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Stages (periods) of qualification of crimes

Rising of scientific problem and its value. 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 and tasks 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 and ground of the got results. A term "qualification" is not exceptionally legal. It originates from the Latin words "qualis" 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 [1]. Thus, 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 [2], 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 [3]). 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 [4].

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 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 psychological 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 dur-

ing 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.

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 Su-

preme 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 and prospects of further research. 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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