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O. Chorny,
lawyer, Kyiv

DELIMITATION OF A TERRORISTIC ATTACK FROM RELATED CRIMES: APPROACHES IN THE CRIMINAL LAW OF UKRAINE

Summary. In this article, the author defined the main criteria, under which a terroristic attack as a criminal law standard should be delimited from related criminal law standards of the Special Part of the Criminal Code of Ukraine on the basis of research of scientific views in the criminal law standards related to a terroristic attack.

Keywords. Terroristic attack, Criminal Code of Ukraine, generic object, criminal law standard, criminal law, delimitation.

Introduction. With the adoption of the Criminal Code of Ukraine on April 5, 2001, the criminal law branch got many stories among which there is an introduction of a new element of crime – a terroristic attack by the commission of which the guilty person encroaches on priority national interests of Ukraine, which reflect the fundamental values and aspirations of the Ukrainian people, their need in decent, safe, conditions of life and civilized ways of their creation and means to meet them, which are enshrined in the Law of Ukraine “On Fundamentals of the National Security of Ukraine”.

Only some time ago, many people in our country wondered, “Is terrorism a real threat to Ukraine?”. Unfortunately, today we already have the answer. According to the results of 2014, Ukraine took the 12th place in the Global Terrorism Index, in 2015, Ukraine still occupied the 12th place in that terrorism index according to experts. By 2014, statistics showed that terrorist activities had not been typical for our state.

Thus, during 2001-2013, there were 19 criminal cases initiated by the Security Service of Ukraine, prosecutor’s offices and departments of internal affairs of the Ministry of Internal Affairs of Ukraine, pending by investigative units of the Security Service of Ukraine, for offences under Art. 258-258-5 of the Criminal Code of Ukraine. During 2014, the number of crimes classified as terrorism increased by 293 times (from 7 to 2053). The most of them took place in the Luhansk Region (931), Donetsk Region (886), Odessa Region (45), Kharkiv Region (39), Dnipropetrovsk Region (22), Zaporizhzhia Region (15), Mykolaiyv Region (14) and the Donetsk Railways (42). Indicators of statistics on the state of crime in Ukraine, pre-trial investigation of the prosecutor’s offices, departments of the Ministry of Internal Affairs, of the Security Service of Ukraine, financial investigations of the State Fiscal Service of Ukraine for 10 months of 2015 show an increase of crimes classified as terrorism (Art. 258, 258-1, 258-2, 258-3, 258-4, 258-5 of the

Criminal Code of Ukraine) by almost a third (from 1755 to 2254, or + 28.4%) as compared to 2014. Most of these crimes took place in the Luhansk Region (1117), Donetsk Region (939), Odessa Region (46), Kharkiv Region (26), Dnipropetrovsk Region (13), Kyiv (22) [1, p. 6-12].

However, the introduction of Article 258 (terroristic attack) of the Criminal Code of Ukraine raises many questions, one of them is correct qualification of a crime and delimitating it from related elements of crime, envisaged by the current Criminal Code of Ukraine. Because, as is known, any criminal act must be qualified in strict accordance with the law which provides for liability for this act as a more or less strict legal assessment of the offense committed is a violation of the principle of legality, violation of interests of the individual, state and society. That is the correct qualification of crime is a prerequisite for the provision of legitimacy in the process of combating crime. And the incorrect qualification as a conclusion could lead to violations of the rights and legitimate interests of citizens and the state as a whole, interfere with the course of justice, undermine the credibility of the investigation, the court and the authority of the state as a whole.

Therefore, based on the above, **the purpose of this article** is an attempt to resolve such issue as the delimitation of the terroristic attack from related crimes on the basis of scientific positions in the criminal law of Ukraine.

In the theory of criminal law, related crimes are those having all common features, except for one that is dividing and [2, p. 148], and “based on specific legal grounds are very close to each other ... because of the proximity of individual elements of these compositions” [3, p. 246-247].

In the theory of criminal law of Ukraine, the following scientists paid attention to the issue of delimitation of the terroristic attack from related crimes: O. Bantyshev, V. Iemelianov, O. Klymchuk, O. Zvonariov, O. Sotula, B. Leonov, V. Lipkan, S. Mokhonchuk, O. Shamara.

Based on the content of the Special Section of the Criminal Code of Ukraine and achievements of the above scientists, it is necessary to identify several criminal law standards that when solving the issue of qualifying a criminal act – a terroristic attack requires delimitation it from other forms of crime. These are such criminal law standards as an infringement of life of a statesman or public figure (Art. 112 of the Criminal Code of Ukraine), sabotage (Art. 113 of the Criminal Code of Ukraine), intentional homicide (p. 5 p. 2 Art. 115 of the Criminal Code of Ukraine), hostage taking (Art. 147 of the Criminal Code of Ukraine), creation of a criminal organization (Art. 255 of the Criminal Code of Ukraine), armed robbery (Art. 257 of the Criminal Code of Ukraine), knowingly false report of a threat to the safety of citizens, destruction or damage of property (Art. 259 of the Criminal Code of Ukraine), use of weapons of mass destruction (Art. 439 of the Criminal Code of Ukraine), infringement of life of a foreign state representative (Art. 443 of the Criminal Code of Ukraine), piracy (Art. 446 of the Criminal Code of Ukraine).

According to legislative action setting (performing of explosions, arsons or other actions aimed at the extermination, causing bodily injuries or other harm to people health, destruction or damage to objects that have great economic or defensive value, as well as actions with the same purpose, aimed

at the contamination, mass poisonings, advance of epidemics, or epizootics or epiphytoticies in order to weaken the state), a sabotage is an offense, which to a great extent corresponds with a terroristic attack. Therefore, it is necessary to determine those criteria on which the delimitation of a terroristic attack and sabotage should be carried out.

First, the disposition of Art. 258 of the Criminal Code of Ukraine provides for not only explosions, arsons or other generally dangerous actions, but for a threat of such actions. That is we should talk about the end of crime in the commission of a terroristic attack that can occur from the moment of creation of a threat of socially dangerous consequences, and sabotage may end at the time of injury, the main component of which is, in our opinion, the financial damage.

It should be also highlighted that the purpose of sabotage, as defined by the legislator, is weakening of the state, i.e. economic, environmental, military or any other of its areas. A primary (ultimate) purpose of a terroristic attack is provoking military conflicts, international complications, influence on decision-making or committing or non-committing of acts by governmental or local authorities, officials of these authorities, associations of citizens, legal persons or drawing public attention to certain political, religious or other views of a perpetrator (terrorist). The absence in the main purposes of a violation of public security and public intimidation (Art.258 of the Criminal Code of Ukraine) is explained by the fact that we believe they are intermediate relatively to the ultimate goals. As intimidating of the population is an element that plays only a role of a tool for achieving the goals of a terroristic attack, but is not the ultimate purpose [4, p. 194-209].

An important criterion, according to which a terroristic attack should be delimited from sabotage, is the ostentation of the terrorist's actions with the obligatory advancing of demands. On the contrary, sabotage is a crime committed from behind. Saboteurs act secretly and do not advertise their activities, that is, without advancing demands or attracting attention to themselves, a person who committed a crime, and the state or organization to which it belongs.

Delimitation by object, that is by a criterion of those social values, which the offender infringes during the commission of a crime, it is necessary to determine that a person who commits sabotage infringes the national security of Ukraine (internal security), seeking for weakening of the state in economic, defense and other areas of the country functioning. A person who commits a terroristic attack infringes upon such an object as public safety, according to the way it is defined by the legislator.

Depending on the orientation of a specific terroristic attack and demands of terrorists who seek to illegally change the administration in any area of the national security of Ukraine, which is a manifestation of internal threats, this socially dangerous act may infringe the security of the state in different areas of its functioning: national, political, economic, environmental, religious, etc. [5, p. 26]. Therefore, public safety can't be a generic object of crime provided for by the disposition of Art. 258 of the Criminal Code of Ukraine, but only that value, encroaching on which the offender tends to cause damage to an object, at which his ultimate goal is aimed, which is provided by the disposition of the said Article 258 of the Criminal Code of Ukraine. It should be noted that Ukrainian scientists state

that the public safety that is recognized the main object of crimes of terrorism, is always an object of infringement, but is not the main, but additional object. The main object of crimes of terrorism are the various areas of human activity, national and supranational institutions, infringement of which determine terrorists' goals, which in terms of their significance may be more important than public safety (e.g. national security of Ukraine) [6, p. 79]. But if the goal of terrorists is provocation of armed conflict, international complications, their actions are aimed against the peace and security of humanity and international law.

If a terrorist sets himself a goal to influence decisions or committing or non-committing of acts by governmental or local authorities, officials of these authorities, associations of citizens, legal persons, or to draw public attention to certain political, religious or other views, a person infringes on the national security. Because this consequently destabilizes the society, the state and political system of the country and violates the political and social stability, i.e. the universal value of any society, which means that most people desire to live in stability, order and security. It also reduces the effectiveness of governmental or local authorities, which in accordance with Art. 19 of the Constitution of Ukraine may be reflected in violation of legal order in Ukraine, based on the principles according to which no one can be forced to do what is not required by law.

Therefore, based on the above, public safety acts as an intermediate and additional object. And such additional objects as life, health, etc., of course, highlights the secondariness of public security as the object of crime — a terroristic attack, its dependence on the

state security and international law [7, p. 201- 202].

Delimitation of a terroristic attack from the infringement on life of a statesman or public figure should be carried out on the grounds that characterize the subjective part of both crimes.

When committing a terroristic attack, a terrorist seeks to achieve a goal that is clearly stated by the legislator in the disposition of Art. 258 of the Criminal Code of Ukraine. The goal, which the offender seeks to achieve when committing a crime provided by Art. 112 of the Criminal Code of Ukraine, although it is not listed as a feature in the disposition of the criminal law standard, it can be inferred from those motives, which the offender must follow when encroaching on the life of a statesman or public figure, namely the desire to stop the public or social activity of a person or revenge for such activities, that is a murder is the purpose of the offense, and for a terroristic attack, killing is a means to achieve another goal.

Committing a crime provided for by Art. 112 of the Criminal Code of Ukraine does not have an aim of publicity and is not accompanied by making any demands to governmental or local authorities, officials of these authorities, associations of citizens, legal persons. This can be said of the crime under Art. 443 of the Criminal Code of Ukraine.

When delimitating a terroristic attack from the infringement on the life of a statesman or public figure, it is necessary to pay attention to social values that suffer damage from the illegal actions of the perpetrators that commit them. Thus, in the commission of a crime under Art. 112 of the Criminal Code of Ukraine, a person infringes, as defined by the legislator, on the national

security, and directly on the political system of Ukraine, which will be the main direct object of the crime [4, p. 63], and an additional object is the life of statesmen and public figures, listed in the disposition of the said criminal law standard. When committing a terroristic attack, a terrorist should harm the public safety according to the current Criminal Code.

The objective part of comparable crimes can be expressed in both seemingly overlapping, and different actions.

Thus, an explosion may be a result of threats, intimidation, as well as a way of killing. But in the first case the explosion is demonstrative in nature and it can cause damage to random people. The second is a way of killing a specific person, a statesman or public figure.

Thus we came to the fact that victims of a crime provided for by Art. 112 of the Criminal Code of Ukraine are specific statesmen or public officials in Ukraine, the establishment of these features is a must, in the classification of a terrorist attack, such specific features are not subject to establishment, because it is important to a terrorist to harm health or life of any people.

The main feature by which we should delimitate a terroristic attack from infringement on the life of a representative of a foreign country is that the actions of a person in committing a crime provided for by Art. 443 of the Criminal Code of Ukraine for achieving a purpose provided by the disposition of the criminal law standard are aimed at killing a person — a foreign state representative or any other person who has international protection, the list of which is clearly enshrined in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons dated

December 14, 1973.

Today, many scholars and practitioners in the world consider real the use of weapons of mass destruction during the commission of terroristic attacks, including nuclear, which may pose a threat of nuclear war. Therefore, it is appropriate to consider the issue of delimitation between “terroristic attacks”, in which weapons of mass destruction can be used, and “use of weapons of mass destruction”. The main feature, which one should rely on when delimitating these crimes, is that during the commission of a terroristic attack, a person may use weapons of mass destruction, but he seeks to achieve the goals defined by the legislator in the disposition of Art. 258 of the Criminal Code of Ukraine, while making certain demands. According to Art. 439 of the Criminal Code of Ukraine, a person is criminally responsible for the direct use of weapons of mass destruction during an armed conflict. More details about this are given in the monograph “Crimes against peace, human security and international law and order” [8].

Certain difficulties may be caused by the delimitation of such crimes as a terroristic attack and armed robbery.

Conclusions. The study of scientific literature on the issue of qualification and delimitation of terroristic attacks from related crimes and a research conducted by the author gives a reason to conclude that an ambiguous position in position regarding a generic object of crime, as well as objective evidence of the commission of this crime, which is unlimited in its content, does not contribute to a clear perception of the issue by law enforcement bodies. However, Art. 258 of the Criminal Code of Ukraine provides for clear limits, according to which it should be delimited from related crimes.

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Чорний О.

Відмежування терористичного акту від суміжних злочинів.

Анотація. У статті автором на підставі дослідження наукових поглядів у кримінальному праві України, та аналізі кримінально-правових норм суміжних із терористичним актом визначено основні критерії за якими слід відмежовувати терористичний акт, як кримінально-правову норму від суміжних кримінально-правових норм Особливої частини Кримінального кодексу України.

Ключові слова: Терористичний акт, Кримінальний кодекс України, родовий об'єкт, кримінально-правова норма, кримінальне право, відмежування.

Черный А.

Размежевание террористического акта от смежных преступлений.

Аннотация. В статье автором на основании исследования научных взглядов в уголовном праве Украины и анализе уголовно-правовых норм смежных с террористическим актом определены основные критерии, по которым следует отделять террористический акт, как уголовно-правовую норму от смежных уголовно-правовых норм Особенной части Уголовного кодекса Украины.

Ключевые слова: Террористический акт, Уголовный кодекс Украины, родовой объект, уголовно-правовая норма, уголовное право, отграничения.