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**CRIMES AGAINST PUBLIC SECURITY
(ILLEGAL TURNOVER OF WEAPONS, TERRORISM)**

In the scientific article the definition of public security as the object of the crimes in question is given. The legal nature of the weapons and other objects of increased danger to others is considered. Objective and subjective signs of crimes against public safety are analysed.

***Key words:** public security, crimes against public security, illegal turnover of weapons, terrorism.*

The security of the person is deemed in Ukraine to be one of the highest social values (Article 3, 1996 Constitution of Ukraine). Crimes against public security harm the security of people and, moreover, represent a high social danger. Underlying public security is the natural right of people to life and the defense thereof consolidated by the 1996 Constitution (Article 27). Therefore, social danger is relegated by the legislator to the category of basic values, or objects, legal provision for the protection of which is the task of the 2001 Criminal Code of Ukraine (Article 1); in the Special Part thereof responsibility is provided for the first time for an infringement on this object in an autonomous Section (Section IX).

The problems of security have always been and remain topical for man, society, and mankind. Security is a most essential requirement, and the provision thereof cannot be left for the moment. It is one of the main indicators of the quality of life. The last is reduced if the requirements of people are satisfied worse under the impact of inadequacy and a surfeit of security.

The fact is that the security of people requires the adoption of respective security measures. However, they are linked with certain limitations of rights and freedoms of man and citizen. The forming of the security of society, establishment of the correct, or optimal, balance between security and freedom, and also the definition of the concept of crimes against public security is one of the urgent

problems of a democratic, rule-of-law State. As noted in doctrinal writings, however, the majority of norms of the 2001 Criminal Code concerning the criminal-law protection of public security against socially-dangerous infringements have been little studied and difficulties arise when qualifying them and isolating them from other crimes in law-application practice¹.

Developing numerous and complex issues of responsibility for individual crimes against public security, especially terrorism and illegal turnover of weapons, cannot be fruitful unless there is a general theoretical foundation underlying this. Only the exposure of the essence of public security, establishment of the general indicia of crimes against it, definition of the concept of these infringements, makes it possible to develop recommendations for the correct and most effective application of respective criminal-law norms and the improvement thereof.

The social danger of crimes against public security lies in the fact that they violate normal (safe) conditions of life of an indefinite group of people, their quiet existence, and create a general danger — conditions for the commission of especially grave crimes and the ensuing of other grave consequences, and often cause them, generating a situation of social alarm, apprehensions, and fear for life, health, disorganize the activity of people, relations between them, and weaken social ties.

Public security as a generic object of crimes is a system of social relations ensuring the defense of the activity of life, averting a threat to the natural existence of people and deprivation of their life and health.

The generally-dangerous character of crimes against public security is conditioned by the object thereof and the fact that their subject-matter and/or means (implement) is a weapon or other by their nature lethal sources which are used or might be used as a weapon, as a means of destruction, or defeat. These are

¹ See V. V. Stashys, «Вступне слово» [Introduction], in V. V. Stashys (ed.), Проблеми відповідальності за злочини проти громадської безпеки за новим Кримінальним кодексом України [Problems of Responsibility for Crimes against Public Security in the New Criminal Code of Ukraine] (Kharkov, 2003), p. 9.

criminal organizations, terrorist groups, and other stable criminal associations and articles representing a high danger for those around them. Stable criminal associations by their nature use or might use threat or force, are always ready to assist their participants and other armed criminals to take advantage of a weapon and, consequently frighten people, cause a feeling of danger, generate in people alarm for their life.

The use of a weapon of mass destruction, development thereof, production, acquisition, storage, sale, and transporting are crimes against the security of mankind (Articles 439 and 440, 2001 Criminal Code).

The safety of production and safety of movement and operation of transport are special types of public security and therefore crimes against them have been provided in Section X and XI of the Special Part of the Criminal Code, respectively.

There are relegated to articles representing a high danger for those around them: certain types of weapon (Articles 257, 258, 260, 262-264, Criminal Code); radioactive, chemical, biological, and explosive materials, substances, and articles (Articles 257, 258, and 259-261, Criminal Code); combat ammunition (Articles 257, 258, 260-264, Criminal Code); explosive substances (Articles 257, 258, 259, 260, 262, 263, 267, and 269, Criminal Code); explosive devices (Articles 257, 258, 259, 260, and 262, Criminal Code); radioactive materials (Articles 257, 259-262, 265-267, Criminal Code); nuclear explosive device or device spreading radioactive material or radiation (Article 2651, Criminal Code); flammable substances (Article 267(2) and 269, Criminal Code); caustic substances (Article 267(2), Criminal Code); and dangerous wastes (Article 268(2), Criminal Code).

The nature of the weapon and other articles representing a heightened danger for those around lies in the fact that they are sources of heightened danger for human life and health, property, and the environment. This is in internal, inherent capacity to destroy or damage the environment, that is, having injurious effects, which are an objective and basic indicia thereof. Therefore, the articles of crimes

against public security should be fit for causing destruction, injury, and destruction of those surrounding, have the properties of injuring a person, causing death or bodily injuries, or significant property damage. If these articles do not have these indicia of fitness, handling them cannot cause harm to public security.

Weapons and other articles representing a heightened social danger for surrounding persons are intended or may be used as means of injuring a live target or destroying or damaging the environment.

When in order to resolve the issue of whether respective articles are a weapon, radioactive, chemical, biological, or explosive materials, substances, articles, ammunition, explosive devices, explosives, caustic, or flammable substances, and also in order to elicit their fitness for use for their special-purpose designation, special knowledge is necessary and an expert examination should be designated. Only the participation of a specialist is sufficient to determine the fitness of an article for use for its special-purpose designation.

In order to avert the danger of causing harm to human life and health and other values of society, avert accidents and crimes with the use of a weapon and other articles representing a heightened danger for surrounding persons, and use them only for socially-useful purposes, a whole system exists of norms or rules for handling them — the procedure for their manufacture, acquisition, repair, storage, wearing, use, recording, carriage, sending, and so on. These rules may be both generally-accepted and established by the State. Requirements which the behavior of people should meet from the standpoint of defense, guarantee of the preservation of human life and health, ownership, and other valuables against the danger of these articles, that is, from the standpoint of public security, are the content thereof. Therefore, these rules are called safety rules. Handling a weapon and articles representing a heightened danger for surrounding persons in precise conformity with these rules, reflected in the specific behavior of people who are participants in social relations, does not create a danger of causing harm, prevents this danger, ensures the safety not only from negligent crimes and accidents, but

also from intentional infringements with the use of these articles.

The objective side of crimes against public security lies in the socially dangerous, unlawful act (action or failure to act) which violates the security (or defense) of the natural existence of an indefinite group of people, creates a common danger (conditions) of their perishing or ensuing of other grave consequences, or causes such consequences.

The absolute majority of crimes against public security is crimes with a formal constituent element and may be committed only by means of an action. Certain crimes against public security have material constituent elements (Articles 264, 267, and 270, Criminal Code) and may be committed by means of an action or a failure to act. These crimes provided for two types of consequences: the creation of a danger of grave consequences ensuing (Article 267(1), Criminal Code); the actual causing of material harm (Article 264, Criminal Code); or harm to human health or property damage on a large scale (Article 270(1), Criminal Code). But when these crimes are committed, the creation of a general danger (or conditions) of causing grave harm is a necessary stage or consequence.

The perishing of people or other grave consequences are qualifying or especially qualifying indicia of certain crimes against public security (Articles 258(2) and (4), 259(2), 260(5), 265(3), 265X3), 267(2), 267(4), 269(2), and 270(2), Criminal Code).

By perishing of people is understood the ensuing of death, even of one person. Other grave consequences are the causing of grave bodily injuries, even of one person; average gravity — to two or more persons, property damage on an especially large scale to any juridical or natural person, and so on.

Where the law provides for a material constituent element, including a consequence in the form of the creation of a danger to life or health or the ensuing of other grave consequences, a causal link is the obligatory indicia of the objective side.

The causing of harm to life and health or property damage may also be a

means of the commission of crimes against public security (for example, Articles 258(1), 261, 262, and 265, Criminal Code). Depending on the gravity of the said harm, it is either encompassed by Articles of the Criminal Code concerning responsibility for crimes against public security or requires qualification for the aggregate of the respective crimes. But in all instances public security must always be disturbed and the danger of the ensuing of grave consequences must be created.

The subjective side of crimes against public security with a formal constituent element is direct intent, and crimes with a material constituent element — negligence. Mixed form of guilt is possible in the last crimes, which provides for intent for the act (for example, violation of certain safety rules) and negligence towards the consequences (for example, the perishing of people).

The motives and purpose of the majority of crimes against public security are not obligatory indicia and may be various.

The subject of crimes against public security is, as a rule, any person who has reached a certain age. Responsibility under the 2001 Criminal Code for banditry (Article 257), terrorist act (Article 258), stealing (theft, robbery, assault with intent to rob) and extortion of a firearm, ammunition, explosive substances, or radioactive materials (Article 262) ensues from the age of fourteen (Article 22(4)), and for other crimes against public security, from the age of sixteen (Article 22(1)).

Consequently, crimes against public security are socially-dangerous guilty acts provided by the Criminal Code (action or failure to act) committed by subjects of the crime violating the security (or defense) of the natural existence of an indefinite group of people and creating a general danger (or conditions) of their perishing or the ensuing of other grave consequences or causing such consequences.

Unlike crimes against the life or health of a person (Section II, Special Part, Criminal Code), crimes against public security infringe not the life or health and not the personal security of individual people, but the general safety, the security of an indefinite group of people, and therefore are generally-dangerous acts. Also

unlike I In said crimes which, as a rule, require the real causing of harm to life 0 health, in order to determine the infringements of completed crime against public security it is necessary, as a rule, for the very creation of a general danger (or conditions) causing grave harm to be created the real causing of harm to life, health, ownership, the environment and so on in crimes against public security acts as a means or indicator of the creation of a general danger or infringement on public security.

The concept formulated of crimes against public security ma serve as the basis for further development of issues of criminal responsibility for specific crimes against public security and the construction of new criminal-law norms of the protection of public security.

Innovation and technological developments lead to the emergence of new sources of energy, materials, heightened dangers for life and health, including earlier unknown dangers, an increase of then capacity, growing risk of the ensuing of grave consequences when violating safety requirements. Criminal responsibility for a violation of safety requirements should in greater measure be so construed that not only the causing of grave harm would be deemed to be punishable, but also the creation of the danger of causing it.

The emergence of new threats to the security of people and re evaluation of traditional ("old") ones leads to a material expansion of the scope of the concept of public security as an object of crimes and respectively an increase of the types of these infringements.

Ensuring human security, including with the assistance of criminal-law norms, is an objective natural and unending process Therefore, whereas the 1960 Criminal Code of the Ukrainian SSK in the Section "Crimes against Public Security, Public Order, and Public Health" initially had only five Articles which provided responsibility for crimes against public security and gradually (lieu number increased to eight Articles, the 2001 Criminal Code of Ukraine in Section IX of the Special Part of the Criminal Code, "Crimes against Public Security",

contained twice as many and now there are 23 Articles. Relatively recently Section IX of the Criminal Code was augmented by new provisions: involvement in the commission of a terrorist act (Article 258¹); public appeals to commit a terrorist act (Article 258²); creation of a terrorist group or terrorist organization (Article 258³); assisting the commission of a terrorist act (Article 258⁴); financing terrorism (Article 258⁵); illegal manufacture of a nuclear explosive device or device spreading radioactive material or radiation (Article 265¹); and violation of the radiation safety regime (Article 267¹)².

It follows from the above that the legislator devoted more attention to responsibility for terrorism and related, just as with other violent crimes, illegal handling of weapons. In accordance with the 1997 United Nations Declaration on Crime and Public Security, member States shall seek to protect the security and well-being of their citizens and all persons within their jurisdiction by taking effective national measures to combat serious transnational crime, including organized crime, illicit arms trafficking, terrorist crimes, and others.

Research into responsibility for terrorism, illegal arms trafficking, and other crimes against public order shows the need to bring the norms of the 2001 Criminal Code on terrorism into full conformity with the 2005 Convention of the Council of Europe on the Prevention of Terrorism, ensure the implementation in national legislation of other convention norms and international standards for counteracting crimes against public security; take measures to eliminate the financial and economic base for the existence of criminal associations; clarify the correlation of sanctions of Articles of Section IX of the Special Part of the Criminal Code, "Crimes against Public Security", with the sanctions of Articles of other sections of the Special Part of the Criminal Code; unify and give definitions of terms for the conceptual apparatus of legislation on counteracting crimes against public security; develop and introduce in the Criminal Code new incentive norms (norms of crimi-

² See *V. P. Tikhyi, Відповідальність за злочини проти громадської безпеки [Responsibility for Crimes against Public Security]* (Kyiv, 2010), pp. 25-35.

nal-law compromise) for relieving from criminal responsibility³; bring norms of the Criminal Code and norms of the Code of Ukraine on Administrative Violations into conformity; widely introduce preventive measures for averting terrorist acts; strengthen control over the handling of weapons, ammunition, explosive substances, radioactive materials, and so on. It is essential also to expand the subject-matter of the crime provided for by Article 262 of the Criminal Code by relegating to it other types of weapons, combat substances and parts of these articles, provide criminal responsibility for making objects unfit which are life support for the population (catastrophic winter-heating experience of Alchevsk in 2006), and finally, introduced all the recommendations of the International Scientific-Practical Seminar "Problems of Responsibility for Crimes against Public Security under the New Criminal Code of Ukraine"⁴.

Тихий В. П. Злочини проти громадської безпеки (незаконний обіг зброї, тероризм)

Дається визначення громадської безпеки як об'єкта аналізованих злочинів. Розглядається правова природа зброї та інших предметів, що становлять підвищену небезпеку для оточуючих. Проаналізовано об'єктивні та суб'єктивні ознаки злочинів проти громадської безпеки.

Ключові слова: громадська безпека, злочини проти громадської безпеки, незаконний обіг зброї, тероризм.

Тихий В. П. Преступления против общественной безопасности (незаконный оборот оружия, терроризм)

Дается определение общественной безопасности как объекта рассматриваемых преступлений. Рассматривается правовая природа оружия и других предметов, представляющих повышенную опасность для окружающих. Проанализированы объективные и субъективные признаки преступлений против общественной безопасности.

³ The modern policy of counteracting criminality is based not only on the conception of "the guilty person must be punished". An obvious departure from this provision and partial refutation thereof is the existing block of criminal-law norms which establish the grounds for relieving a person from criminal responsibility and punishment. The provision that intensifying the severity of punishments, it has become generally acknowledged, is not the best means of combating criminality.

⁴ V. V. Stashys (ed.), Проблеми відповідальності за злочини проти громадської безпеки за новим Кримінальним кодексом України [Problems of Responsibility for Crimes against Public Security in the New Criminal Code of Ukraine] (Kharkov, 2003).

Ключевые слова: общественная безопасность, преступления против общественной безопасности, незаконный оборот оружия, терроризм.