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## THE DISTINCTION OF THE NOTIONS «TERROR», «TERRORISM» AND «ACT OF TERRORISM» IN THE INVESTIGATION OF CRIMINAL OFFENSES OF A TERRORIST NATURE

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*The article deals with issues devoted to criminal prosecution in relation to terrorism. Taking into account the specifics of such criminal offenses, the definition of the scientific and the most typical sources of the legislative differentiation of these concepts. We consider the procedural aspects of the definition of «terrorism» and «terrorist act» in the investigation of criminal*

*offenses related to terrorism, indicated gaps of existing legislation in the direction of their effectiveness.*

**Keywords:** *terrorism, criminal proceedings, act of terrorism, pre-trial investigation, forensic characterization, of the initial phase of the investigation.*

The world is changing around Ukraine nowadays, the postulates and principles, that a few years ago seemed unshakable, today do not stand the test of social, economic, political and law enforcement relations, radically modified and transformed.

The consistent change of state is due to peculiarities of world political process, that comes because of the interaction of many political forces and institutions, involved in international life. As a result, in this process different and quite conflicting interests and ideological positions, goals and intentions of international politics and especially states are opposed.

The destabilization of the world order gives a way to the ambitions of regional powers. So, the dismantling of the Kemalist government system in Turkey is a good example. The hybrid war, that Russia practiced in modern conflicts, is aimed at destroying societies, oppression of their will with the purpose to resist a large-scale terrorism.

The relevance of the topic concerns the attention on the fact that the crime situation in the country remains difficult. The motivation of serious crimes changes, the terrorism, economic crime, banditry spreads. The terrorism threatens public security and interests of Ukraine, as the stable environment in and around Ukraine becomes unpredictable and destructive threatening.

A common means of committing a criminal offense is explosive, firearm, etc. The international experience indicates particular danger of blackmail and terrorist acts in public places, such as railway stations, schools, hospitals, shops, transport, stadiums. The number of criminal offenses that are the result of loss of life due to the use of explosives and firearms, is extremely increasing.

The problem of terrorism is discussed by scientists in all fields of science close to this phenomenon (philosophy, sociology, political science, history, psychology, economics, journalism). The domestic researchers in the field of law expressed interest to the terrorism and responsibilities in 90s of the XX century – these are the monographic (thesis) works of S. . Dopulka [2], V. P. Yemelyanov [3, 5], V. F. Antipenko [1], S. M. Mohonchuk [10].

Concerning the relevance of the research substantiating of terrorist acts, it is advisable to select research areas of terrorism, such as:

- social and political phenomenon (T. Boyar-Sozonovich, V. Vunogradov, . Gayduk, K. Zharinov, V. Zagladin, V. Inozemcev, Y. Klimchik, G. Ovchunnkov, E. Stepanov, V. Shestakov and others);
- in terms of basic forms and trends of modern terrorism, terrorist acts motives, as well as social and psychological roots of terrorism and the transformation of the terrorist struggle (M. Afanasiev, . Budnutskiy, . Grachov, . Gerasimov, . ordanov, . Zotov, N. Kapitanenko, S. Kovalenko, U. Latupov, L. Medvedko, D. Olshanskiy, V. Petrishchev and others);
- from the perspective of criminal and international law (V. Antipenko, V. Yemelianov, . Krasnov, V. Krutov, V. Kudriavtsev, V. Lunieev, B. Martynenko, L. Novikova, . Pobegailo, . Rudenko, . Hlobustov, . Shevchenko and others);
- in the context of Ukraine's national security (Y. Bin'ko, V. Gorbulin, . Gucalo, G. Kostenko, P. Krut', . Panov, . Panfilov, V. Smolyanyuk);

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– in terms of the correlation of the international terrorism and the globalization (Y. Bodanskiy, . Garr, B. Graham, R.Zhakkar, . Yaffe, R. Kagan, . ronin, D. Prist, . mae, D. Smok, H. Hoffmaster and others).

However, despite that range of studies, devoted to terrorism, there is also a number of controversial issues, due primarily to the diverse nature of the phenomenon, its rapid differentiation and increased threats to national security, public safety, and the lack of unanimity of scientific and legal views on concepts and categories theory of the terrorism.

The purpose of this article is to establish a difference in terms of “terrorism” and “terrorist act” and their value in certain criminal offenses of the same name.

Disclosing the content of the term “terrorism” – is the problematic question, because currently there are over 100 definitions of this phenomenon. However, none of them is supported by the international community as generally accepted. [9] Ukrainian lawyers Vladimir Yemelyanov and S. Gavrish noted, that terrorism is regarded by modern science in three areas: criminal act, terrorist groups (organizations) and terrorist doctrine [5]. Considering the terrorism also as negative social and legal phenomenon suggests another scientist – V. Lipkan and he also suggests not just to reduce it to commit explosions and arson, but those actions, which are considered as terrorism, include to the concept of the notion “terrorist act” [8]. Also, it is necessary to distinguish the notions «terrorism» (from lat. terror - terror, fear) and «terror» - a policy of intimidation, repression of political opponents by violent means.

The terrorism has a rising growth trend in transitional periods and stages of social life, where instability is the main characteristic of basic relations and social connections. Such conditions contribute to the growth of aggression in society and lead to the fact that this or that economic, ethnic, social, religious or other group trying to impose its will on society, use violence as a tool to implement their plans and aspirations.

It is hard to define the notion of terrorism. Experts does not have the consensus on this subject. Some believe, that terror and terrorism are not concepts that are associated with well-defined and clearly identifiable events. This is caused by the fact that the concepts of «terror» and «terrorism» does not carry the semantic distinction. Terror and terrorism - are the methods of influence, methods of achieving the objectives, methods of struggle, which consist of separate elements that define them - terrorist acts. It is impossible to formulate the concept of terrorism without giving a definition of “terrorist act.”

An act of terrorism, that is the use of weapons, explosions, fire or any other actions that exposed human life or health to danger or caused significant pecuniary damage or any other grave consequences, where such actions sought to violate public security, intimidate population, provoke an armed conflict, or international tension, or to exert influence on decisions made or actions taken or not taken by government agencies or local government authorities, officials and officers of such bodies, associations of citizens, legal entities, or to attract attention of the public to certain political, religious or any other convictions of the culprit (terrorist), and also a threat to commit any such acts for the same purposes (art. 258 CCU) [7].

Thus, a terrorist attack is an action that takes a variety of forms of violence (or the threat of its use), feature of which is that the object of violence can not be a subject at the time of the attack. Indeed, any terrorist action (not even related to the murder) always involve violence, coercion, threat. The primarily means of achieving the goal for every terrorist is bullying, creating an atmosphere of fear and uncertainty.

The famous researcher of the French Revolution, the French historian Augustin Cochin concluded the democracy as the power of “small people” and the terror as an inevitable attribute of democracy.

Originally it has been done by masonic lodges in France, and then through the party. In order to save power of the ruling minority malfunctions in the system were corrected only by extreme means – terror. As evidenced by, in particular, the political history of France in the 19th century. [6]. Investigating the consequences of the Russian revolution in 1917, Ukrainian academician Igor Shafarevich had reached the similar conclusions about the terror [13].

In return, terrorism is a violence committed by a “weaker” (without authority), the violence that comes from the oppositional layers of society, sometimes radically oriented and, as a rule, a very few who usually do not have and can not have the support of the majority of society. Terrorism has political, social, national or religious signs. Terrorism as a phenomenon which pursues at least three basic significant goals. The first one is to make a pressure on the authorities, to intimidate the persons who are endowed with the powers. The second target is to spread fear and uncertainty among citizens, who have loyal attitude to existing government officials. The third aim is the desire to cause sympathy among their potential supporters, ie in the segment of society who are believed them, subjected to oppression or discrimination, but inferior to terrorists in radicality. Thus, terrorism is often impossible without terrorists’ announcement about their responsibility for the act of violence. Although, there are exceptions, such as when the terrorists want to involve other organized minority in the armed battle with state authorities. In other words terrorism as a provocation.

Certain clans of the ruling minority who do not have and cannot have the support of the majority of society because of their national and religious differences (sometimes social) might also resort to the terrorism in order to seize full power (but secretly). In contrast to the terror (at application of it within the country) or war (when applying to other countries), participation of state security forces in the actions of state terrorism is carefully concealed.

Signs of terror are the following: violence as a tool to reach certain goals; mean of coercion for person to make the decision; achievement of result through the actions of intimidation. Terror is accompanied by escalating tensions, compulsion for someone to make something.

Among the most common ways to commit terrorism acts we can distinguish murder (with cold and firearms, poisons); explosions (in the yard, building, transport, stadium or other crowded places); the seizure of vehicles with passengers (airplanes, buses, cars); hostage-taking (kidnapping); arson, threats by telephone; poisoning of water, food; action using weapons of mass destruction.

Today, signs of a terrorist act are the following: 1) the committing of generally dangerous acts or the threat that generate common danger; 2) the public nature of the execution with pretension for wide publicity; 3) deliberate creation of the conditions of fear, tension on the social level which is aimed at intimidating of the whole population or its part; 4) the use of general dangerous violence against some (innocent victims) or property to induce certain behavior of others.

In this way, the term “terrorist act” can be considered on two levels, each of which has described different completeness:

1. Internationally it is defined in the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001) as:

a) any act that is recognized as criminal offense in one of the treaties listed in the annex to this Convention and how it is defined in such treaty. This is about the following agreements: the

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Convention on the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970); Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971); Convention on the Prevention and Punishment of Crimes against persons who use international protection, including Diplomatic Agents (adopted by the UN General Assembly on 14 December 1973); International Convention against the Taking of Hostages (adopted by the UN General Assembly on 17 December 1979); Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980); Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, which complements the Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, February 24, 1988); Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988); International Convention on the Suppression of Terrorist Bombings (adopted by the UN General Assembly on 15 December 1997); International Convention on the Suppression of the Financing of Terrorism (adopted by the UN General Assembly on 9 December 1999);

b) any other act intended to cause the death of any civilian or other person who is not taking an active part in the hostilities in a situation of armed conflict or to cause her grievous bodily injury, and also to inflict significant damage to any material object, as well as organizing, planning such acts, aiding in its perpetration, incitement to it when the purpose of such act, by its nature or context is to intimidate the population, to violate public security or to force authorities/international organization to do any act or to refrain from its committing and prosecution due to the criminal procedure under the national laws of the parties.

Legal support of of counterterrorist activity is one of the most important tasks of a successful counteraction to domestic and international terrorism [4; 12]. The main principles of combating should be the following: the legality, the priority of prevention measures of terrorism, the irreversibility of the punishment for guilty persons, the priority of rights protection of persons who are subjects of danger resulting from terrorist actions, minimal concessions to terrorists and some other. Legislative consolidation of the principles of combating terrorism is very important, because this type of crime can provoke excessive use of brutal state measures, derogation from law, also to undermine confidence in the ability of the state, that cause the opposite effect.

A permanent improvement of appropriate national legislative base should become an essential condition that could prevent the growth of terrorism and make a contribution to a successful fight against it. The first step in this direction was the adoption of the Law of Ukraine "On Fighting Terrorism" [11]. This law defines terrorism as a threat to use the violence, and its application that generate fear in both individuals and in many other people, and it is designed for their intimidation and generation of distrust to public authorities - their ability to counter these criminal acts.

The main purpose of the law is the protection of individual, state and society from terrorism, identifying and eliminating of the causes and conditions that give rise to it. The law defines the legal and organizational fundamentals of combating this dangerous phenomenon, powers and duties of the executive authorities, public associations and organizations, officials and individuals in the fight against terrorism. Also the law defines the procedure for coordination of executive authorities and organizations activity, which are involved in the combating terrorism; guarantees of legal and social protection of citizens due to the participation in the fight against terrorism.

The fight against terrorism requires a comprehensive approach which should include measures of economic and political, social and legal nature. This is a long-term program, implementation of which depends on many factors, but it is not a secret that decisive and effective measures are needed today. Speed of response to constant improvisation of enemy is an important indicator of the state's ability to provide adequate response to aggression. Intelligence and counterintelligence are the state structures with the highest priority which should be able to respond to threats quickly with maximum effectiveness and this is the key to our security.

## THE LIST OF REFERENCES

1. ... : ... : 12.00.08 « ... »/ ... - ... : ... , 1997.-20 .
2. ... : ... . 12.00.08 « ... »/ ... - ... : ... , 1993.-20 .
3. ... - ... / ... - ... : ... , 1999.-269 .
4. ... (ETS N 90): ... : 27.01.1977 ETSN90 [ ... ].- ... : [http://zakon3.rada.gov.ua/laws/show/994\\_331](http://zakon3.rada.gov.ua/laws/show/994_331).
5. ... : ... / ... // ... -2015.- 1.- .234-244.
6. ... / ... - ... : ... , 2003.
7. ... : ... : 05.04.2001 2341-III// ( ... ).-2001.- 25-26.- .131.
8. ... : ... / ... - ... : ... , 2009.-164 .
9. ... , ... : ... . 12.00.09 « ... »/ ... - ... : ... , 2013.-20 .
10. ... : ... . 12.00.08 « ... »/ ... - ... : ... , 1999.-16 .
11. ... : ... : 20.03.2003 638- V // ( ... ).-2003.- 25.- .180.
12. ... : ... : 25.04.2013 230/ 2103 [ ... ].- ... : [www.zakon2rada.gov.ua](http://www.zakon2rada.gov.ua).
13. ... : ... .2/ ... - ... : ... , 1994.- 512 .