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STAGES (PERIODS) OF QUALIFICATION OF CRIMES

ЕТАПИ (СТАДІЇ) КВАЛІФІКАЦІЇ ЗЛОЧИНІВ

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The article is devoted to the study of stages of crime classification. The concept of classification stages, their types and criminal and legal significance has been determined. The types of acts (content of relevant operations) and corresponding features inherent in a particular stage of crime classification have been established.

Key words: crime classification, criminal and legal assessment of a committed act, stages of classification, mental activity (operation).

Стаття присвячена дослідженню етапів (стадій) кваліфікації злочину. З'ясоване поняття етапів кваліфікації, їх види та кримінально-правове значення. Установлені види діянь (зміст відповідних операцій) і відповідні особливості, що притаманні конкретному етапу (стадії) кваліфікації злочину.

Ключові слова: кваліфікація злочину, кримінально-правова оцінка вчиненого діяння, етапи (стадії) кваліфікації, розумова діяльність (операція).

Статья посвящена исследованию этапов (стадий) квалификации преступления. Установлено понятие этапов квалификации, их виды и уголовно-правовое значение. Выявлены виды деяний (содержание определенных операций) и соответствующие особенности, которые присущи конкретному этапу (стадии) квалификации преступления.

Ключевые слова: квалификация преступления, уголовно-правовая оценка совершенного деяния, этапы (стадии) квалификации, умственная деятельность (операция).

Rising of scientific problem. Qualification of crimes is the qualificatory question of realization of criminal execution and one of the basic stages of application of criminal and legal norm. At the same time in relation to its descriptions and structural elements (determination of concept, establishment of kinds, principles, methodological principles, stages (periods), pre-conditions and grounds of criminal and legal qualification and others like that) there is absent unity of scientific opinions.

Analysis of researches of this problem. In the doctrine of criminal law traditionally qualifications of crimes distinguish the stages (stages). At the same time to unity of positions of authors in relation to the amount of such stages (stages), their description, correlation with the stages of application of criminal and of legal norm it is not.

Aim of the article. By an aim to do there is finding out of correlation of terms the "stage" and "stage" of qualification of crimes, finding out of amount of such stages (periods) during qualification and establishment of character of acts (table of contents of corresponding operations), that inherent to the certain stage (periods) qualifications of crime.

Exposition of basic maintenance of material. A term "qualification" is not exceptionally legal. It originates from the Latin words "quails" is quality and "facere" – to do ("qualificare" – to determine, to set quality). Thus, to characterize – means to set belonging of object that is estimated, to the certain class, and in more wide sense – to estimate, to determine the phenomenon (object, process) properly, to set its essence descriptions through correlation with other phenomenon or object maintenance of that is already certain.

Legal qualification, it is a search, choice and application to the certain event, case of certain legal norm. In a criminal and legal doctrine qualification of crimes is traditionally examined in two aspects: a) as a process – activity of certain subjects in relation to an estimation and establishment of exact (complete) accordance between the signs of commission by a person of an act and signs of corpus delict foreseen by a Criminal law, and b) as a result – the legal fixing of such accordance, pointing of norm of Criminal Code that foresees responsibility for commission by a person of an act.

Most scientists, examining qualification in two aspects, as a result and as a process, in last case distinguish the stages (periods) of its realization. At the same time a question about the amount of such stages (periods) and their essence (table of contents) in scientific literature did not get an unanimous decision.

It should be noted that separate scientists the stages and periods of qualification of crimes examine as identical terms and processes. Other scientists, distinguish qualifications of crimes to the period, and in their limits set the stages of its realization, as certain constituents of the corresponding stages. According to language explanatory dictionaries the stage is a step, period in development of certain process; the stage is a corresponding process, its moment, stage. Thus, *the criminal and legal classification stages are elements (components) of the corresponding mental activity, dispersed in time and characterized by a specific set of operations (actions) that are inherent in each of them.* The stages (periods) of qualification of crimes are a step of process of qualification that develops consistently, qualitatively changes during the period of its development.

One scientists the stages of qualification identify with the periods of process application of criminal and legal norm (A.N. Ihnatov) or by the stages of criminal

process (V.N. Kudryavtsev [1, p. 14–16], F.G. Burchak). The second group of criminal lawyers to the list of the stages of qualification of crimes takes terms that is needed for correct qualification, namely: establishment of actual circumstances of business; to the type of illegality of act; electing of criminal and legal norm that foresees a corresponding corpus delict and interpretation of its signs; fixing of this conclusion is in a corresponding judicial document (R.R. Galikabarov, L.D Gauchman, G.A. Levitskyi [2, p. 4]). Other scientists (for example, B.A. Kurinov) divide the process of qualification into three stages: a) establishment as of legal relationships, b) exposure of generic features of crime, c) establishment and comparison of specific signs of crime [3, p. 56–57].

It should be noted that qualification of crime – sufficiently a dynamic process that on the different stages of criminal realization (to the process) has certain features and specific. The stages of qualification are elements (constituents) of corresponding activity, that is separated in time and are characterized the specific set of operations (actions), that inherent each of them.

The first stage of qualification of crimes is establishment of all actual (objective and subjective) circumstances of commission of an act that have a criminal and legal value.

It should be noted that at opening of criminal realization sufficiently often there is only a minimum volume of information about a commission of crime. In the process of pre-trial investigation, an amount (volume) and quality of facts that have a criminal and legal value increase, and in the moment of completion of investigation of case the corresponding subject of qualification must own all necessary and substantial data about committed crime. Depending on that, all actual circumstances of criminal case (realization) are full set as far as, as far as exactly they are investigational and analysed, correct qualification of committed crime will be carried out.

In addition, on the first stage of qualification: a) set the most general generic features, what inherent offence in general; b) set type of legal relationships; c) decides question about that, or a case that is examined belongs, to the group of crimes or is other type of offence and d) turns out what branch of the law regulates such legal relationships. Only after establishment of fact of committed of act that owns the signs of crime, a person that carries out qualification passes actually to the qualifying estimation of crime – sets a presence in the crime of signs of certain composition, Criminal law foreseen by a norm.

The second stage of qualification of crimes is establishment of criminal and legal norm (article, part, point of the article of Criminal law) that most full and exactly foresees responsibility for a committed act by a person. That is why, after the decision of question about family legal qualification of certain case, admitting that an act contains the signs of crime, passing comes true to the second stage. On this stage qualification comes true after the type of crime, i. e. why a question decides about that, what norm of Criminal law embraces an act that is examined. The sequence of executions on this stage consists in such: a) comparison of signs that characterize the object of committed act and corpus delict foreseen by a corresponding criminal and legal norm, b) comparison of signs that characterize the objective side of committed act and corpus delict foreseen by a corresponding criminal and legal norm, c) comparison of signs that characterize subject of committed act and corpus delict foreseen by a corresponding criminal and legal norm, d) comparison of sign that characterize subjective side committed act and corpus delict, foreseen corresponding criminal and legal norm.

It should be noted that on this stage of qualification of crime it is necessary also to set: a) limits of action (actions) of Criminal law at times, in space and after the circle of persons, b) authenticity of text of criminal and legal norm taking into account changes and additions, c) type of disposition of criminal and legal norm (simple, descriptive, referenced, blanket), d) or does not have circumstances that eliminate possibility of bringing in of person to criminal responsibility, e) or a crime is committed individually or in participation, f) or committed complete or unfinished crime, g) or committed form single crime or multiplicity crime (repeated, totality, relapse) and others like that.

Consider that the result of qualification of crimes must be confession of presence in the act of person of elements (their signs) of corresponding corpus delict committed individually or in participation, complete or unfinished, in default of signs: 1) act that is unimportant (P. 2 Article 11 Criminal Code); 2) acts, committed in default of public unconcern and illegality (necessary defensive, detention of person that committed crime, absolute necessity, physical and psychical compulsion, and others like that); 3) publicly dangerous act that is not a crime, for lack of its separate elements and signs (absence of object, guilt, subject of commission of crime, or other elements (signs) of corpus delict) and others like that.

Qualification of crime can be carried out correctly only in the case when all without an exception the circumstances related to all elements of corpus delict take place and fully (exactly) answer the signs of that or other corpus delict, foreseen by Criminal Code.

The third stage of qualification of crimes is establishment of accordance of signs of committed act (actual circumstances of business) to the signs of crime, Criminal law and fixing of such conclusion foreseen by a norm in a corresponding judicial document.

Qualification, as a result of thinking, is subject to the legal (judicial) fixing in corresponding judicial documents, what representatives of corresponding public authorities fold within the limits of the plenary powers. Qualification comes true in a corresponding judicial form (to the order), for this reason the judicial result of qualification is performance of judicial act (decision or sentence). Thus, in an eventual account the process of qualification of crime foresees the obligatory conclusion – formula of qualification. It shows by self-reference in a corresponding judicial document on digital denotation (number) of the article (parts of the article, point) of Special part of Criminal law, and on occasion – and on the article (part of the article) of its General part, that foresee a committed by a person act.

It is expedient to mark, that formula of qualification, however the certain result of its realization and process of qualification coincide, as separate norms of General and Special parts of Criminal law are used for qualification, however on them there can be absent reference in the formula of qualification. What be more, in the act of person can be present row of characterizing signs that is foreseen by different parts of the corresponding article of Special part of Criminal law, however during qualification in the certain cases of reference it takes place only on part of the article with a most sequence number.

On occasion there can be a question about additional qualification of crimes or in general its retraining. Additional qualification takes place in case of establishment of absence of complete (exact) accordance (to equality) between the signs of committed by a person of a crime and elements (by their signs) of corpus delict, foreseen by the certain norm of Criminal law, that was select during qualification. Retraining of crimes is the repeated process of establishment of accordance (to equality) of signs of committed act to the signs of corpus delict foreseen by a Criminal law, and also comparison of both groups of signs, from before set, that results in a new result and determines what crime it quite and what criminal and legal norm it is foreseen in a Criminal law.

Thus, the *alteration of crime classification* is the adjustment of the previous (primary and subsequent) classifications results. Classification change is a change in the criminal and legal assessment of a committed act by replacing or changing (clarifying) the criminal and legal regulation that is to be applied, in whole or in part [4, p. 333].

It should be noted that from a legal point of view, changes in classifications include no changes in assumptions (versions) put forward during the collection and evaluation of the actual case (proceedings) circumstances as of the possible applicable regulation, arising in the mind of the classification subject, but only changes reflected in the procedural documents.

The following features characterize the change of classification (re-classification):

1) recurrence, that is, it is always repeated in terms of the classification of the same act of a person on the same criminal case (proceedings). Changing the crime classification requires a previous (primary, predicate) classification of the act committed by a person. At that, the classification can change more than two times;

2) it is aimed at pre-classification changes;

3) alteration of a crime classification (re-classification) brings a new result, different from the previous one: a) a change of classification may consist not only of the classification of an action under *another* article (part of the article) of the Criminal Code but also of *additional* classification, also under another article (part of the article) of the Special Part of the Criminal Code; b) classification changes are also the case where an executor of law omits indications of the act classification according to the relevant article (part of the article) of the Special Part of the Criminal Code; c) the classification will change if the act, initially classified as a crime, was later recognized to be non-criminal, etc.;

4) the classification change may be characterized both by a personal status improvement and deterioration (for example, the court of appeals changes the sentence in case of a crime legal classification change and the application of the article (part of Article) of the Criminal Code on an offence of *minor gravity*);

5) the crime classification change is legally reflected in the relevant procedural documents.

A prerequisite for changing a crime classification (re-classification) is a failure to meet the conditions of the proper classification. The criminal law doctrine addresses the reasons for the modification of the crime classification (re-classification), in particular:

1) *change of actual data* which were the basis of the classification. After initial classification, there is a process of proof: the facts are being collected, checked, and evaluated. The criminal proceedings establish new actual circumstances, which may be a reason for changing the classification. That is why, the new significant circumstances of the case, which are of criminal and legal significance, or the recognition of the factual circumstances of the case, based on which the criminal and legal classification (preliminary) was conducted as inadequate – may be the reasons for its change. For example, according to part 1 Art. 338 of the Criminal Procedural code, with a view to changing the legal classification and/or prosecution, a prosecutor has the right to change the information in case *new facts of the criminal offence* have been established during the trial;

2) *legislative amendments* that may affect the initial classification in accordance with the rules of the criminal law relating back in time;

3) *the establishment of errors* in the application of the law, not related to its alteration, leading to a change in criminal and legal classification;

4) *abuses or improper professional know ledge* that occurred at criminal and legal classification.

The Criminal Procedural Code sets rules (limits) for alteration of the criminal and legal classification. That is, such a change will meet the law, if there are appropriate grounds, certain conditions and procedures are met including guarantees of ensuring the rights of the suspect (an accused, a convict) and the victim. For example, the procedure for changing the information (criminal and legal classification) includes the steps as follows: 1) drafting and approval of a new indictment, stating the changed information and the justification of the decision (part 1 Art. 341 of the Criminal Procedural code); 2) providing copies of a new indictment to participants of court proceedings; 3) explaining the victim the right to support the charges in the previously submitted amount, in case the prosecution is raising the question of criminal law application in the changed indictment, providing for liability for a less serious crime, or reduction of the charge (part 3 Art. 338 of the Criminal Procedural code); 4) explaining the victim the change of information; 5) adjourning the trial to give the, accused person, defense lawyer the opportunity to prepare for defense against the new charge (part 4 Art. 338 of the Criminal Procedural code).

At the same time, the Criminal Procedural code also gives restrictions on the alteration of criminal and legal classification by the relevant courts. For example, the court of cassation has no right to apply the law to a serious criminal offence or more severe punishment (part 1 Art. 437 of the Criminal code). Part 2 Art. 437 of the Criminal Code, the judgment of guilt by the trial court of original jurisdiction or the court of appeal, the decision of the court of appeal on the decision of the trial court of original jurisdiction may be revoked in connection with the need to apply the law to a serious criminal offence or more severe punishment or otherwise worsen the situation of the convict only if these were the reason for the appeal filed by the prosecutor, the victim or the representative.

Correct qualification of crime is complete, exhaustive application of all Criminal laws that embrace a particular publicly dangerous act – only possible variant of criminal and legal estimation of committed by a person of an act. In order that qualification of crimes was correct, stable and reasonable it must be based on elementary legislative principles (values) and answer certain general requirements (to the rules), namely:

1) qualification must be clear and complete, i.e. to represent an act that is committed;

2) during qualification it is impossible intentionally to elect more heavy corpus delict (the so-called qualification is “with a supply”);

3) if there are doubts at exactness of qualification (on condition that from them it is impossible to get rid), then they must be interpreted in behalf on a guilty person – qualification takes place on more soft law;

4) during qualification it does not follow to use broadside interpretation of law, if it does not go to submit person that is suspected or to the defendants in the committing of crime;

5) crime is characterized after the article (by part of the article) of Special part of Criminal law, and in necessary cases and after the article (by part of the article) of its General part;

6) qualification comes true taking into account the rules (principles) of action of law on criminal responsibility in time, space and after the circle of persons;

7) qualification comes true after the elements of corpus delict.

It should be noted that in majority to it rules of qualification, unlike the rules of awarding punishment, in criminal law didn’t foreseen. They mostly exist in the type of customs, withstand practice, corresponding scientific positions (approaches). Part from them is contained in the resolutions of Plenum of Supreme Court, devoted to application of criminal responsibility for the certain types of crimes. Only the separate rules of qualification that is set forth in science of criminal law and worked out in inquisitional-judicial practice, called the recreation in a criminal legislation. However majority from them remain the article of research and suggestions of scientists.

Conclusions. A selection the brought stages (periods) over to qualification of crimes carries conditional character up to a point, as such stages outline obligatory component qualifications only, i.e. the list of actions (operations) that a person that carries out qualification must stick to. At the same time in the real reality the sequence of such stages and operations (actions) that present their maintenance can change depending on the features of committing of certain crime and specific (methodologies) of pre-trial investigation of criminal realization.

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