

PROBLEMATIC ISSUES ON QUALIFICATION OF CRIMES AGAINST PEACE, SECURITY OF HUMANITY AND INTERNATIONAL LEGITIMACY

The specific nature of crimes set forth by Chapter XX of Criminal Code of Ukraine lies in its connection with international criminal justice where they are also considered as crimes. Thus at the process of qualification of these crimes one should refer him/herself to international legal sources in order to clarify the wording of legal standards or certain definitions.

The main sources of legal standards on such types of crimes in international justice where they have been defined as crimes against mankind or humanity (the terminology itself requires separate review) are as follows: the statutes of Nuremberg (1945) and Tokyo Military Tribunals; statutes of International Criminal Tribunal for the former Yugoslavia (1993) and Rwanda (1994); Rome Statute of the International Criminal Court (1998); numerous conventions and resolutions of UN, etc. It should be pointed out that the listing of crimes which are falling within the International Criminal Court (further – ICC) jurisdiction is more than enough. They cover almost all criminal actions that could be done to the civil population during the armed conflict. The article 5 jurisdiction ICC, articles 7 and 8, are defining the crimes against humanity and military crimes [1]. However, national criminal justice also plays an important role in this. The fullest qualification review of these crimes was done by S.Mokhonchuk [2]. He was able to analyze different evaluative criteria and existing concepts of these crimes in international and domestic justice. S.Mokhonchuk points out that principles and norms that define fight with these crimes are naturally linked to the principles and norms setting down the fight with other offences against state and person. This connection is stated in the view that context and system of crimes against humanity are evolving in the circle of definitions and institutions (culpability, implication, etc.) known to national criminal justice. However, it would be a mistake to conclude that such relationship of institutions and definitions converts into their equality and that crimes against humanity are only one of main criminal types. On the contrary, it should be stressed that such institutions of criminal justice as *corpus delicti*, complicity, preparation for crime, etc., gain specifically new features at the fight with crimes against humanity based on which qualification of crimes is connected with resolution and thus relates crimes against humanity with other crimes and definition of special conditions that sets the characteristic feature of such crimes [2].

First of all, S.Mokhonchuk stresses that criminal law setting *corpus delicti* of one or another crimes defines their specific features. *Corpus delicti* of crimes against the humanity is broader as its elements are not separate characteristics but frequently are big clusters of main criminal offences. Crimes against humanity especially those that involve military aggression or violation of war laws and customs embrace significant and various group of delicts united in one definition, one *corpus delicti* of crimes against humanity. For example, military *corpus delicti* generalized big groups of main criminal offences (murders, assaults, theft, etc.). In the same time “war” as the element of aggression is in its turn different from “action” as an element for every *corpus delicti* as war is a complicated system of actions [2]. It is possible to agree with such statement but it does not affect the qualification of a crime based on national criminal legislation where elements of *corpus delicti* crimes possess circle of independent general criminal ones.

Besides above-stated every crime against peace, humanity or military should always obtain its own legal estimate and further on they should be qualified based on the accumulation. In other words, any of the named crimes cannot “include” the other one. The basis for this conclusion is the recognition of relevant interests of international peacekeeping, security of humanity and compliance with rules of warfare and military conflicts, etc. [3]

The presented statements have been directly confirmed in decisions and activity of international military tribunals. It is seen in the activity of International military tribunals on former Yugoslavia and Ruanda where the definitions of “crime against peace”, “crime against security of humanity” and “military crime” are formally divided [4].

Thus, the *corpus delicti* of crime against peace and security of humanity possesses a system of attributes that can found in international criminal justice. Nevertheless, the juridical qualification of an action purposed at settlement of responsibility for the commitment per these attributes is grounded as at norms of international criminal justice so as at national criminal legislation.

To conclude it should be admitted that drawbacks of national criminal justice and necessity of changes for correct reflection of serious crimes against peace and security of humanity were discussed at the expert round table “Implementation of norms of International Humanitarian Justice and Rome Statute of International Criminal Court to the national legislation of Ukraine” which occurred on July of this year in the Parliament of Ukraine. During the work of round table special attention was paid on analysis of barriers preventing from subjecting to responsibility the persons carried out international crimes, discussion was made on implementation of Rome Statute of International Criminal Court and standards of International Humanitarian Criminal Justice into the Criminal Code of Ukraine. Law of Ukraine “On inclusion of changes to Criminal Code of Ukraine to maintain its harmonization to the statutes of Rome International Criminal Court” [5].

List of references

1. Rome Statute of International Criminal Court. International Court, UN; Statute international document dd 17.07.1998 <http://zakon3.rada.gov.ua>

2. Mokhonchuk S.M. Problematic issues on qualification of crimes against peace, security of humanity and international legitimacy/ S.Mokhonchuk// Ukrainian Lawyer. – 2011 – #4(17). – C. 71-76
3. Kibalnik A.G. Crimes against peace and security of mankind / A.G. Kibalnik, I.G. Solomonenko. – St.Pt.: Leg. Center Press, 2004 – 383 p.
4. Statute of the International Criminal Tribunal for Rwanda (8th November, 1994).
<http://www.licasoft.com.ua>. Statute of International Criminal Tribunal for the former Yugoslavia (15th May, 1993) / <http://volya.kharkov.ua>
5. Implementation of norms of International Humanitarian Justice and Rome Statute of International Criminal Court to national legislation of Ukraine // Supreme Court of Ukraine. Official website (<http://www.scourt.gov.ua>).