

Constitutional principles of qualification of crimes in Ukraine

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Qualification of crimes is the determinant question of realization of criminal execution and one of the basic stages of application of criminal and legal norm. Traditionally qualification of crimes is examined as establishment and legal fixing of exact (complete) accordance (to equality) between the signs of committing by a person act and signs of corpus delict foreseen by a penal law. In order that qualification of crimes was correct, stable and reasonable it must be founded, first of all, on base legislative principles (principles), including constitutional. Thus, separate constitutionally-legal norms that contain general and legal principles have an important value for qualification of crimes.

The Article 8 Constitution of Ukraine foreseen that confession and action of principle of supremacy of law, according to that Constitution of Ukraine has the greatest legal force. Laws and other normatively-legal acts passed an act on the basis of Constitution of Ukraine and must answer it. Reference to the court for the protection of constitutional rights and freedoms of man and citizen directly on the basis of Constitution of Ukraine is guaranteed. In addition, according to P. 2 Article 19 Constitution of Ukraine, public authorities and organs of local self-government, their officials are under an obligation to operate only on basis, within the limits of plenary powers and in a method, that foreseen by Constitution and laws of Ukraine. In accordance with Article 129 Constitution of Ukraine judge during realization of justice are independent and submit only to the law. The Article 58 Constitution of Ukraine provides, that nobody can be responsible for acts that in a time of their committing did not admit a law as offence.

These and other constitutional positions are fixed in basis of principle of legality, that found a recreation in the row of the articles of the Criminal code of Ukraine (farther is CC) and Articles 7, 9, 12 of the Criminal procedural code of Ukraine (farther is CPC). Thus, in accordance with P. 1 Article 2 CC founding of criminal responsibility are committing by a person publicly of dangerous act that contains the corpus delict foreseen by this Code. Criminality of act, and also its punishability and other criminal and legal consequences admit to only CC. Application of penal law by analogy is forbidden (P. 3, 4 Article 3 CC). A law on criminal responsibility that abolishes criminality of act softens criminal responsibility or by another character improves position of person, has a reverse action in time, including spreads to the persons that accomplished corresponding acts to the set of action such law, including on persons that depart punishment or punishments departed, but have a conviction (P. 1 Article 5 CC). These binding overs assist strengthening of legality and are the guarantee of impossibility of bringing in of person to criminal responsibility for an act that in the moment of his committing did not admit to CC, as a crime.

During qualification of crimes principle of legality must show up in activity of law applicable organs at finding out of all actual circumstances of case, that have a criminal and legal value for qualification, correct establishment of criminal and legal norm that is subject to law applicable in a certain situation and judicial fixing of corresponding decision in obedience to the requirements of normatively-legal acts. This principle during qualification is recreated in the row of aspects: a) act can be skilled as a crime, only if it is foreseen in CC; b) qualification by analogy is forbidden; c) qualification of crime comes true on a law that operated in a time of committing of corresponding act; d) result of qualification is subject to the judicial fixing in the order and form, statutory; e) founding and order of change of qualification must come true exceptionally in accordance with the requirements of legislation.

An important value has Article 9 of Constitution of Ukraine according to that, running international agreements, a consent to obligation of that is given by Supreme Counsel of Ukraine, are part of national legislation of Ukraine. It determines constitutional position, that and international and legal traditions, principles and norms of international law admitted in general lines, are recreated in the criminal legislation of Ukraine and indisputably are the legal founding of qualification of crimes.

It should be noted that exactly stability of legislation, absence in its blanks and inconsistencies, its accordance to the existent public necessities, unanimous interpretation and application of law at the dispatch of certain criminal cases are the guarantees of providing of legality of crimes qualification.

In the Article 24 Constitutions of Ukraine the foreseen principle of equality before a law, that, including, foresees impossibility of privileges or limitations on the signs of race, colour of skin, political, religious and other persuasions, sex, ethnic and social origin, property state, residence, on language or other signs. In a criminal legislation this principle testifies that persons that committed crime, in an equal degree be under an obligation to appear before a penal law. In relation to qualification of crimes, then this principle foresees only for all the grounds of criminal responsibility and qualification, only approach in relation to admission of act, establishment of presence of circumstances, that eliminate criminality of act, identical decision of the questions related to the action of law in area and time, unimportant, identical approaches in relation to application of norms of CC, a right for a court to apply or not corresponding legislative binding over is foreseen in that.

Equality of citizens before a law is complemented by constitutional principle of realization of justice on the basis of competitive spirit of parties and to freedom in a grant by them to the court of the proofs (Article 129). These constitutional positions are developed in CPC (Article 7, 22), that also provides correct establishment and leading to presence of signs of corpus delict in the act of person, and that is why guarantees correct qualification of committed.

It is necessary to mark that for qualification of act of person principle of presumption of unguiltiness has a fundamental value. Thus, in accordance with Article 62 Constitution of Ukraine, P. 2 Article 2 CC and the Articles 7, 17 CPC a person is considered unguilty in the commission of crime and can not be exposed to

criminal punishment, while its guilt will not be well-proven in the legal order and set by the accusatory sentence of court. A prosecution cannot be based on the proofs got an illegal way, and also on suppositions. All doubts in relation to well-proven of guilt of person are interpreted on its benefit. For a criminal law is principle of subjective relation in guilt (responsibility is only for a winy commission publicly of dangerous act), that must follow every law applicier during realization of qualification of crime.

Qualification of crimes also must be based on well-known principle of non bis in idem - principle of impossibility twice to attract to legal responsibility of one kind for the same offence. This constitutional principle foreseen in the Article 61 Constitution of Ukraine found its legal development in P. 3 Article 2 CC, according to that nobody can be brought to the criminal account for the same crime more than once. On the basis of this principle the built row of rules of qualification of crimes, in particular: a) qualification at the competition of norms (general and special, two special, part and unit); b) qualification of totality of crimes; c) qualification is at dissociation of crimes from other offences (that is why act that got a legal estimation however an administrative crime can be examined as a sign (element) of corpus delict, foreseen CC).

During qualification of crimes principle of humanism, that in Constitution of Ukraine shows up in guaranteeing of providing of rights, freedoms and interests of citizens, has an important value. Constitutional rights and freedoms of man and citizen are the object of criminal and legal guard (Article 1 CC). What touches principle of humanism in relation to persons that committed crime, then he is fixed in basis of criminal and legal positions that regulate a release from criminal responsibility, awarding punishment, release from punishment and its serving, application of other events of criminal and legal character. In addition, on the basis of principle of humanism separate rules and approaches are set in relation to qualification of crimes, in particular: a) rule of qualification of crimes at presence of both aggravating and emollient signs; b) approach is in relation to the decision of the vexed questions of qualification of crimes in behalf on a person, in case of absence in CC of corresponding rules of its realization.

Qualification comes true corresponding, by the authorized agents on it by public organs. Impossibility of violation of principle of officialness of qualification is foreseen in the Article 60 Constitution of Ukraine, where it is marked that nobody is under an obligation to execute criminal orders or orders obviously. Legal responsibility comes for giving and implementation obviously of criminal order. In scientific literature marked, that such constitutional position found a recreation in CC, in that in certain cases a citizen is even obligated to conduct the criminal and legal estimation of own act and act of other persons [4, p. 380].

Resulted and other constitutional principles found a recreation in legal in general lines principles, and in particular, in principles of criminal law. Realization of these binding overs both on legislative and on lawapplicable levels will provide exactness, stability, stability, unanimity, plenitude and individuality of qualification of crimes.

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