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Qualification of unfinished crime

Abstract: The article is devoted to the qualification's features of unfinished crime. Set lacks of criminal and legal regulation of the types of unfinished crime and criteria of dissociation of preparation to the crime from encroaching (complete and unfinished) upon a crime. The expounded suggestions (governed) are in relation to qualification of unfinished crime and its kinds.

Keywords: qualification, unfinished crime, preparation to the crime, encroaching upon a crime.

A crime is an act (action or inactivity) that in or other measure lasts in time. At the committing of such act possible passing of row of implementation of criminal intent of person phases (stages) that carry out it. At the same time, on occasion this intention can be and unrealized to the end. At that rate the question is about an unfinished crime the certain specific, conditioned by those compositions of complete crimes are foreseen in the articles of Special Part of Criminal law, takes place during qualification of that.

In a criminal and legal doctrine distinguish: a) the stages of development of crime (criminal activity) (from five to seven stages), in particular, forming of intention on the commission of crime, exposure of intention, decision-making on the commission of crime, preparation to the crime, encroaching upon a crime, complete crime, disposing of criminal result); b) the types of crimes are after the degree of their completeness (complete and unfinished crimes); c) the stages of commission of crime (from two to three stages), for example, preparation to the crime, encroaching upon a crime and complete crime. At the same time, in scientific literature expounded and positions in relation to impossibility to acknowledge preparation to the crime, encroaching upon a crime and complete crime by the stages of crime. Unity of opinions of scientists touches only a question about expedience of selection of complete and

unfinished crime. Consider that after the degree of completeness crimes are divided into complete and unfinished, and last, in turn, it is possible to divide into kinds: preparation to the crime and encroaching upon a crime.

In accordance with P. 1 Article 13 of the Criminal Code of Ukraine (farther is CC) an act that contains all signs of corpus foreseen by the corresponding article of Special part of CC delict confesses a complete crime. According to P. 2 Article 13 CC an unfinished crime are preparation to the crime and encroaching upon a crime.

Thus, it is necessary to set during qualification of committed by a person act, that it accomplished a complete or unfinished crime. It should be noted that in the criminal legislation of determination of unfinished crime is not contain, and its kinds are only marked. System interpretation of Criminal Law grounds to reason, that an act that *does not contain* all signs of corpus foreseen by the corresponding article of Special Part of CC delict acknowledges an unfinished crime. At the same time, or is it possible to assert that absence of any sign of corresponding element of corpus foreseen by the article of the Special Part of CC delict testifies that a person accomplished an unfinished crime? For example, in opinion of Eu. V. Blagov, not establishment of corresponding sign of act can testify not to the presence of unfinished crime, but about absence of crime in general [1]. For this reason, most scientists assert that an unfinished crime takes place, when intention guilty not fully realized, the objective side of such corpus delict is not developed, real harm of object of encroachment is not caused. That is why, for example, absence of reason or aim, as signs of subjective side of certain corpus delict, testifies to absence of this crime in general, but not about an unfinished crime. Thus, it is possible to assert that absence only of certain signs of corresponding elements of corpus delict can testify that a crime is unfinished.

In a criminal and legal doctrine position spoke out also, that at an unfinished crime some sign of objective side of corpus delict is never enough [2]. With the brought approach over it is impossible unanimously to agree, as at preparation to the crime in general absent signs of objective side of corpus delict foreseen by Special Part of CC. The brought determination over can touch only to the crime attempted with material composition, and preparation to the crime with formal composition.

Consider that during qualification of committed act by a person, first of all, it is necessary to find out, what certainly complete crime a person gathered (tried) to accomplish, and then set or there are all signs of this corpus delict in its act. In a crimi-

nal legislation absent criteria of dissociation of unfinished crime are from complete. It follows to admit the general signs of unfinished crime: a) commission of intentional act, b) not leading crime to the end, c) on reasons that does not depend on will of a person.

In addition, for providing of correct qualification of unfinished crime clear dissociation matters: a) preparation to the crime from the exposure of intention (establishment of initial and eventual moments of preparation to the crime), b) preparation to the crime from encroaching upon a crime (establishment of initial and eventual moments of encroaching upon a crime), c) complete from the unfinished encroaching, d) attempt upon a crime from a complete crime (establishment of completion' moment of certain corpus delict).

In accordance with P. 1 Article 14 CC preparation to the crime are seeking out or adaptation of facilities or instruments, seeking out of accessories or plot on the commission of crime, removal of obstacles, and also other intentional conditioning for the commission of crime.

It should be noted that the use is in the law of approximate list of types of acts that present preparation to the crime, not very a legislative construction pretended for the criminal and legal adjusting. In opinion of separate scientists it is better to foresee or exhaustive list of such acts, or generalized private concept that would embrace all possible variants of preparatory actions. As overcoming all variety of preparatory to the crime acts is impossible, expedient will be a construction of norm with the generalized private term is conditioning for the commission of crime. Only after formulation of such concept possibly for the orientation of inquisitional-judicial practice to point the approximate list of such acts.

For correct qualification of preparation to the crime it is necessary to set initial and eventual its moments with the aim of clear dissociation from the exposure of intention and encroaching upon a crime. An initial moment of preparation to the crime is a commission of any act sent to conditioning for the commission of certain complete crime (in case of exposure of intention the certain actions sent to realization of this intention are not accomplished). The eventual moment of preparation is the successful conditioning for the commission of crime, which is why completion of such creation as a result, but not as begun, however completed process. Thus, for preparation there is characteristic absence of act that is described in disposition of the article of Special part of CC, and the anymore absence publicly hazard effects. Acts,

that inherent to preparation to the crime, are outside the objective side of complete corpus delict. For this reason, in scientific literature of preparation to the crime distinguish from encroaching upon a crime on the criterion of beginning of implementation of objective side of corpus delict that a person decided to do. However the use of this criterion is possible only at additional explanations in relation to that exactly it follows to consider beginning implementation of objective side of corpus delict.

In this connection a question appears about qualification of preparation to the crime with reference to the article of Special Part of CC, that foresees a complete crime, as an objective side of preparation to the crime is fully described in the norms of General Part of CC and only informatively related to the norms of Special Part of CC.

In accordance with P. 1 Article 15 CC encroaching upon a crime are commission by a person with direct intention of act (to the action or inactivity), directly sent to the commission crime foreseen by the corresponding article of Special Part of CC, if here a crime was not carried through on reasons that did not depend on its will. Is there a question at interpretation of this legislative formulation, which it follows to understand under the act directly sent to the commission of crime? In opinion of separate researchers an orientation of act is not encroaching upon a crime, but preparation to the crime, as is conditioning for his commission, because at encroaching upon the crime of act guilty is the direct commission of crime [3].

It should be noted that in case of crime attempted part of objective side of complete corpus delict is executed. If a person does not begin to execute an act ponderable in the corresponding article of Special Part of CC, committed at no terms it is impossible to characterize as encroaching upon a crime. That is why, unlike preparation, the objective side of encroaching upon a crime is described both in the norms of General and in the norms of the Special Parts of CC.

For qualification of encroaching upon a crime the construction of corpus delict that a person tried to do has an important value, as at that rate it follows to establish the incompleteness of objective side of certain corpus delict – absence publicly hazard effects or complete act in crimes with material composition or incompleteness of act in crimes with formal composition. For this reason, confession of commission by a person act first of all depends a complete or unfinished crime on the features of legislative construction of corpus delict. An attempt is possible both on a crime that is ac-

complished by an action (active behaviour) and on a crime that is accomplished by inactivity (passive behaviour).

In a criminal legislation, encroaching upon a crime is divided into two kinds. So, in accordance with P. 2 Article 15 CC a crime attempted is complete, if a person produced all actions considered that necessary for bringing to an of crime conclusion, but a crime was not complete on reasons that did not depend on its will. According to P. 3 Article 15 CC a crime attempted is unfinished, if a person on reasons that did not depend on its will did not accomplish all actions considered that necessary for bringing to an of crime conclusion.

In the theory of criminal law the debatable is remained by a question about a criterion that is posited division of encroaching upon kinds. Separate researchers suggest to acknowledge to such a subjective criterion – own presentation of guilty about a degree implementation of act at the commission of crime. Other scientists suggest for dividing of attempt into kinds to use an objective test – degree of implementation of objective side of corpus delict. Consider that an objective test is not quite suitable for dissociation unfinished from a complete attempt, as objectively at the commission of any type of attempt always are absent or publicly hazard effects, or not fully commission act, as a sign of objective side of complete corpus delict.

The initial moment of commission of encroaching upon a crime is beginning of act (to the action or inactivity) that is directly sent to the commission of crime, that is why beginning of commission of the action or inactivity, marked in disposition of the article of Special Part of CC. The eventual moment of attempt is: for a crime with material composition is a commission of the act marked in disposition, that did not entail a dangerous consequence publicly; for a crime with formal composition is breaking of commission of act, that is why its partial commission (for an unfinished attempt) and moment of establishment of unsuccessful attempt to accomplish a complete crime (for a complete attempt).

In accordance with Article 16 CC criminal responsibility for preparation to the crime and encroaching upon a crime comes after the Article 14 or 15 and after that article of the Special part of CC, that foresees responsibility for a complete crime. Consider that the use at that rate of term "responsibility" is not quite logical. Firstly, qualification of crime is preceded to bringing in of person to criminal responsibility. Secondly, the marked norm of CC decides a question not about criminal responsibility, but sets the rules of qualification of unfinished crime. Thirdly, the commission by a

person of preparation to the crime of small weight is subject to qualification, however it pulls criminal responsibility (P. 2 Article 14 CC). Finally, the criminal act of person must be skilled, however from criminal responsibility it can be exempt in the order set by a law.

In opinion of L. D. Gauchman a necessity of application is during qualification of unfinished crime of the articles, that regulate preparation and attempt conditioned by that foreseen signs of unfinished corpus delict in them, what absent in the articles of Special Part of CC [4].

Position speaks out in scientific literature in relation to possibility of commission of unfinished crime that comes true with indirect intention or from carelessness. At establishment of orientation of intention of guilty on a commission crime an important value has taking into account of reason and aim committed, as they testify to the presence of direct intention. It follows notices also, that an unfinished crime from a subjective side is characterized guilt only in the type of direct intention. First on this circumstance specified only when the question was about encroaching upon a crime, however in future this position was widespread on preparation to the crime.

Deem it wise to set forth the separate rules of qualification of unfinished crime.

1. Establishment for the person of careless form of guilt at the commission of crime eliminates its qualification as unfinished.

2. Establishment for the person of indirect intention at the commission of crime eliminates its qualification as encroaching upon a crime.

3. Establishment of all signs of complete crime, by general rule, eliminates qualification of act as an unfinished crime. An exception is a presence of certain types of actual error in the act of person, that is why in case of wrong idea of person about the actual objective signs of committed by it.

4. It is necessary to set for qualification of unfinished crime that a crime that a person gathered (tried) to do was not carried through on reasons that does not depend on its will.

5. Every stage of commission of intentional crime comes true consistently and embraces by itself the previous stages within the limits of one corpus delict (encroaching upon a crime embraces by itself preparation to the crime; a complete crime embraces by itself unfinished crime). At that rate qualification of commission act comes true only taking into account the last stage.

6. If a person wished to accomplish a certain crime and actually commission answers all signs of this corpus delict by it, then even during partial realization of intention, act characterized as a complete crime. If a person wished to accomplish a certain crime, however it is actually commission by her does not answer all signs of this corpus delict, then commotted is characterized as an unfinished crime.

7. If intention of person contained an offensive publicly of the hazard effects, foreseen by the article (by part of the article) of Special Part of CC, that sets responsibility for more grave crime, than it is actually caused, committed it is necessary to characterize as a crime attempted.

8. If intention of person contained an offensive publicly of the hazard effects foreseen by the same article of Special Part of CC, that and actually caused, then committed it is necessary to characterize as a complete crime.

9. If acts committed a person at preparation to the certain crime or encroaching upon his commission contain the signs of other complete crime simultaneously, all committed it follows to characterize after totality of crimes, one of that is unfinished, and other complete.

References:

1. Благов Е. В. Применение уголовного права. – СПб: Изд-во Р. Асланова «Юридический центр Пресс», 2004. – С. 171.
2. Куринов Б. А. Научные основы квалификации преступлений. – М.: Изд-во Моск. ун-та, 1984. – С. 121.
3. Уголовный закон: Опыт теоретического моделирования. / Отв. ред. В. Н. Кудрявцев и С. Г. Келина. – М. : Наука, 1987. – С. 95.
4. Гаухман Л. Д. Квалификация преступлений: закон, теория, практика. – М.: ЗАО «ЮрИнфоР», 2013. – С. 175.