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Practice of Application in Cases of Terrorist Crimes, Problems of Law Enforcement

By Serebrennikova A.V. & Lebedev M.V

Moscow state University

Annotation- This article provides an analysis of the rules on criminal responsibility for terrorism and hostage-taking, and certain signs of corpus delicti. The problem of qualification of terrorist crimes is relevant today. One of the problems faced by the law enforcer, who qualifies a terrorist act and hostage-taking, is the correct determination of the signs of the composition of these related crimes. In this article, the authors analyze the norms of Art. 205 of the Criminal Code and Art. 206 of the Criminal Code, the basic aspects of the differentiation of norms are disclosed, the practice of law enforcement on the indicated compositions is studied.

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Practice of Application in Cases of Terrorist Crimes, Problems of Law Enforcement

Serebrennikova A.V. [α] & Lebedev M.V. [σ]

Annotation- This article provides an analysis of the rules on criminal responsibility for terrorism and hostage-taking, and certain signs of corpus delicti. The problem of qualification of terrorist crimes is relevant today. One of the problems faced by the law enforcer, who qualifies a terrorist act and hostage-taking, is the correct determination of the signs of the composition of these related crimes. In this article, the authors analyze the norms of Art. 205 of the Criminal Code and Art. 206 of the Criminal Code, the basic aspects of the differentiation of norms are disclosed, the practice of law enforcement on the indicated compositions is studied.

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I. Introduction

We illustrate the provisions indicated in the final qualifying work, using the example of judicial practice. The Judicial Collegium for Criminal Cases of the Supreme Court of the Republic of Tatarstan examined the criminal case No. 2-9 / 2015 of 03.19.2015. concluded: *"Fakhrullina G.F. I went into the visitors' office of a notary's office located in: Kazan, ... and she demanded to give her a certificate of inheritance under the law, namely, for an apartment…*

After that Fakhrullina G.F. showed the notary's office employees the belt she had previously put on her, connected by wires with a button, threatening that it was a "martyr" belt stuffed with trotyl, which she would detonate by pressing the button in case of failure to fulfill her requirements ... Following criminal intent Fakhrullina G.F. transferred her claims, written in advance by her own in writing, to the police officers who arrived at the notary's office, told them that she did not want to negotiate with them, release the hostage FULL NAME32 until her requirements were met, insisted on the issue of a certificate of inheritance under the law to her and the provision of funds on accounts of FULL NAME40 in OJSC AIKB ...

To create a public resonance Fakhrullina G.F. also demanded the arrival of the leadership of the Republic of Tatarstan and the leadership of law enforcement agencies in order to influence previous decisions of the authorities regarding her complaints about the actions of the notary of the Kazan notary district FULL NAME23 as an additional condition for the release of the hostage FULL NAME32 "[2].

One of the frequent problems in qualifying a hostage-taking on the basis of a sign of the objective side is that the law enforcement officer does not always pay attention to the necessary elements of the corpus delicti: capture and retention. The mere fact that there is a restriction of freedom, an obstacle to the movement and leaving a person's place of detention indicates a sign of violence. Non-hazardous violence for life and health, the restriction of freedom is interpreted in paragraph 21 of the Resolution of the Plenum of the Supreme Court of December 27, 2002 N 29 "On judicial practice in cases of theft, robbery and burglary" [6, p. 57].

The verdict of the Medvedevsky District Court of the Mari-El Republic in the case of 08.10.2015 established, *"Popov A.A. committed the capture and retention of the juvenile as a hostage, in order to force the state to act as a condition for the release of the hostage, in respect of a known juvenile .... Going to the balcony of the apartment, A. Popov lifted a helpless young child by a T-shirt, speaking the words of the threat that if the police were called, he would kill FULL NAME3 ... in order to coerce the police officers, that is, the state represented by the law enforcement agency - the police, to fulfill his requirements as a condition for the release of the hostage, he put forward the police officers the conditions to arrange a meeting with the police officer he knew - the district police officer. ... arguments of Popov A.A. about his innocence of the alleged crime, that he did not seize and did not hold the juvenile FULL NAME3 as a hostage, did not put forward any demands to the police officers, the court finds vicious, caused by the desire of Popov A.A. to avoid criminal liability for what was done. "[3].*

Another distinction between a terrorist act and hostage-taking is the absence of hostage capture, most of which is a danger to others, i.e. an indefinite circle of persons. Such a danger is inherent in other crimes of a terrorist nature. 205, 211, 278 and 279 of the RF Criminal Code [7].

Another feature of the distinction between a terrorist act and hostage taking is the presence of different goals when committing an act. When committing a terrorist act, the goal is aimed at forcing the authorities to make decisions.

Author α: Doctor of law, Professor of criminal law and criminology, Moscow state University. M. V. Lomonosov Russia, Moscow. e-mail: serebranna@hotmail.com

Author σ: Analyst of Department of National Security, Gubkin Russian State University of Oil and Gas, (National Research University), Russia. Moscow. e-mail: 3g4g@mail.ru

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In accordance with the materials of the criminal case No. 2-8 / 2015 contained in the sentence of the Supreme Code of the Republic of Dagestan dated 21.04.2015, one can consider the goals of the guilty person in the commission of a terrorist act: *"... committing a terrorist act ..., with the aim of forcing the authorities to make a decision on changing the existing management order and granting state sovereignty to the Republic of Dagestan with a view to further creating on its territory an independent Islamic state operating on a the principles of Sharia. The person # 1 chose, as the means of implementing the crime planned, a high-power explosion in the place of public worship ofadherents of a different direction in Islam to cause death to the maximum number of people and intimidate the population "[4].*

The purpose of Article 206 of the RF Criminal Code is the desire to coerce the state, organization, or citizen to commit certain positive actions, as well as to refrain from committing any actions. So the materials of the criminal case No. 1-2002 / 2017 contained in the Decision of the Sernursky District Court of March 10, 2017, states: *"A.N. Vaseev seized and detained the person as a hostage, ... expressed his demand as a condition for the release of the hostage FULL NAME1, to take action, namely, within five minutes to come to the territory of the LLC ... and bring for A. Vasseev a bottle of vodka, while expressing, in case of non-compliance with his requirements, the threat of killing FULL NAME1 with a kitchen knife "[5].*

The domestic literature describes that a situation is possible when a terrorist act and hostage-taking can become norms competing in qualification. According to V.A. Osipov such a conflict can be resolved if we consider the norms asthe general and the particular: "terrorist activity is a general norm in relation to hostage-taking" [6], and in this case there is a qualification rule when the law enforcer should give priority to a special norm.

The next element of the distinction of Article 205 and 206 of the RF Criminal Code is a note to the articles containing the conditions for exemption from liability. So, in accordance with Article 205 of the RF Criminal Code, a person is exempted from criminal liability at the stage of preparation if it is possible to complete the objective side. Article 206 of the RF Criminal Code contains a similar note, within the meaning of which, the person who committed the crime can be exempted from criminal liability. The difference is a special condition, namely: "voluntarily or at the request of the authorities, he will release the hostage if his actions do not contain a different corpus delicti". Based on the criminal cases examined by us, it can be argued that such crimes often contain other corpus delicti. As other corpus delictis, the legislator understands drug trafficking, intentional harm to the hostage's health, arms trafficking, property damage, and others. In this case, the guilty person has the opportunity to significantly reduce the grave consequences of the crime.

So, according to the Verdict of the Klintsovsky District Court of March 25, 2016 in the case No. 1-7/ 2016, *"by Pugina R.V., in order to compel the KlintsovskyDepartment of the Ministry of Internal Affairs of Russia, as a state authority , to bring him his former wife and juvenile daughter, as a condition for the release of the hostages, but then, at the request of the employees of the KlintsovskyDepartment of the Ministry of Internal Affairs of Russia, independently released the hostages Korzhukhova G.A. and Pugina R.V., in due to it, in accordance with the note to Article 206 of the RF Criminal Code , he is subject to exemption from criminal liability for seizing and holding a person as a hostage, committed in order to coerce the state and the citizen to commit an action as conditions for the release of the hostage, using an item as a weapon, in respect of two persons, provided for in Article 206, Part 2, Clause "d", "g" of the RF Criminal Code .*

The analysis of the norm shows that this provision, as indicated in the note, can only apply to that part of the objective side, which consists in preparing for the commission of a terrorist act, but does not extend its effect to those criminals who express a threat of commission, while when hostage-taking, the note extends its effect to the entire objective side of the crime.

The issues considered in this paper and the conclusions of the authors do not claim to be exhaustive, but represent a sphere for further scientific discussions.

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