

The Place of The Institution of Multiple Crimes in Qualification of The Crime

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Abstract

Within the framework of this article, the significance and criminal-legal impact of the institution of multiple crimes for crime qualification are examined. It is noted here that the legal assessment of committed acts in the event of multiple crimes belongs to the category of general rules for crime qualification. The significance of the guiding explanations provided in the resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan for the qualification of crimes is determined. Furthermore, the features of crime qualification based on the forms of multiple crimes are analyzed. This section analyzes cases where multiple crimes are excluded when committing socially dangerous acts, which, although they constitute a separate independent crime, must be qualified under a single article. This is justified by examples of preparation for committing a more serious crime, which may be provided for as an independent crime. Based on the study of individual qualification rules for recidivism, the totality of crimes, and recidivism. Based on the foregoing, it is concluded that in modern law enforcement practice, the forms of multiple crimes cease to be merely background characteristics and acquire the status of constructive features of crime compositions, without which it is impossible to accurately and fairly qualify the act.

Keywords: Crime qualification, multiplicity, dangerous recidivism, especially dangerous recidivism, liability, recidivism, rules, legal assessment, crime, dangerous recidivism, especially dangerous recidivism, set of crimes.

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1. Introduction

Within the framework of the modern architecture of the criminal legislation of the Republic of Uzbekistan, the presence of signs of repetition, aggregation, and recidivism serves as a crucial factor in the legal evaluation of the committed act.

These forms of multiplicity have a direct impact on the qualification of criminal behavior, determining the transition from the basic composition of the crime to the qualified one.

The specific nature of the material-legal impact of these institutions is manifested in the legal assessment of the act (crime qualification), the assessment of the degree of social danger, and the systemic connection of criminal law norms. In particular, establishing the fact of multiple persons often obliges the law enforcement officer to apply parts of the articles of the Special Part of the Criminal Code that provide for stricter sanctions.

Each of these forms (whether it be pretrial recidivism or post-penitentiary recidivism) is considered by the legislator as evidence of increased personal danger,

which entails the need for a special qualification procedure to ensure the principle of justice and proportionality of punishment.

Influence on qualification is ensured through a rigid link between the provisions of the General Part (Articles 32, 33, 34 of the Criminal Code) and the specific provisions of the Special Part of the Criminal Code, which requires the investigation authorities and the court to clearly distinguish between these institutions.

In the theory and practice of criminal law, the legal assessment of a committed act is designated as the qualification of a crime. The founders of the theory of crime qualification are V.N. Kudryavtsev [1], B.A. Kurinov [2], R. Kabulov [3] and other foreign and domestic scientists in the field of criminal law.

"Crime qualification is the establishment and legal consolidation of a precise correspondence between the signs of the committed act and the signs of the crime composition provided for by the criminal law" [4].

In theory and judicial practice, general, specific, and individual rules for qualifying crimes have been developed.

In modern criminal law doctrine, the legal evaluation of acts in the presence of multiple traits is considered an integral part of the universal algorithm for crime qualification. Alongside fundamental institutions such as the limits of the criminal law's action in time and space, the doctrine of elements of composition, and the rules for evaluating unfinished criminal activity and complicity, multiple qualification forms a regulatory foundation for precisely establishing the compliance of the committed act with the signs of a specific norm.

The inclusion of multiplicity in the list of general qualification rules is due to the following factors:

the multiplicity of crimes is not limited to the scope of a single article, but requires a comprehensive analysis of the interaction of several components of crimes or sentences;

rules for multiple crimes determine the logic of transitioning from establishing factual circumstances to selecting a specific part or article of the Special Part of the Criminal Code of the Republic of Uzbekistan;

observing general qualification rules in multiple cases is a necessary condition for implementing the principles of justice and individualization of responsibility, preventing

both unjustified mitigation and excessive intensification of repression.

The clarifications provided in the resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan are important in ensuring the correct qualification of crimes. Thus, the Plenum of the Supreme Court of the Republic of Uzbekistan, in its resolution "On issues of qualifying acts in the event of multiple crimes," explains that the extinguishing and removal of a criminal record in accordance with the procedure established by law are circumstances that exclude the combination, recidivism, and recidivism of crimes [5].

In this context, it seems necessary to determine the legal status of these resolutions.

It is known that in accordance with Article 11 of the Constitution of the Republic of Uzbekistan, the system of state power in the Republic of Uzbekistan is based on the principle of the separation of powers into legislative, executive, and judicial branches.

The fundamental role of judicial acts is enshrined in Article 138 of the updated Constitution of the Republic of Uzbekistan, according to which decisions of the judicial branch of power have general binding force for all subjects of law - from state institutions to ordinary citizens. In the context of criminal proceedings, this means that the interpretative acts of the Plenum of the Supreme Court concerning qualification issues are not merely methodological recommendations, but directive instructions mandatory for execution by all lower courts and investigative bodies. This is also confirmed by the Law of the Republic of Uzbekistan "On Courts," which states in Article 25 that "Explanations of the Plenum of the Supreme Court of the Republic of Uzbekistan on issues of applying legislation are mandatory for courts, state and other bodies, enterprises, institutions, organizations, and officials applying the legislation for which the explanation is given" [6].

Alongside the aforementioned resolution, there are other resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan where clarifications are provided regarding the classification of two or more crimes.

Often, the dynamics of criminal activity development may encompass a number of independent socially dangerous acts that may constitute a multitude of crimes. Thus, preparation for the commission of the primary intended crime may constitute a separate criminal offense. An example is the acquisition of firearms

committed through theft to commit intentional murder for revenge. In this case, the defendant's actions are qualified independently under the relevant articles of the Criminal Code (parts one of Articles 247 and 97 of the Criminal Code). Such a legal assessment is due to the fact that, as a result of criminal acts, harm is caused to various social relations protected by individual articles of the criminal law.

At the same time, in cases directly provided for in the clarifications of the resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan, socially dangerous acts, although they constitute a separate independent crime, must be qualified under a single article. Thus, the Plenum notes that "In the event of multiple crimes, if one of the crimes was a means or method of committing another and the signs of both crimes are specified in the disposition of the relevant article of the Criminal Code, the act shall be qualified under only one article of the Criminal Code that provides for liability for a more serious crime." At the same time, additional qualification of the act under an article providing for liability for a less serious crime is not required" [1].

These are cases where, for example, a violation of customs legislation committed using one's official position is subject to qualification only under paragraph "g" of part two of Article 182 of the Criminal Code, where there is no need to additionally qualify the perpetrator's act under Article 206 of the Criminal Code. A similar explanation is provided for the misappropriation of another's property through abuse of official position, expressed in the misappropriation of another's property. The Plenum notes that such acts should be qualified under paragraph "g" of part two of Article 167 of the Criminal Code, and additional qualification under Articles 19211, 205 of the Criminal Code is not required [8].

Let us now proceed to consider qualification issues for individual forms of multiple crimes.

It is known that if recidivism is specified in a criminal law norm as a qualifying feature, then the commission by a person of several identical or other crimes constituting recidivism is subject to qualification under the relevant article (part of the article) of the Criminal Code providing for liability for the recidivism of this crime [9].

The signs of a combination of crimes provided for in Article 33 of the Criminal Code represent special

qualification rules and, of course, influence the general qualification of committed socially dangerous acts.

Thus, based on the provisions of part one of Article 33 of the Criminal Code, the commission of two or more criminal acts provided for by different articles or different parts of the same article of the Special Part of the Criminal Code, for which a person has not been convicted and for which they are liable, constitutes a combination of crimes.

Within the framework of Part 2 of Article 33 of the Criminal Code, a strict rule for qualifying situations characterized by the competition of parts of the same norm is established. According to the will of the legislator, if a committed act falls under the description of several dispositions within the structure of a single article of the Special Part, the law enforcement officer is obliged to be guided by the established imperative, which precludes arbitrary interpretation of the gravity of the act. According to this regulatory prescription, the law enforcement officer must be guided by the principle of the priority of the strictest sanction.

The essence of this rule lies in the exclusion of redundancy, the absorption of less difficult by more difficult, and its methodological significance. Thus, if a person's actions exhibit signs provided for by both the main and qualified (or specially qualified) parts of the article, an independent qualification for each of them is inadmissible. This prevents the violation of the principle of the inadmissibility of imposing punishment for the same crime twice.

Liability in situations where the less severe is absorbed by the more severe occurs exclusively in the part of the article that provides for the most severe punishment. At the same time, all actually committed actions and the resulting consequences must be fully reflected in the prosecution's plot, even if they are formally "absorbed" by a more serious composition during legal evaluation.

The methodological significance of this rule allows for the clear separation of two or more crimes from a single complex socially dangerous act (crime). The implementation of such a task ensures accurate and fair criminal repression within the framework of a single article of the Criminal Code.

These rules are called qualification for a set of crimes.

The Plenum of the Supreme Court of the Republic of Uzbekistan notes that "a crime falling under the features

provided for in parts 2 and 3 of Articles 210, 211, and 212 of the Criminal Code should be qualified only under part 3 of these articles, according to the rules specified in Article 33 of the Criminal Code" [10].

At the same time, it should be borne in mind that a combination of crimes may be qualified under one article (part of an article) of the Criminal Code only in cases where the signs of all committed crimes are covered by the disposition of one of the articles (parts of an article) of the Criminal Code that provides for a more severe punishment.

Along with other criteria, the justification for stating the totality is the characteristics of the material signs of the criminal act, expressed in the encroachment on several social relations protected by criminal legislation. In particular, the law enforcement practice and doctrine of the criminal law of Uzbekistan distinguish the following grounds for applying Article 33 of the Criminal Code:

1. Differentiation based on the object of encroachment. The mandatory qualification of a set is dictated by the need for legal protection of several autonomous social relations. If the subject's acts encroach on heterogeneous genus or species objects enshrined in various chapters of the Special Part of the Criminal Code, the application of a set of norms becomes the only way to ensure the completeness of the legal assessment of the act. This highlights the increased social danger of the act, as one or more actions damage qualitatively different legal values (for example, the interests of justice and the individual).

2. Differentiation based on the subject of encroachment. Acts characterized by the mismatch of their substantive components also serve as grounds for separate qualification. If, within a single time interval, the subject commits acts aimed at various material substances or goods protected by autonomous criminal law norms, such actions cannot be covered by a single composition and must be imposed in aggregate.

At the same time, as noted in the resolution of the Plenum of the Supreme Court, if an act whose object is specified in several articles of the Criminal Code (competition of general and special norms) is committed, as well as if the act is committed with qualifying signs that aggravate liability (for example, special cruelty in murder), and alongside this, other signs that are grounds for qualifying the same act as committed in circumstances that mitigate liability (for example, in a state of affliction), a set of

crimes is absent. In such cases, the act shall be qualified as an independent crime.

Undoubtedly, at present, the status of a person as a dangerous and especially dangerous recidivist is of significance for the qualification of a crime. Such a status of a person who has committed a crime significantly affects the severity of the crime committed and influences the legal assessment of the act.

Based on this, the legislator implemented the signs of dangerous and especially dangerous recidivism directly in the disposition of the articles of the Special Part of the Criminal Code. The placement of these circumstances in the third and fourth parts of the relevant norms serves as a tool for tightening liability: it allows the court to apply stricter sanctions to subjects with a stable criminal past compared to persons who have committed a similar act for the first time. At the same time, it should be borne in mind that under the articles of the Special Part of the Criminal Code providing for liability for a crime committed by an especially dangerous recidivist, only the actions of persons who, prior to committing this crime, were recognized as particularly dangerous recidivists in accordance with the procedure established by law, may be qualified.

When deciding on the liability of a person previously recognized as an especially dangerous recidivist for a newly committed crime, it should be taken into account that recognizing a person as an especially dangerous recidivist is canceled only upon the removal of their criminal record in accordance with the procedure established by Article 79 of the Criminal Code [11].

Thus, it can be concluded that in modern law enforcement practice, the forms of multiple crimes (repeat, aggregate, or recidivism) cease to be merely background characteristics and acquire the status of constructive features of crime compositions, without which it is impossible to accurately and fairly qualify the act.

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4. See: Kudryavtsev V.N. Op. cit.
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6. Law of the Republic of Uzbekistan No. ZRU-703 dated July 28, 2021, "On Courts."
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10. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 11 dated April 17, 1998, "On Judicial Practice in Cases of Bribery" (with amendments and additions as of May 14, 2024).
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