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**TERRORIST ATTACKS IN UKRAINE:
CORPUS DELICTI, CRIME STATISTICS
AND REASONS OF COMMITTING**

The article is devoted to research of corpus delicti, reasons and crime statistics of terrorist acts committing in Ukraine. Structure of this article was described in the way. Crime statistics provided by the commission of terrorist crimes in Ukraine from 2009 to 2015, it was revealed different trends. Particular attention is paid to the investigation of a crime “Terrorist act” (art. 258 of the Criminal Code of Ukraine). The article notes the presence of a definite connection between the political and historical events in Ukraine and trends in terrorist acts, the creating of terrorist groups and organizations, the financing of terrorism.

Key words: *terrorist act, terrorist group, financing terrorism, corpus delicti.*

The failure of signing Ukraine – European Union Association Agreement (28–29 November 2013), state power aggression against Euromaidan demonstrators in Kyiv and other Ukrainian cities led to Revolution of Dignity on February 2014 (with a great number of victims) and state power changing in Ukraine. After that there were Crimea annexation by Russia and the cruel Russian-Ukrainian War in Donetsk and Luhansk regions, also provoked by Russia. It changed Ukrainian society and made its European as never before.

Crimea annexation by Russia and the War in Donetsk and Luhansk regions, unstable situation in other regions of Ukraine, great number of refugees in Ukraine led to sharp increase in violent crime. On 14 April 2014 was started “Anti-terror Operation” in Donetsk, Luhansk and Kharkiv regions of Ukraine. Because of these particular attention should be paid to crime statistics of terrorist attacks in Ukraine

before and during War in Ukraine. Also, we would like to pay attention to analysis of terrorism corpus delicti by Criminal Code of Ukraine.

Criminal Code of Ukraine proscribes criminal liability for the commission of the terrorist act (art. 258 of the Criminal Code of Ukraine). Besides, criminal liability is instituted for drawing into the terrorist act (art. 258-1 of the Criminal Code of Ukraine), public instigation to a terrorist act (art. 258-2 of the Criminal Code of Ukraine), creation of the terrorist group or terrorist organization (art. 258-3 of the Criminal Code of Ukraine), facilitating the commission of the terrorist act (art. 258-4 of the Criminal Code of Ukraine), financing terrorism (art. 258-5 of the Criminal Code of Ukraine), deliberately false notification of threat to public order, destruction or damage to property (art. 259 of the Criminal Code of Ukraine). The sanctions of the above articles mostly contain the punishment of imprisonment, and depending on aggravating circumstances, that of life imprisonment. According to Criminal Procedure Code of Ukraine the pretrial investigation in this category of cases is to be conducted by the investigators of the Security Service of Ukraine.

According to the Ukrainian's data Ombudsman during the years of Ukrainian independence 25 individuals had become victims of the terrorist attacks, 2 more had been killed by the 1st of October 2011. During this period Security Service of Ukraine investigated 22 cases in respect of 35 individuals, with 9 cases gone to court hearing. 25 individuals have been prosecuted with 2 sentenced to life imprisonment. Besides, according to the Security Service the following number of cases has been open based on the definition of the terrorist act (art. 258 of the Criminal Code of Ukraine): 2009 – 1 case; 2010 – 1 case; 2011 – 3 cases¹. It is worth mentioning that the above statistic data includes a resonant crime committed on 20 January 2011 in the town of Makyivka, Donetsk region when 2 explosions were committed (not far from the trade center and next to the “Makyivvugol” government plant). The explosions incurred substantial material damage. After the explosions, the criminals demanded 4,2 mln. Euro, threatening to terrorize the town if

¹ <http://zib.com.ua/>

the demands are not met. In September 2011 the criminals (2 individuals) were convicted following the provisions of the art. 258 of the Criminal Code of Ukraine to 15 and 8 years of imprisonments respectively.

According to Maplecroft Risks Index (Atlas)² for 2009–2011, that includes macroeconomic risk, security risk, governance risk and illicit economies, resource security, climate change, pandemics, societal resilience, including human rights, Ukraine is one of the countries of «medium risk». With this, neighboring countries make part of the groups with “high risk” and “low risk”.

The Anti-Terrorist Center was created at the Security Service of Ukraine under the Law of Ukraine “On the fight against terrorism”. On 17 April 2012 at the press conference Petro Shatkovsky, First Deputy Chief of the Anti-Terrorist Center at the Security Service of Ukraine said that the level of terrorist threat at the time of Euro-2012 is minimal³.

The situation was changed in Ukraine after Revolution of Dignity and beginning of War in Donetsk and Luhansk regions. According to the Prosecutor General’s Office of Ukraine the following number of cases has been open based on the definition of the terrorist act (art. 258 of the Criminal Code of Ukraine): 2013 – 4 cases; 2014 – 894 cases (49 persons took notification of suspicion); January – April 2015 – 90 cases (12 persons took notification of suspicion)⁴.

Also, it is interesting for this research could be crime statistics on “Creation of terrorist group or terrorist organization” (art. 258-3 of the Criminal Code of Ukraine) in 2014 – 427 cases (256 persons took notification of suspicion), in 2015 – 339 cases (139 persons took notification of suspicion), “Financing of terrorism” (art. 258-5 of the Criminal Code of Ukraine) in 2014 – 48 cases (4 persons took notification of suspicion), in 2015 – 62 cases (1 person took notification of suspicion). At the same time in 2013 was initiated only one criminal case for these crimes.

² <http://maplecroft.com/>

³ <http://korrespondent.net/ukraine/events/1340806>

⁴ <http://www.gp.gov.ua/>

Criminal liability for committing terrorist act and other related crimes has been investigated by such criminalist researchers who defended PhD thesis— S. O. Dopilka (Kyiv, 1993), V. F. Antypenko (Kyiv, 1999), S. M. Mokhonchuk (Kharkiv, 2000), V. P. Yemelianov (Moscow, 2001), M. V. Semykin (Kharkiv, 2004), O. V. Kyrychenko (Kharkiv, 2005), L. V. Novikova (Kyiv, 2007), O. V. Yepel (Kharkiv, 2011), etc.

Before we start analyzing the corpus delicti, proscribed by art. 258 of the Criminal Code of Ukraine, it is worth mentioning that its title is formulated as “Terrorist Act”. The similar title is used in the Criminal Code of Lithuania, Russian Federation, etc. Criminal Codes of Azerbaijan, Armenia, Republic of Belarus as well as some other countries are using the term “terrorism” to define such socially harmful act. It is generally undisputed that the concept of terrorism is broader than that of the terrorist act. Under art. 1 of the Law of Ukraine “On the fight against terrorism” they are actually identical: 1) terrorism – is socially harmful activity, that is constituted by conscious purposeful use of violence by taking hostages, committing arsons, murders, torture, intimidation of the public and government agencies or committing attacks at lives and health of the individuals or threats of committing criminal acts to attain criminal goals; 2) terrorist act – is a criminal act of using weapons, explosion, arson or other acts, which entail liability under art. 258 of the Criminal Code of Ukraine.

The disposition of art. 258 of the Criminal Code is worded in the following way – “terrorist act, that is the use of weapons, committing an explosion, arson or other actions that endanger life and health of the individual or incurring substantial material damage or other grave circumstances, if such actions were committed with the goal of violating public security, intimidation of the public, provoking military conflict, international conflict, or with the goal to influence decisions or acts or omissions by the government agencies or local authorities, government officials from such agencies, public unions, legal entities, or to attract attention of the

public to certain political, religious or guilty individual (terrorist), as well as the threat to commit aforementioned acts with such goals”.

Given the existing social need and the status of the research in the Ukrainian criminal law as to the study of various aspects of criminal liability for the commission of the terrorist act and other related crimes, it should be pointed out that the basis of criminal liability in Ukraine is commission by the individual of the socially harmful act, containing *corpus delicti*, provided for in the Criminal Code of Ukraine. And the concept of the *corpus delicti* is not proscribed in law. Criminal law research, in its own turn, says that *corpus delicti* is “legal model of the crime⁵” and requires the identification of its four elements – the object, objective side, the subject and subjective side.

One of the most important elements of such approach is the object. Such central place for the object is determined by the fact that the object establishes what exactly the crime was aimed at. The theory of social relations, which is in this sense traditional, was suggested by prof. A. A. Piontkovsky. The concrete social relations that are being damaged through the commission of a crime are identified by the title of the chapter of the Criminal Code of Ukraine in which it is included. Accordingly, “terrorist act” and aforementioned related crimes are part of the Chapter IX of the Special Section, Criminal Code of Ukraine called “Crimes against Public Security”. Such a general object can be interpreted as “the state of protection of the life and activities of the individuals from the sources of high danger (criminal associations, terrorists, weapons and other deadly objects)”⁶. The direct object in case of the terrorist act is to be narrowed the activity of terrorists. Besides, its definition requires to be made more specific by means of the additional direct object – property relations as well as life and health of an individual.

⁵ Борисов В. І. Склад злочину як правова модель // Вісник Академії адвокатури України. – № 1 (14). – 2009. – С. 254–256.

⁶ Кримінальне право України: Особлива частина: підручник / [Баулін Ю. В., Борисов В. І., Тютюгін В. І. та ін.]; за ред. В. В. Сташиса, В. Я. Тація. – [4-те вид., перероб. і допов.] – Х. : Право, 2010. – С. 286.

An important place belongs to such element of the *corpus delicti* as the objective side. It traditionally comprises such identifiers, depending on disposition of the article, that relate to criminal liability: socially harmful act and consequences, causative connection between the act and the consequences, the way of committing a crime, place, time, setup, tools, means of committing a crime.

According to the definition of the terrorist act in the Criminal Code of Ukraine it is necessary to take a look at two models of this offence: 1) “use of weapons, committing explosion, arson or other actions, that endanger human life or health or incur substantial material damage or grave consequences”; 2) “a threat to commit the above actions”. Under such circumstances the first model requires the establishment of the socially harmful act, consequences and causative connection between them (*material corpus delicti*), and the other one only requires the establishment of the socially harmful act (*formal corpus delicti*).

Given the definition of the acts, provided for in par. 1 art. 258 of the Criminal Code of Ukraine it should be pointed out that they are alternative in character, moreover the list of the acts is not final. It is very interesting in this case to establish the consequences in the form of endangering human life and health. Such danger needs to be assessed based on how real is the possibility of such consequences are human life and health.

As part of the brief analysis of the *corpus delicti* one should also take a look at the threat to commit actions defined in art. 258 of the Criminal Code of Ukraine. Such threat of explosion, arson, use of weapons, etc. can be communicated to any person and by any means (verbally, non-verbally, directly or in any other way). Under such circumstances it is about committing psychological violence to a vast number of people, by providing information as to the desire to commit such actions in future. When interpreting the threat of committing such actions there is a issue of correlation of “terrorist act” and “deliberately false notification of threat to public order, destruction or damage to property” (art. 259 of the Criminal code of Ukraine). Evidentially, in both cases it is about information related-actions and threats of explosions, arsons and other actions

that constitute the disposition of article of “terrorist act”. It is worth pointing out that “deliberately false notification ...” (art. 259 of the Criminal Code) contains a very special way of committing this offence – by way of deception. Sometimes this offence is called “telephone terrorism”. In this case the offender does not really intend to commit real explosion or arson, and the treat of human death and other grave consequences are indirect. Besides, the good criterion is to delineate these offences is the goal of committing a terrorist act. In art. 259 of the Criminal Code of Ukraine purpose it is not part of the corpus delicti.

The subjective side of the corpus delicti for terrorist act comprises guilt and purpose. The guilt is contained as express malice (this presupposes the recognition of the socially harmful character of the act, foreseeing the consequences and the desire to see them take place). The goal is central to this crime’s corpus delicti given its definition in the Criminal Code of Ukraine as it is the purpose that allows to identify it as a crime against public security and delineate from other alike crimes. The goal in art. 258 of the Criminal Code of Ukraine is worded in a different way – 1) the goal of violating public order; 2) intimidating the population; 3) provoking military conflict, international conflict,; or 4) influence on decisions or acts or omissions by the government agencies or local authorities, government officials from such agencies, public unions, legal entities; or 5) attract attention of the public to certain political, religious or guilty individual (terrorist). The layout of the goals of the terrorist is even more important as there is a good probability will attain such goals and social relation of the public security will be damaged. In such circumstance the goal becomes objective and will be reflecting both the subjective side of the crime and its objective side – that is, it can transform into socially harmful circumstances.

As to the subject of the terrorist act, as the element of the corpus delicti a sane individual of over 14 years of age can be subjected to criminal liability.

Along with the provisions of par. 1 art. 258 of the Criminal Code of Ukraine acts and consequences the legislator has separately identified the aggravating cir-

cumstances – recurrence; conspiracy in a group; incurring substantial material damage and other grave consequences; human death.

Шепітько М. В. Тероризм в Україні: склад злочину, статистика та причини вчинення

Стаття присвячена розгляду кримінальної статистики, складу злочину та причинам вчинення терористичних актів в Україні. Проаналізовано статистику вчинення злочинів терористичної спрямованості в Україні з 2009 по 2015 роки, виявлено певні тенденції. Особливу увагу приділено дослідженню складу злочину «Терористичний акт» (ст. 258 КК України). В статті вказується на наявність певного зв'язку між політичними і історичними подіями в Україні та наявністю тенденції вчинення терористичних актів, утворення терористичних груп та організацій, фінансування тероризму.

Ключові слова: тероризм, терористичні групи, фінансування тероризму, склад злочину.

Шепітько М. В. Терроризм в Украине: состав преступления, статистика и причины совершения

Статья посвящена рассмотрению уголовной статистики, состава преступления и причин совершения террористических актов в Украине. Проанализирована статистика совершения преступлений террористической направленности в Украине с 2009 г. по 2015 г., выявлены некоторые тенденции. Особое внимание уделено исследованию состава преступления «Террористический акт» (ст. 258 УК Украины). В статье отмечается наличие определенной связи между политическими и историческими событиями в Украине и тенденциями по совершению террористических актов, созданию террористических групп и организаций, финансирования терроризма.

Ключевые слова: терроризм, террористические группы, финансирование терроризма, состав преступления.