

²⁶ Article 2 of the Convention on the Prevention of Terrorism.

²⁷ Adopted at Riga on 22 October 2015; Published in the Official Journal of the European Union no. L 159/17 of 22 June 2018.

²⁸ Available on the website: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/217>, accessed on May 27, 2019.

²⁹ Article 4, paragraph 1 of the Additional Protocol to the Convention of the Council of Europe on the Prevention of Terrorism. *For the purposes of this Protocol, „traveling abroad for terrorist purposes” means traveling to a state which is not the state whose national citizen or resident is the person who is traveling, for the purpose of committing or contributing to committing or participating in a terrorist act, or providing or acquiring training for terrorism.*

³⁰ Published in the Official Journal of the European Union L88 / 6 EN of 31.03.2015, available at <https://publications.europa.eu/en/publication-detail/-/publication/.../language-ro> accessed at 31 May 2019.

shall take the necessary measures to ensure that the provision or collection of funds by any means directly or indirectly, with the intention of using them or knowing that they will be used wholly or in part to commit any of the offenses referred to in Articles 3 to 10 or to contribute to committing any of those offenses, shall be criminalized as a criminal offense when committed with intent.

2. If the financing of the terrorism referred to in paragraph (1) of this Article relates to any of the offenses referred to in Articles 3, 4 and 9, it shall not be necessary for the funds to be used, in whole or in part, with the purpose of committing or contributing to the commission of any of the offenses concerned, nor is it obligatory for the author to know the offense or specific offenses for which the funds are to be used.

6. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138 / EC and 2013/36 / EU

The main legal instrument to prevent the use of the European Union's financial system for the purpose of money laundering and terrorist financing is the Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018.

The Directive establishes „*more effective and comprehensive measures for the financing of terrorism, measures to be taken while complying with the fundamental right to the protection of personal data and complying with international commitments and the application of the proportionality principle*”³¹.

The preamble to the Directive states that trends in how terrorist groups finance and carry out their operations reveal that modern technology services have become increasingly popular as alternative financial systems and, in keeping up with the new trends, further steps should be taken to ensure greater transparency of financial transactions, corporate entities and other legal entities, as well as trusts and legal constructions with a structure or function similar to trusts, (...) in order to improve the current prevention framework and to combat in a more effective manner the financing of terrorism. It is important to note that the measures taken should be proportionate to the risks³². The Directive defines terms such as „electronic money”, „virtual currency”, „digital wallet provider”³³.

The objective of the Directive, namely the protection of the financial system by preventing, detecting and investigating money laundering and terrorist financing, can not be achieved individually by the Member States, as the measures adopted by them to protect their financial systems may be incompatible with the functioning of the internal market, the principles of the rule of law and the Union's public policy. This desirability can therefore be better achieved at Union level, which can adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

³¹ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138 / EC and 2013/36 / EU, published in the Official Journal of the European Union at 9 06 2018, L 156/43.

³² Paragraph 2 of the preamble to the Directive.

³³ Article 3 (c) point 16; art. 3 (d) pt.18; art. (EU) 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 and amending Directives 2009/138 / EC and 2013/36/EC (3) (d).

Article 4 of the Directive specifies that the Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 10th January 2020.

III. The Terrorist Financing Offense in Domestic Law

In domestic legislation of Romania, the financing of terrorism is criminalized in art. 36 par. (1) of the Law no. 535/2004 on preventing and combating terrorism as follows: *„it is a terrorist financing offense to collect or make available, directly or indirectly, licit or illicit funds, knowing that they are to be used, in whole or in part, for committing acts of terrorism or for supporting a terrorist entity „*

At the same time, paragraph 2 of art. 36 of Law no. 535/2004 establishes that *„The commission of a crime for the purpose of obtaining funds with the intention of being used or knowing that they are to be used wholly or partly for the purpose of committing acts of terrorism or for supporting a terrorist entity is punishable by the punishment specified by law for that offense, the maximum of which is increased by 3 years.”*

As far as *„terrorist entities”* are concerned, they are defined in art. 4 point 1 of the Law no. 535/2004 as a person, grouping, structured group or organization that: a) commits or participates in terrorist acts; b) is preparing to commit terrorist acts; c) promotes or encourages terrorism; d) supports, in any form, terrorism.

„The terrorist actions” are defined in art. 4 point 7 of Law no. 535/2004 as *„the preparation, planning, favoring, commissioning, directing, coordinating and controlling the terrorist act, as well as any other activities carried out after its committing, if related to the terrorist act”*.

It should be noted that, following the review of Recommendation no. 5 and the FATF Glossary of October 2016, it is recommended that the provisions on terrorist financing offense also apply to the provision or collection of funds or other assets that explicitly include economic resources, including oil and other natural resources, dividends and asset income and any other assets that are not funds but could be used to obtain funds, goods or services³⁴.

Law no. 535/2004, defines, at art. 4, point 8, the term *„funds”* as *„goods of every kind, tangible or intangible, movable or immovable, acquired by any means and documents or legal instruments in any form, including electronic or numerical form, property rights or interest in such goods, bank credits, traveler’s checks, bank checks, mandates, shares, securities, bonds, special drawing rights and letters of credit, without being enumerated as limiting.*

The active subject of the offense can be any person who is criminally liable, including a legal person, and this offense can be committed in all forms of participation: co-sponsorship, instigation and complicity.

The primary passive subject of the offense may be the state as the holder of protected social values and secondary passive subjects may be charitable organizations, banks and financial agencies by which transfers of funds are made to finance terrorist acts or organizations.

The *actus reus* consists of an action, namely to collect or make available, directly or indirectly, funds.

³⁴ FATF Guidance, *„Criminalising Terrorist Financing (Recommendation 5)* - available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Criminalising-Terrorist-Financing.pdf>, accessed on 25-th May 2019.

In order to be considered a terrorist financing offense, it is not necessary for the financing of terrorist organizations to result in the commission of a terrorist act but may have any purpose designed to support the capacity of the terrorist organization to prepare and organize such attacks.

The immediate consequence is the state of danger created for socially protected relations and implicitly derives from the commission of the offense.

As regards the subjective side of the terrorist financing offense, the perpetrator's guilt takes the form of direct or indirect intent.

No law is immutable, and Law no. 535/2004 even less. It has undergone changes following the entry into force of Law no. 58/2019 which amends and complets Law no. 535/2004 on preventing and combating terrorism³⁵ and will probably be followed by others in order for its provisions to comply with those contained in Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, the deadline being 10th January 2020.

However, it is clear that, in countering the terrorist phenomenon, it is important to reduce the sources of income of terrorist entities, which must be achieved only by legal instruments, by clear and transparent regulations in line with technological developments, a unique definition of terrorism, and of terrorist offenses, both in the Member States of the European Union and in the other countries of the world.

IV. Conclusions

As W. Lacqueur states, „*Modern terrorists, unlike their predecessors, do not subsist only with enthusiasm but need a lot of money*”³⁶.

As a result, discontinuing funding flows, dismantling or banning these flows may, over time, limit the ability of terrorist groups to launch attacks, because in the absence of funds, risks of failure of planned operations are increasing.

Even if some terrorist acts do not require high costs, terrorist organizations need financial resources for propaganda, recruitment, to buy weapons and information to create a favorable environment for their activities. In other words, the destruction of the funds needed for terrorist activities leads to diminishing the capacities of action, limiting their impact and effect.

Moreover, knowing how terrorist groups and networks finance their activities is essential both for understanding their functioning and for taking measures to dismantle financial networks and stop their funding sources.

Although financial information alone is not enough to combat terrorism, however, when combined with other counterterrorism measures, financial information can greatly increase the ability of a country to identify and counteract terrorist activity. And as terrorist financing offenses are cross-border, it is necessary that strategies in the field be based on cooperation and exchange of information between services specialized in combatting terrorist financing.

With the specific purpose of enhancing the capacity of law enforcement, prevention and response to terrorist financing, the European Parliament issued the

³⁵ Published in the Official Gazette no. 271/10 April 2019.

³⁶ W. Lacqueur, *The Age of Terrorism. A Completely Revised and Expanded Study of National and International Political Violence, Based on the Author's Classic Terrorism*, Ed. Little, Brawn & Co, New York, 1987, p. 96.

Recommendation of 1 March 2018 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on cutting sources of the Jihadists' income. It was considered that the establishment of a system for monitoring worship places and religious schools, institutions, charitable foundations and cultural associations where there is reasonable suspicion that they are related to terrorist groups may provide details on the source of the funds they receive and how the funds are distributed.

This is why finding and eliminating the financial sources of terrorist networks should become an essential component of all anti-terrorist investigations.

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