



CURRENT ISSUES OF QUALIFICATION AND DIFFERENCE BETWEEN THE ACT OF TERRORISM AND SABOTAGE

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The article is dedicated to the research of peculiarities of qualification of the act of terrorism and sabotage. The following criminal legal description of these crimes is aimed at determining their common and individual characteristics that allows to differentiate their law enforcement activities.

The study focuses on the issue of the need to improve anti-terrorist legislation, which is directly aimed at combating and preventing terrorism. For this purpose, the proposed definition of the content of some concepts is an important step to clarify the content and extent of the relevant criminal law standards and separate them from related illegal actions.

Key words: criminal liability, crime, qualification of acts, crimes differentiation, act of terrorism, sabotage.

Articolul este dedicat cercetării particularităților de calificare a actului de terorism și sabotaj.

Descrierea juridică penală a acestor infracțiuni are ca scop determinarea caracteristicilor comune și individuale care permit diferențierea aplicării legii.

Studiul se concentrează pe problema necesității de îmbunătățire a legislației anti-teroriste, care urmărește în mod direct combaterea și prevenirea terorismului. În acest scop, a fost propusă definiția conținutului unor concepte, fiind un pas important pentru a stabili conținutul normelor de drept penal relevante și să fie efectuată diferențierea de alte acțiuni ilegale conexe.

Cuvinte cheie: răspunderea penală, infracțiune, calificarea infracțiunilor, diferențierea infracțiunilor, act de terorism, sabotaj.

Formulation of the problem. The modern political course of our country, connected with Ukrainians' aspiration for European integration, led to the rapid spread of a type of crime not typical for Ukraine across the country. The aim of committing crimes is solving political and economic issues by bringing illegal demands to the authorities and representative bodies, political parties, public and religious organizations, enterprises, institutions, organizations, intimidating the population and individual citizens with the aim of forcing to perform or refrain from certain actions. These requirements are rarely combined with the real threats and serious crimes: arson, bombings, the use of toxic

substances, hostage-taking, etc. This criminal activity creates a state of instability, tension, fear in society or in certain groups of the population, causing harm to public safety or posing a threat of the same, etc. Such acts are called terroristic crimes [1, p.72].

Improvement of the existing legislation, implementation of international laws in the domestic criminal law in modern conditions is a necessity connected with the implementation by Ukraine of obligations of international laws and bilateral agreements.

Currently, special attention is paid to improving anti-terrorist legislation, which is directly aimed at combating and preventing terrorism. To

determine the content and extent of anti-terrorist legislation, it is important first of all to clarify the content and limits of such an act as an act of terrorism and to separate it from the adjacent illegal actions [2, p.91].

Research on the topic. Publications of V. Antypenko, O. Bantyshev, L. Bahryi-Shakhmatov, R. Hasanov, V. Zelenetsky, V. Yemelianov, V. Kovalenko, V. Zhuravlov, V. Lipkan, S. Mokhonchuk, V. Nastiuk, V. Pylypchuk, B. Romaniuk, etc. are devoted to theoretical research of problems of qualification and differentiation of the act of terrorism and sabotage.

Purpose of the article is to analyze the characteristics of qualification and problems of differentiation of the act of terrorism and sabotage.

Statement of the material. In recent decades, terrorism has become threatening in its scale worldwide. This phenomenon is especially destructive and dangerous in eastern Ukraine, where the anti-terrorist operation is conducted currently, and national military people confront to terrorist threats every day. These circumstances determine the need for preventive measures on the spread of terrorism and its tools – acts of sabotage throughout the country.

It should be noted that the issue of determination of a separate group of terrorist crimes and determination of an exhaustive list of such crimes in the domestic science remains controversial. In particular, M.I. Bazhanov observes that in criminal law, the notion of terrorist crimes is redundant because it is vague, resulting in such a concept being impossible for criminal law [3, p. 215]. However, most scientists and legal practitioners are convinced of the need to distinguish in the domestic criminal code of a specific crime called “terrorism” [1, p. 73].

In addition to the above, in modern Ukraine, there is a significant spread of actions associated with committing acts of sabotage. The great social danger of such acts is due to the fact that even a single act of sabotage could cause significant damage to the economy, disrupt the order of one or another industry. It is also necessary to remember that these offenses lead to serious moral and political damage. In modern conditions, the danger of sabotage increases due to new weapons of mass destruction of enormous destructive

power, chemical and biological weapons of substantial efficiency. This fact necessitates a more detailed study of signs of such related crimes as an act of terrorism and sabotage, including features that define the structural differences between the considered crimes for more correct classification for these acts [4].

The current Criminal Code of Ukraine refers acts of terrorism to Chapter IX of the Special Part “Crimes Against Public Security” and defines it as the use of weapons, making an explosion, arson or other acts endangering the life or health, or causing significant property damage or other grave consequences, if such actions were committed to violate public security, to intimidate the population, to provoke a military conflict, international complications, or to influence decision-making or committing or non-committing acts by the government or local authorities, officials of these bodies, associations of citizens, legal persons, or to draw public attention to certain political, religious or other views of the perpetrator (terrorist), as well as a threat of committing the said actions for the same purposes.

In the science of criminal law, there are four interrelated features of an act of terrorism: a) committing or threatening the commission of generally dangerous acts; b) public nature of the commitment to achieve a wide response; c) deliberate creation of an atmosphere of fear, social tension in order to intimidate the population or its part; d) the use or threat of violence in respect of an indefinite number of persons or property for the purpose of forcing designated persons for certain behavior. Given the nature of qualification, an act of terrorism should be distinguished from related offenses, and especially from the sabotage.

As a result of committing sabotage, a state of fear may occur in any populated area or in a group of people. However, we must realize that this emotional state arises after the fact, as a result of committing crimes without intent to create it, while the actions of terrorists are aimed at creating a climate of fear among the population and to use such circumstances to achieve other goals. So we can conclude that sabotage is completed with an act of violence, and the act of terrorism just begins from such violence [2, p. 92].

At the same time, when committing sabotage, the criminal's actions are aimed at harm, and in the commission of an act of terrorism, criminal activity is aimed at intimidating the population or its part, creation and maintenance of a state of terror. In addition, the purpose of committing acts of sabotage is weakening the state, undermining its economic security and national defense, but as for the act of terrorism, its purpose is forcing the adoption of a decision or rejecting it. Meanwhile, saboteurs act in secret, trying not to publicize their activities, and terrorists commit crimes openly, defiantly, announcing their claims [2, p. 92].

In the Criminal Code of Ukraine, sabotage is referred to Section I of the Special Part "Crimes Against National Security". The said crime components under Art. 113 of the Code are defined as the commission of explosions, arsons or other actions aimed at the mass destruction of people, causing bodily injury or other harm to their health, destruction or damage to objects that have great economic or defensive value, and committing actions with the same purpose, aimed at contamination, mass poisonings, spread of epidemics, epizootics or epiphytoticies in order to weaken the state [5].

So we see that the act of terrorism has much in common with sabotage. However, each of these crimes has individual characteristics that contribute to their proper qualification and distinguishing these acts. For this purpose, it is necessary to pay attention to the objective side of the crime under Art. 113 of the Criminal Code of Ukraine. The specified act is committed in the form of: explosions, arsons or other actions aimed at the mass destruction of people, causing injuries or other damage to their health; explosions, arsons or other actions aimed at the destruction of or damage to objects that have great economic or defensive value; actions aimed at radiological contamination; actions aimed at mass poisoning; actions aimed at epidemics; actions aimed at spreading epizootics; actions aimed at spreading epiphytoticies. So the sabotage is defined by a set of characteristics, features and essential peculiarities inherent in it as military and political and legal categories that make up the inner meaning of this criminal act. Sabotage is primarily aimed at

weakening the state, causing much damage to its economic system [6].

However, the diversion is characterized by special orientation of acts and the subjective side specifics. This act is aimed at undermining the constitutional order and security as the most important constituents of society. [7]

In the disposition of sabotage article, the legislator emphasizes the objective of this act: causing injury to people, destruction or damage to property facilities. Commission of an act of terrorism involves injury to the public, it is committed in a generally dangerous way and is essentially a form of mental pressure on people and a means of intimidation. The hazard of terrorism lies in the many threats to society, numerous human losses, causing material damages, destabilizing the situation in a particular region or in the country as a whole; it creates intense moral and psychological atmosphere, spreads fear of citizens for their lives and health.

Terrorism became a global social and even political problem largely due to the low probability of its vulnerability in the modern world and high efficiency of impact on many objects of crime. Uncertainty of the direct object of terrorist attacks contributes to the globalization of terrorism, causes its increased danger for vulnerable people who are not involved in the essence of the conflict. A unique feature of an act of terrorism is a way of committing this crime in the form of threats to commit certain illegal acts. As for the sabotage, its committing by threats is not regulated in the current Criminal Code of Ukraine.

When making a distinction between sabotage and an act of terrorism, one should pay attention to the time of crime as an important element that demonstrates the difference between these actions. Thus, since the commission of criminal acts defined (explosion, arson, spread of epidemics, epizootics and other activities, according to the dispositions of Art. 113 of the Criminal Code), sabotage is considered complete. However, the actions on explosion or arson are only a beginning of the performance of the objective part for an act of terrorism. After this stage of the criminal activity and creating an atmosphere of fear among the population, subjects committing acts of terrorism connect their further actions

with coercion of an object of influence to certain behavior, which is the real purpose of the crime.

Sabotage and the act of terrorism differ on such subjective grounds as the purpose content. The purpose of committing sabotage, as opposed to the act of terrorism, is to weaken the state, which may be followed by its destruction as a political organization of society. Regarding public concern arising after sabotage, it is not covered by the crime. [8]

At the same time, the widest spread of information about the commission or preparation of an act of terrorism is the primary tactics of terrorists. The act of terrorism, which is left unnoticed, loses its meaning. As for the sabotage, a direct disruptive action that implies a loss for the enemy is inherent in it. Thus, another difference of these crimes is a subject's interest in publicity.

Simulation of a man-made disaster, accident or force action carried out by another force is the aim of a saboteur. Real performers prefer to blame alleged perpetrators for such sabotage as assassinations committed by secret services. The public response to an act of terrorism, which is on the contrary necessary for terrorists to change public attitudes, influences on mass psychology. Terrorist organizations demonstrate their strength and willingness to go all the way, sacrificing both their own lives and the lives of victims. A terrorist loudly declares that this society has the force that will under no circumstances accept the existing order of things, and will fight it to the finish. [9]

Conclusions. Summarizing the research, we can state that sabotage and acts of terrorism are completely different concepts, although they have common features, which consist in the focus on the damage to an infinitely wide range of people and damage or destruction of material objects.

Fundamentally distinguishing features of these crimes are: a) the absolute legal certainty of forms of crime under Art. 113 of the Criminal Code of Ukraine, as opposed to Art. 258 of the Criminal Code of Ukraine, to which a variety of actions can be assigned; [10] b) the purpose of committing a crime is different – when committing an act of terrorism, actions of criminals are aimed at intimidating the population, destabilizing the situation, and when committing sabotage

– at the infliction of substantial harm to the economic system of the state.

In view of the above, given the dynamic development of society, world technology, and criminal techniques and the system of law, the issue of the correct qualification and delimitation of sabotage and acts of terrorism will require revision and improvement.

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