

DOI: 10.33270/0525676812.9
УДК 343.326(477)"364"

VYHIVSKYI Ivan

PhD in Law, Employee of the National Police of Ukraine
Kyiv, Ukraine
ORCID: <https://orcid.org/0009-0007-6942-9429>

COUNTING TERRORIST ACTIVITIES ON THE TERRITORY OF UKRAINE IN THE CONDITIONS OF ARMED CONFLICT

Abstract. *The purpose of the article is to analyze the mechanisms countering terrorist activities on the territory of Ukraine in the conditions of armed conflict. Methodology. General scientific methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction, and modeling) were used, with the help of which the mechanism of countering terrorist activities on the territory of Ukraine in the conditions of armed conflict was analyzed. Results. The definition of the concept of terrorist activity is established as a type of criminal illegal activity that is directed against public security or international legal order to achieve political goals by means of violent coercion. Terrorism, in the conditions of the armed conflict in Ukraine, should be equated with terrorist activity in terms of meaning, because in the conditions of countering such a negative phenomenon, the essential features of both concepts are the same, and therefore the volumes of their content may be identified. Also, it is established that certain countries and international institutions have an arsenal of proven mechanisms for combating crimes related to terrorist activities, particularly at the international level, and continue work on determining the most effective areas of this activity, eliminating contradictions and inconsistencies. Practical implications. In order to properly consolidate the evidence regarding preparation for the commission of a terrorist act, a list of actions of authorized persons during the simulation of the crime as a form of control over the commission of the crime is proposed, namely: preparation and execution of all procedural documents; making a decision to use deceptive (imitation) means; direct conduct of covert investigative (detective) actions with proper fixation by technical means; procedural registration of the results, and the identification and detention of suspects in the commission of a crime.*

Keywords: terrorism; terrorist activity; terrorist act; crime; countermeasures; criminal proceedings; pre-trial investigation; covert investigative (search) actions.

Рекомендоване посилання:

Vyhivskyi I. Counting terrorist activities on the territory of Ukraine in the conditions of armed conflict. *Hayka i pravoohorona*. 2025. Вип. 1–2 (67–68). С. 67–75. DOI: 10.33270/0525676812.9

1. Introduction

Today, the world community faces qualitatively new multi-vector security threats of a natural, man-made, and social nature. These are climate change, the permanent destruction of the environment, and outbreaks of epidemics and pandemics both new and previously known, but seemingly overcome, forever diseases, the development and rapid spread of information and telecommunication technologies and robotics which are being used for destructive purposes, and the transformation until recently established geopolitical relations, etc. In response, threatening military conflicts have begun to emerge more and more often, and international terrorism on behalf of extremist organizations and individual political leaders is intensifying, leading to appropriate calls are being made with threats to democratic forces and institutions and ideas are being expressed to redistribute the spheres of influence on world geopolitical and economic

development between the leading, or and countries that refer to them (Hora et al., 2022).

The conditions of the armed conflict against Ukraine lead not only to a significant increase in the number of illegal means of destruction, but also to an increase in the level of particularly serious criminal offenses of a terrorist nature, which are committed by organized groups and criminal organizations through cooperation with corrupt officials and criminality. Such negative trends create new threats and challenges, such as the Ukrainian criminal world cooperating more and more actively with terrorist groups of countries both near and far abroad (Tsiupryk, 2019). Since the beginning of the full-scale invasion, as of the beginning of 2024, 113,603 criminal proceedings have been initiated due to crimes committed on the territory of Ukraine by servicemen of the armed forces of the Russian Federation and their accomplices, of which 49 are related to terrorist activities (Articles 258–258-6 of

the Criminal Code of Ukraine) (About registered criminal...).

In such conditions of an armed conflict, among the problems accompanying this massive and multifaceted threat to society, the issues of countering terrorist activities by forming an arsenal of techniques and methods aimed at detecting, investigating and preventing certain types of crimes that lead to in-depth analysis and study require the issue of combating terrorist activity, forming an arsenal of techniques and methods aimed at detecting, investigating and preventing certain types of crimes related to terrorist activity, and minimizing their socially dangerous consequences to be considered. One of the priorities is to improve the activities of pre-trial investigative bodies and special units for combating organized crime and terrorism of the Security Service of Ukraine and the National Police of Ukraine.

Research considering practical aspects of combating certain types of terrorist crimes has been conducted by R. V. Antonyuk, A. O. Danylevskyi, V. V. Krutov, B. D. Leonov, V. A. Lipkan, L. V. Novikova, and M. V. Rybachuk, M. V. Semikin, O. V. Shamara, and others. In the works of O. V. Baulin, T. M. Bulba, M. V. Kostenko, M. O. Lenko, R. V. Melnyk, M. A. Mykhaylov, V. V. Polishchuk, O. V. Sav'Yuka, T. V. Skubi, M. S. Tsutsiridze, I. V. Tsyupryka, criminal procedural and forensic aspects of the investigation of crimes related to terrorist activities are discussed. L. I. Arkusha, M. V. Bagrii, V. V. Lutsik, M. A. Pohoretskyi, D. B. Sergeeva, O. S. Tarasenko, O. Yu. Tatarov and others devoted their works to the specifics of covert investigative (detective) actions (CIDA).

The doctrinal provisions formulated by the aforementioned authors have an important methodological significance. At the same time, the modern realities of the development of crime related to terrorist activity testify that it has acquired a fundamentally new quality, transforming not only into criminal organizations of various degrees of complexity, number and scale of influence, but also capable of forming quasi-state associations of criminal orientation in conditions of armed conflict. This is why the problem of combating terrorist activity in the conditions of an armed conflict requires a more detailed study.

2. Definition of the concept of "terrorism" and terrorist activity

The development of the processes of worldwide globalization has led to the emergence, assertion and promotion by individuals of the idea of terror as a tool for controlling society with the help of violence, often brutal, merciless and devastating, which has resulted in the so-called "hybrid" and, in essence, terrorist wars, which are characterized by a rejection of law as a means of limiting violence. In the context of waging "hybrid wars", new types of terrorist attacks directed against certain objects vital for ensuring the security of the state and its citizens

can become especially dangerous. Criminal encroachments on such objects cause serious damage not only to a certain state, individual owners of large industrial, transport or other objects, or ordinary citizens, but can also be directed against current and future generations of the population of certain territories, regardless of borders of neighboring and even distant states (Hora et al., 2022, p. 8-9).

As S. A. Kuzmin and M. Yu. Azarov emphasize, terrorism and its manifestation – terrorist activity in various external forms – is one of the most dangerous types of criminal activity (Kuzmin, & Azarov, 2012, p. 43). Researchers' approaches to this problem are determined by the fact that terrorism is directly related to the problem of the survival of humanity, ensuring the security of states. As an extreme form of social, ethnic, and/or religious radicalism and extremism, it is entirely focused on the realization of its goal. Moreover, this criminal phenomenon has seen steady growth worldwide (Zhuravlova, 2014, p. 70).

According to M. V. Semiki (2004), the concept of "terrorism" should be considered at three levels: in the narrow sense, terrorism includes committing or threatening to commit an explosion, arson, and other socially dangerous actions aimed at intimidating the population in order to influence decision-making. In a broad sense, terrorism includes all crimes of a terrorist orientation, which also aim to intimidate the population in order to achieve certain goals. In the broadest sense, terrorism includes the creation of terrorist groups, their leadership or participation in them, as well as any facilitation of their activities. The author believes that these levels of concepts of terrorism correspond to the terminology used in the legislation of Ukraine on combating terrorism (Semykin, 2004, p. 11).

V. S. Kantsir (2011) considers terrorism to consist of crimes against public safety, which include explosions, arson and other actions that can lead to the death, significant material losses or other dangerous consequences. These actions are carried out with the aim of violating public safety, intimidating the population or influencing the decisions of authorities, as well as implying the threat of committing similar acts in the future (Kantsir, 2011, p. 16).

According to I. V. Tsyuprik (2019) and M. O. Semenyshyn (2020), terrorist activity is a type of illegal activity directed against public safety or the international legal order to achieve political goals by terrorists through violent coercion of state authorities (Tsiupryk, 2019; Semenyshyn, 2020). Terrorism should be equated with terrorist activity in its semantic meaning. This approach is justified from the point of view of criminal investigation, since there are no sufficient grounds for distinguishing between the concepts of "terrorism" and "terrorist activity" due to the essential features of both concepts largely being the same, and therefore the scope of their content also

coincides. According to Part 1 of Art. 1 of the Law of Ukraine "On Combating Terrorism" (Law of Ukraine No. 638-IV, 2003), terrorist activity is an activity that includes: planning, organization, preparation and implementation of terrorist acts; incitement to commit terrorist acts, violence against individuals or organizations, or destruction of material objects for terrorist purposes; the organization of illegal armed formations, criminal groups (criminal organizations), or organized criminal groups to commit terrorist acts, as well as participation in such acts; recruitment, arming, training and use of terrorists; propaganda and spread of the ideology of terrorism; or, lastly, financing and other facilitation of terrorism. Therefore, terrorist activities must be understood as criminal illegal acts – crimes provided for in Art. 258, 258-1–258-5 of the Criminal Code of Ukraine.

Currently legal scholars emphasize that terrorism is the object of numerous political speculations, manipulations and double standards, which is a powerful factor in the development of a generally accepted academic understanding of this concept. This is primarily facilitated by the substitution of concepts, which is allowed by representatives of state institutions, power structures, the political establishment, the media, and even researchers for political and/or ideological reasons. It consists of an attempt to mix the concept of terrorism with other negative phenomena of social reality, such as terror, extremism, genocide, national liberation movements, ethnic conflicts, political murders and others, which creates real problems in identifying what constitutes terrorism. Also, it should be emphasized that at present terrorism is changing from a means of solving political, economic, theological or other goals into a self-sufficient, self-reproducing social phenomenon with its own anti-social ideology and logic of development. This seriously destabilizes the situation not only in individual countries, but also in the whole world (Hora et al., 2022, p. 8-9).

Modern terrorism is not only explosions, arson, mass murders, or the creation of an atmosphere of chaos and panic, but also a special worldview, which is based on the idea of intimidating or destroying one's opponents, building the desired future for oneself or for one's immediate environment, for like-minded people from number of representatives of their people through violence. At the same time, hiding behind national or quasi-national slogans or ideas of protection of certain religious beliefs and theological values, terrorists never defend purely national, international or religious interests. Their goal is the furthering of the interests of a narrow circle of persons, which always have a distinct economic basis. Terrorism is one of the most dangerous and complex phenomena of social life and the modern historical process. For this reason, there is still no universally-accepted approach to the interpretation of its essence even in the scope of international legal research (Zubach, 2015, p. 234).

3. International experience of combating terrorism in the world

The level of the terrorist threat in the world is currently quite high. Both countries with ongoing armed conflicts (primarily in the Middle East and Africa) and Western countries, which until recently were quite safe due to their developed systems of law enforcement and special services, suffer from it. In particular, the example of the United States can be used to illustrate a special mechanism that provides for the collection of evidence in proceedings on crimes related to terrorist activities. In this country, the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency (Foreign Intelligence) collect operational data to counter terrorism, as well as the FBI, which collects operational data to ensure internal security and search for evidence to ensure criminal prosecution. An obstacle to the effective transfer of information within the country was a restriction established at the initiative of the United States Department of Justice and subsequently canceled by a court decision adopted in 2002 in the case "In Re-Sealed Case, 310 F. 3rd 717" (US Foreign Intelligence Surveillance Court of Review, 2002). Permits for the use of electronic surveillance and other special operations for the purpose of gathering operational information about the activities of agents of foreign states and terrorists inside the country are issued by the Foreign Intelligence Surveillance Court in Washington, DC. The collection of evidence in criminal cases is authorized by ordinary federal district courts throughout the United States under another statute. Until 2001, internal rules of the Ministry of Justice imposed restrictions on the contact of investigative bodies and prosecutors with counterintelligence to prevent the use of methods employed by intelligence organisations during the investigation of criminal cases. The aim was to prevent the replacement of the strict criteria used in the collection of evidence for a court by the less strict evidentiary standards and more flexible operational rules typical of intelligence services. The wording of the corresponding law allowed the use of some intelligence methods of obtaining information on the territory of the United States under the more liberal regime provided for national security agencies, provided that the purpose of such use is the collection of intelligence data. Later, this law was changed, and now it is allowed to use similar methods also in cases where the collection of intelligence data is "one of the purposes". It no longer provides that a warrant for conducting special operations can be issued only for the needs of intelligence, but not for the collection of materials that can be useful both as intelligence and as evidence in court (Reznikova et al., 2017; Taran, & Tsiupryk, 2017).

Also, it is worth paying attention to the practice of the European Court of Human Rights. In

generalizing the practice of applying Art. 15 of the Convention, it is stated that in order to identify violations of the borders defined by states, the Court will focus on such factors as the nature of the rights violated by the retreat, the circumstances that led to the emergency, and its duration ("Brannigan and McBride v. the United Kingdom", § 43; "A. and others against the United Kingdom", § 173) (Taran, & Tsiupryk, 2017, p. 398). The Court in such circumstances considers the question whether the ordinary laws will be sufficient to prevent the danger caused by the emergency ("Lawless v. Ireland", § 36; "Ireland v. United Kingdom", § 212); whether the measures are an appropriate response to an emergency ("Brannigan and McBride v. the United Kingdom", § 51); whether the measures were taken for specified purposes ("Lawless v. Ireland", § 38); whether the derogation is limited by the nature and reasons for which it was based ("Brannigan and McBride v. the United Kingdom", § 66); whether the question of the necessity of retreat was controlled (ibid., § 54); the application of relaxation in the measures taken ("Ireland v. the United Kingdom", § 220); measures subject to safeguards (ibid., § 216-219; "Lawless v. Ireland", § 37; "Brannigan and McBride v. the United Kingdom", § 61-65; "Aksoy v. Turkey", § 79-84); the importance of the right to determine the limit and broader purpose of judicial control over the exercise of this right (ibid., § 76); whether there was judicial review of practical measures (ibid., § 78; "Brannigan and McBride v. the United Kingdom", § 59); whether these measures will be introduced with any unjustified discrimination ("A. and Others v. the United Kingdom", § 190); and positions of the national courts of the contracting states regarding the urgency of the applied measures. The court will be justified in adopting the opposing conclusions if it substantiates that the national court incorrectly interpreted Art. 15 or the judicial practice of the Court in accordance with this article or came to the conclusion that it is unfounded (ibid., § 174) (Restrictions during..., 2017).

Despite the fact that the fight against terrorism is recognized as a sufficient reason for a certain limitation of the scope of certain human rights, this does not mean complete, absolute freedom of action of the authorities, and in each case requires justification and the provision of evidence to confirm the expediency of applying measures that limit such rights. In addition, inhuman and degrading treatment or torture (Article 3 of the Convention) is not admissible under any circumstances (including emergency situations within the meaning of Article 15 of the Convention).

Thus, it is worth emphasizing that individual countries and international institutions have an arsenal of proven mechanisms for combating crimes related to terrorist activities, particularly at the international level, and continue work on determining

the most effective directions of this activity, eliminating contradictions and inconsistencies.

The most typical actions of terrorists are the organization of explosions in places of mass gathering of people. Cases of organizing explosions near the buildings of institutions and organizations that provide assistance to military units are not rare. With the adoption of the new Code of Criminal Procedure of Ukraine, investigators gained the right to obtain information about illegal activity in secret, that is, to conduct a covert investigation in accordance with the provisions of Chapter 21 of the Criminal Procedure Code (CPC) of Ukraine (Criminal Procedure Code..., 2012; Bahrii, & Lutsyk, 2017; Pohoretskyi, & Serhieieva, 2014).

4. Institute of clandestine investigative (research) actions

Thanks to the introduction of the CIDA institute into the criminal process, the bodies of pre-trial investigation received the opportunity to obtain evidence in criminal proceedings by clandestine means and methods. This is related to the legislator's consolidation of new forms of obtaining evidence by secret means and methods, in particular those related to interference in criminal activity (Pohoretskyi, & Serhieieva, 2014). Currently, the legislative consolidation of the CIDA institute provides a wide range of powers to the investigator, the prosecutor or, on their behalf, to the employees of the operational unit, namely to receive information about illegal activities hidden from the source of possession of such information.

The introduction of the CIDA institute by Chapter 21 of the Criminal Procedure Code of Ukraine, solving the problem of the legitimacy of obtaining classified information, removed the main advantage of obtaining information by informal means, which is the efficiency of obtaining and using such data for recording and stopping illegal activities. Primarily, this applies to crimes that contain signs of increased public danger, including terrorist activity.

Obtaining information at the initial stage of the pretrial investigation of criminal proceedings plays an important role in gathering evidence of the involvement of a person or persons in a certain crime. An extremely important place in this direction, in particular with regard to crimes related to terrorist activities, is the obtaining of information about illegal activities in a clandestine way, that is, during the CIDA. In addition, carrying out these actions within the framework of criminal proceedings for crimes related to terrorist activities helps to reveal previously unknown facts of illegal activity that cannot be obtained in any other way, and most importantly, to stop criminal activity at the stage of preparation, which contributes to the prevention of severe consequences.

The leveling of the efficiency of obtaining the necessary information by clandestine methods is caused by the complex procedure of procedural

registration of the initiation of the CIDA; namely, the lack of legal grounds for conducting the CIDA by an employee of the operative unit without the appropriate mandate of the investigator or prosecutor. An employee of the operational unit does not have the right to initiate the conduct of separate CIDA before the investigator or prosecutor (Articles 40–41, 246 of the Criminal Procedure Code of Ukraine), but must only carry out a specific CIDA for which the investigating judge has granted permission to conduct, and which the investigator or prosecutor gave a corresponding mandate to their implementation. The Criminal Procedure Code of Ukraine restricts the powers of an operational unit employee to take procedural actions in criminal proceedings on his own initiative or to petition the investigating judge or prosecutor, and in particular, to initiate the CIDA (Tsiupryk, 2019; Arkusha, 2013). In view of the above, a certain logic is followed, yet at the same time, the independence of the procedural activity of the operational unit employee is a debatable issue. In our opinion, the activity of an operational unit employee should be based on the implementation of "undercover work" in the interests of criminal proceedings.

However, there is a problem related to the aforementioned norms of the CPC of Ukraine. Yes, in accordance with the provisions of Art. 250 of the Criminal Procedure Code of Ukraine, the legislator gives the right to the investigator, the prosecutor or, on their behalf, to the employee of the operative unit, to start the CIDA (establishing the location of the radio-electronic device and monitoring the person) before the resolution of the investigating judge (Criminal Procedure Code..., 2012). Therefore, the investigator must agree with the prosecutor on the start of this CIDA, and the prosecutor must immediately after the start of said CIDA apply to the investigating judge with a corresponding petition. The investigating judge is then obliged to consider a request for permission to establish the location of a radio-electronic device or monitor a person within six hours from the moment of its receipt (Part 1 of Article 248 of the Criminal Procedure Code of Ukraine).

On the other hand, in practice, during the implementation of this norm, certain contradictions arise due to differences in the positions of the investigating judge and the investigator or prosecutor on the need to immediately conduct such an investigative action. In case of refusal (i.e. provision of a decision on refusal to grant permission to conduct CIDA) by the investigating judge in granting the request, such CIDA must be immediately terminated, and the information obtained as a result of its conduct must be destroyed (Article 255 of the Criminal Procedure Code of Ukraine). Such a refusal may lead to the loss of valuable information that could contribute to the identification of a person who has committed a criminal offense.

A similar situation arises in the case of committing a terrorist act remotely using a mobile phone (i.e. making a contact call to an explosive device). Under such conditions, it becomes necessary to carry out the aforementioned CIDA, in particular, in the case of establishing the mobile phone number from which the call to the explosive device was made, identifying persons whose observation may be of significant importance for achieving the goal of criminal proceedings. Note that these CIDA will not actually be related to saving people's lives or preventing the commission of a serious or especially serious crime, but to the direct identification of a person who could have committed such a criminal offense (and his direct prosecution) or one who possesses information, the knowledge of which will contribute to the establishment of a base of evidence.

Next, one of the effective methods of stopping crimes and obtaining evidence related to intervention in criminal activity is a type of CIDA which is control over the commission of a crime. It involves the intervention of a law enforcement agency in a crime and verification of the true intentions of the person whose actions are being verified. Among the forms of control over the commission of a crime, simulating the situation of the commission of a crime is relatively new and effective, with the help of which intervention in criminal activity is directly carried out in order to record the illegal actions of persons who are being documented.

Simulating a crime scene as a form of control over the commission of a crime is admissible only if there are sufficient grounds to believe that a crime is being prepared or a serious or particularly serious crime is being committed. The use of simulating the circumstances of the commission of a crime is possible only if, as a result of such actions, it is impossible to completely prevent: encroachment on life or causing serious bodily harm to a person (ot persons); the spread of substances dangerous to the lives of many people; escape of persons who have committed serious or particularly serious crimes; or ecological or man-made disaster, which is directly indicated in the imperative norm of Part 2 of Art. 271 of the CCP of Ukraine (Criminal Procedure Code..., 2012; Chystolinov, Cherkov, & Pasiaka, 2012). Thus, in accordance with criminal procedural legislation on the need to simulate the situation of the crime in the process of documenting the criminal activity of the persons under investigation during the investigation of crimes related to terrorist activity, the prosecutor issues a resolution on conducting this type of CIDA in the manner prescribed by law, which is assigned to investigative or operational workers who will conduct the investigative actions (Tsiupryk, 2017, p. 445).

It should be emphasized that the results of control over the commission of a crime, as well as any CIDA, are compiled into a report, in addition to

the information specified in Art. 104 of the Criminal Procedure Code of Ukraine, which determines the general procedure for drawing up protocols, additional items and documents received during this CIDA. If control over the commission of a crime ends with an open recording, a report is drawn up in the presence of such a person (Part 4 of Article 271 of the Criminal Procedure Code of Ukraine). In this case, a mandatory condition of the aforementioned is the display of information about such a person in the protocol and his signature in it, and in case of refusal to sign, the signatures of witnesses. The specified protocol is non-secret, and therefore, it provides an opportunity to use it during the selection of a preventive measure for the person against whom the crime scene was simulated.

Thus, simulating the situation of terrorist activity is CIDA, which consists of the actions of an investigator, an authorized person using simulation tools that create an image of the commission of a real terrorist act in order to prevent it and expose the known or unknown person(s) who planned or ordered its commission. It is also CIDA, which is a complex sequence of organizational and procedural actions of an investigator (another authorized person) using fake (imitation) means to create artificial conditions for terrorist activity and commit a real terrorist act with the aim of exposing and investigating the activities of terrorists. Imitation of the crime scene is sometimes the only way to prevent crimes, in particular those related to terrorist activities, and to document the criminal actions of those who conceived them and began to organize and implement them.

For the purpose of proper use when proving the results of simulating the crime scene, it is necessary to: indicate actions that make it impossible to cause serious bodily harm to a person (or persons) or encroachment on life and spread of substances dangerous to the life of a significant number of people (with mandatory reflection in the prosecutor's resolution), and during the production of pre-identified (marked) or false (imitation) means, take into account that the person involved in their production may be questioned as a witness.

5. Conclusions

Terrorist activity is a type of criminal illegal activity that is directed against public security or international law and order and to achieve political goals by means of violent coercion. Terrorism, in the conditions of the armed conflict in Ukraine, should be equated with terrorist activity in terms of meaning, because in the conditions of countering such a negative phenomenon, the essential features of both concepts are identical and therefore the volumes of their content may be identified.

It has been established that certain countries and international institutions have an arsenal of proven mechanisms for combating crimes related to terrorist activities, in particular at the international level, and also continue work on determining the

most effective directions of this activity, eliminating contradictions and inconsistencies.

In Ukraine, thanks to the introduction of the CIDA institute into the criminal process, the bodies of pre-trial investigation have received the opportunity to obtain evidence in criminal proceedings by secret means and methods. The introduction of the CIDA institute has contributed to solving the problem of the legitimacy of obtaining classified information, but as a result has led to the loss of the main advantage: the efficiency of obtaining information in a classified way, using such data to record and stop illegal activities. First of all, this applies to crimes that contain signs of increased public danger, including terrorist activity.

Such CIDA as simulating the crime situation, in most cases, is the only way to counter terrorist activity and to establish the criminal actions of the persons who organized it and facilitated its commission (clause 4, part 1, article 271 of the Criminal Procedure Code of Ukraine). Replicating the situation of terrorist activity is CIDA which consists of the actions of an investigator, an authorized person using simulation tools that create an image of the commission of a real terrorist act in order to prevent it and expose the known or unknown person(s) who planned or ordered its commission. It is also CIDA which is a complex of organizational and procedural actions of an investigator (another authorized person) using fake (imitation) means to create artificial conditions for terrorist activity and commit a real terrorist act with the aim of exposing and investigating the activities of terrorists. In order to properly consolidate the evidence regarding preparation for the commission of a terrorist act, a list of actions of authorized persons during the simulation of the crime as a form of control over the commission of said crime is proposed, namely: preparation and execution of all procedural documents, making a decision to use fake (imitation) means, direct conduct of CIDA with proper fixation by technical means, procedural registration of the results, and the identification and detention of suspects in the commission of a crime.

In view of this and in order to prevent possible contradictions during the application of the provisions of Art. 250 of the Criminal Procedure Code of Ukraine, it is considered appropriate to amend part 1 of this article, namely: «In exceptional urgent cases related to saving people's lives and preventing the commission of a serious or particularly serious crime, in particular for the purpose of detecting and recording the fact of committing such a crime, provided for by Chapters I, II, VI, VII (Articles 201 and 209), IX, XIII, XIV, XV, XVII of the Special Part of the Criminal Code of Ukraine, secret investigative (search) action may be initiated before the decision of the investigating judge is issued in the cases provided for this Code, according to the decision of the investigator, agreement with the prosecutor, or the prosecutor

themselves. In urgent cases related to saving the life of a person in the de-occupied territories under martial law, as well as during the commission of a crime related to terrorist activities, in the absence of an investigator, an employee of the operational unit

with a request to conduct secret investigative (search) actions has the right to do so in criminal proceedings where he is a member of the investigative-operational group».

References

- [1] About registered criminal offenses and the results of their pre-trial investigation. Site "Office of the Prosecutor General". Retrieved from <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>
- [2] Arkusha, L.I. (2013). The concept, system and grounds for conducting covert investigative (search) actions. *South Ukrainian legal journal*, 3, 141-144.
- [3] Bahrii, M.V., & Lutsyk, V.V. (2017). *Procedural aspects of tacit information acquisition: domestic and foreign experience*. Kharkiv: Pravo.
- [4] Chystolinov, O.M., Cherkov, V.O., & Pasieka, D.O. (2012). Imitation of the crime scene as a form of control over its commission: concept, essence, organizational and procedural principles of conduct. *Scientific Bulletin of the Lviv State University of Internal Affairs*, 4, 370-379.
- [5] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <http://zakon3.rada.gov.ua/laws/show/4651-17>
- [6] Hora, I.V., Kolesnyk, V.A., & Maliuk, V.V. (et al.). (2022). *Activities of the Security Service of Ukraine to counter terrorism: operational, procedural and forensic aspects*. Kyiv: TBTs.
- [7] Kantsir, V.S. (2011). *Terrorism in the modern globalization space: philosophical and legal dimension*. Lviv: Krai.
- [8] Kuzmin, S.A., & Azarov, M.Yu. (2012). The current state of the terrorist threat in Ukraine. *Fight against organized crime and corruption*, 2, 41-45.
- [9] Law of Ukraine No. 638-IV "On the fight against terrorism". (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/638-15#Text>
- [10] Pohoretskyi, M.A., & Serhieieva, D.B. (2014). Covert investigative (search) actions and operative-search measures: concept, essence and relationship. *Fight against organized crime and corruption (theory and practice)*, 2(33), 137-141.
- [11] Restrictions during a state of emergency: guidelines for the application of Article 15 of the European Convention on Human Rights. (2017, February). Retrieved from http://ukrainepravo.com/international_law/european_court_of_human_rights
- [12] Reznikova, O.O., Misiura, A.O., Dromov, S.V., & Voitovskiy, K.Ye. (2017). *Actual issues of combating terrorism in the world and in Ukraine*. Kyiv: NISD.
- [13] Semenyshyn, M.O. (2020). *Conceptual principles of prevention of selfish and violent crimes by bodies and units of the national police of Ukraine (based on the materials of the United Forces operation)*. Kyiv: Dakor.
- [14] Semykin, M.V. (2004). *Criminal liability for the creation of a terrorist group or terrorist organization* (Doctoral thesis, Kharkiv, Ukraine).
- [15] Taran, O.V., & Tsiupryk, I.V. (2017). The practice of the European Court of Human Rights on issues related to the manifestations of terrorism. *Legal journal of the National Academy of Internal Affairs*, 2(14), 395-402.
- [16] Tsiupryk, I.V. (2017). Simulating a crime scene during the investigation of crimes related to terrorist activities. *Bulletin of the Kharkiv National University of Internal Affairs*, 1(76), 443-448.
- [17] Tsiupryk, I.V. (2019). *Evidence in criminal proceedings about crimes. related to terrorist activity: theory and practice*. Kyiv: Nats. akad. vnutr. sprav.
- [18] Zhuravlova, A.Yu. (2014). Concept and essence of crimes related to terrorist activities. *Customs business*, 3(2), 65-72.
- [19] Zubach, I.M. (2015). Social and legal phenomenon of terrorism as an object of forensic study. *Bulletin of the Lviv Polytechnic National University*, 813, 232-237.

Список використаних джерел

- [1] Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування. *Офіс Генерального прокурора*: [сайт]. URL: <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>
- [2] Аркуша Л. І. Поняття, система та підстави проведення негласних слідчих (розшукових) дій. *Південноукраїнський правничий часопис*. 2013. № 3. С. 141–144.
- [3] Багрий М. В., Луцик В. В. Процесуальні аспекти негласного отримання інформації: вітчизняний та зарубіжний досвід : монографія. Харків : Право, 2017. 376 с

-
- [4] Чистолінов О. М., Черков В. О., Пасека Д. О. Імітування обстановки злочину як форма контролю за його вчиненням : поняття, сутність, організаційні та процедурні засади проведення. *Науковий вісник Львівського державного університету внутрішніх справ*. 2012. № 4. С. 370–379.
- [5] Кримінальний процесуальний кодекс України : Закон України від 13 квіт. 2012 р. № 4651-VI. URL: <http://zakon3.rada.gov.ua/laws/show/4651-17>
- [6] Діяльність Служби безпеки України з протидії тероризму: оперативні, процесуальні та криміналістичні аспекти : монографія / [І. В. Гора, В. А. Колесник, В. В. Малюк та ін.]. Київ : 7БЦ, 2022. 540 с.
- [7] Канцір В. С. Тероризм у сучасному глобалізаційному просторі: філософсько-правовий вимір : монографія. Львів : Край, 2011. 554 с.
- [8] Кузьмін С. А., Азаров М. Ю. Сучасний стан терористичної загрози в Україні. *Боротьба з організованою злочинністю і корупцією*. 2012. № 2. С. 41–45.
- [9] Про боротьбу з тероризмом : Закон України від 20 берез. 2003 р. № 638-IV. URL: <https://zakon.rada.gov.ua/laws/show/638-15#Text>
- [10] Погорецький М. А., Сергєєва Д. Б. Негласні слідчі (розшукові) дії та оперативно-розшукові заходи: поняття, сутність і співвідношення. *Боротьба з організованою злочинністю і корупцією (теорія і практика)*. 2014. № 2 (33). С. 137–141.
- [11] Обмеження під час надзвичайного стану: орієнтири щодо застосування статті 15 Європейської конвенції з прав людини від 23 лют. 2017 р. URL: http://ukrainepravo.com/international_law/european_court_of_human_rights
- [12] Резнікова О. О., Місюра А. О., Дрьомов С. В., Войтовський К. Є. Актуальні питання протидії тероризму у світі та в Україні : аналіт. доп. Київ : НІСД, 2017. 90 с.
- [13] Семенишин М. О. Концептуальні засади запобігання корисливо-насильницьким злочинам органами та підрозділами національної поліції України (за матеріалами операції Об'єднаних сил) : монографія. Київ : Дакор, 2020. 550 с.
- [14] Семикін М. В. Кримінальна відповідальність за створення терористичної групи чи терористичної організації : автореф. дис. ... канд. юрид. наук : 12.00.08. Харків, 2004. 20 с.
- [15] Таран О. В., Цюприк І. В. Практика Європейського суду з прав людини з питань, що стосуються виявів тероризму. *Юридичний часопис Національної академії внутрішніх справ*. 2017. № 2 (14). С. 395–402.
- [16] Цюприк І. В. Проведення імітування обстановки злочину під час розслідування злочинів, пов'язаних з терористичною діяльністю. *Вісник Харківського національного університету внутрішніх справ*. 2017. № 1 (76). С. 443–448.
- [17] Цюприк І. В. Доказування у кримінальних провадженнях про злочини, пов'язані з терористичною діяльністю: теорія і практика : монографія. Київ : Нац. акад. внутр. справ, 2019. 499 с.
- [18] Журавльов А. Ю. Поняття та сутність злочинів, пов'язаних із терористичною діяльністю. *Митна справа*. 2014. № 3 (2). С. 65–72.
- [19] Зубач І. М. Соціально-правовий феномен тероризму як об'єкт криміналістичного вивчення. *Вісник Національного університету «Львівська політехніка»*. 2015. № 813. С. 232–237.
-

ВИГІВСЬКИЙ Іван

кандидат юридичних наук, співробітник Національної поліції України

м. Київ, Україна

ORCID: <https://orcid.org/0009-0007-6942-9429>**ПРОТИДІЯ ТЕРОРИСТИЧНІЙ ДІЯЛЬНОСТІ НА ТЕРИТОРІЇ УКРАЇНИ
В УМОВАХ ЗБРОЙНОГО КОНФЛІКТУ**

Анотація. Метою статті є аналіз механізмів протидії терористичній діяльності на території України в умовах збройного конфлікту. Використано загальнонаукові методи формальної логіки (аналізу, синтезу, дедуції, індукції, аналогії, абстрагування та моделювання), за допомогою яких висвітлено механізм протидії терористичній діяльності на території України в умовах збройного конфлікту. Визначено поняття терористичної діяльності як виду кримінально протиправної діяльності, яка спрямована проти громадської безпеки або міжнародного правопорядку й на досягнення політичної мети шляхом насильницького примусу. Тероризм в умовах збройного конфлікту в Україні слід ототожнювати з терористичною діяльністю за словесним значенням, позаяк в умовах протидії такому негативному явищу істотні ознаки обох понять фактично збігаються, а тому ототожнюють обсяги їхнього змісту. Також встановлено, що деякі країни та

міжнародні інституції мають арсенал апробованих механізмів протидії злочинам, пов'язаним із терористичною діяльністю, зокрема на міжнародному рівні, а також продовжують роботу з визначення найефективніших напрямів цієї діяльності, усунення суперечностей та неузгодженостей. Для належного закріплення доказів щодо підготовки до вчинення терористичного акту запропоновано перелік дій уповноважених осіб під час імітування обстановки злочину як форми контролю за вчиненням злочину, а саме: підготовка й оформлення всіх процесуальних документів; прийняття рішення про використання несправжніх (імітаційних) засобів; безпосереднє проведення негласних слідчих (розшукових) дій з належним фіксуванням технічними засобами; процесуальне оформлення результатів, встановлення та затримання підозрюваних у вчиненні злочину.

Ключові слова: тероризм; терористична діяльність; терористичний акт; злочин; протидія; кримінальне провадження; досудове розслідування; негласні слідчі (розшукові) дії.