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THE CONTENT OF QUALIFICATION OF CRIMES

The main provisions of the theory of qualification of crimes were developed in the Soviet times. Some of them, notably relating to the content of criminal law assessment, have become obsolete. Therefore, the article aims to interpret a new vision of the content of qualification. The methods used in the research include analysis, synthesis, induction, deduction, interview and statistical method. The authors note that in practice, in fact, general and specific signs of the crimes appearing in the criminal law are used in the qualification of crime.

The authors question the use of "corpus delicti" in enforcement during the criminal legal evaluation. Corpus delicti was created in science to the full understanding and disclosure of the crime and its possible structures. It is impossible to carry out qualification and to resolve issues of criminal responsibility or exemption from it on the basis of scientific statements, which are not enshrined in law.

Without knowledge of corpus delicti it is possible to hold a formal qualification of the offences and the imposition of criminal liability. This is due to the fact that all penal signs, sufficient for criminal liability provided for in the existing criminal law of the Russian Federation.

The authors make the conclusion that qualification is carried out not in terms of corpus delicti, which is a scientific category, but on the basis of general features of crime – guilt, social danger, unlawfulness, liability to punishment, since it is them that are consolidated on the legislative level.

Keywords: content of qualification of crimes, corpus delicti, general features of a crime, guilt, social danger, unlawfulness, liability to punishment.

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Numerous works are devoted to the concept of qualification, its meaning, rules and other matters [1; 2; 3]. However, the main provisions of the theory of criminal qualification have been developed in the Soviet period. Therefore, a new perspective on the content side of the qualification is necessary.

According to scientific literature on the definition of crimes corpus delicti is the only basis of criminal responsibility, and therefore the legal basis for qualification of crimes [4; 5]. It also follows from the content of art. 8 of the Criminal Code of the Russian Federation (hereinafter - the Criminal Code), which stipulates that "the basis of criminal responsibility is an act that contains all the elements of a crime under this Code." At the same time, the Criminal Code does not reveal the content of "corpus delicti" and does not give its definition.

The definition of corpus delicti, its elements and attributes are given by science the criminal law. Most authors take the elements of corpus delicti are the object, the objective side, the subject and the subjective side [6, p. 45-128; 7, p. 18-59; 8, p. 236-295; 9, p. 10-21; 10, p. 36-114].

The Criminal Code formalized the concept of the crime. According to Part. 1, Art. 14 of the Criminal Code, "crime is a guilty committed socially dangerous act prohibited by this Code under the threat of punishment." This definition contains the common elements of a crime: guiltiness, public danger, illegality and punishability. These features are disclosed and specified by the norms of the General and the Special parts of the Criminal Code.

Features related to all crimes are listed in Part. 1, Art. 14 of the Criminal Code, the general conditions of criminal liability are listed in Art. 19 of the Criminal Code, the age at which criminal responsibility is formalized by Art. 20 of the Criminal Code, forms and types of guilt are listed in Art. Art. 24, 25, 26 and 27

of the Criminal Code. Features of particular crimes are listed in the dispositions of the articles of the Special Part of the Criminal Code of the Russian Federation.

In our opinion, law enforcement most often uses elements of the crime in the process of qualification.

For example, Art. 158 (1) of the Criminal Code fixed features a simple theft as of a secret larceny of other people's property. At the same time, in a note to this article defines the larceny, which specifies its attributes. So, In Articles of this Code, larceny means the unlawful, uncompensated seizure and/or the appropriation of other peoples property, committed with a mercenary purpose by a guilty person or by other persons, which as injured the owner or any other proprietor of this property.

In the presence of signs of theft, as well as of the signs placed on the guilty person, enshrined in Art. Art. 19-20 of the Criminal Code, the actions of the person can be qualified as a crime under Part. 1, Art. 158 of the Criminal Code. Accordingly, a person can be held criminally liable. In this case there is no need to use the elements of the crime.

We suppose that practically general and specific elements of crimes listed directly in the Criminal Code are used in process of qualification. So, on the basis of the Art. 140 (2) of the Criminal Procedure Code of the Russian Federation (hereinafter - the Code of Criminal Procedure) seen as the ground for the intitution of a criminal case shall be the existence of the sufficient data, pointing to the signs of a crime.

According to Art. 220 Code of Criminal Procedure in the conclusion of guilt, the investigator shall point out the substance of the accusation, the place and the time of committing the crime, its methods, motives, goals and consequences, as well as the other circumstances of importance for the given criminal case; the formulation of the made charge with an indication of the Item, part and Article of the Criminal Code of the Russian Federation, stipulating responsibility for the given crime.

On the basis of Art. 304 Code of Criminal Procedure, In the introductory part of the sentence shall be supplied the item, part and Article of the Criminal Code of the Russian Federation, envisaging responsibility for the crime, with the perpetration of which the defendant is charged. Art. 308 Code of Criminal Procedure requires that in the resolute part of the judgement of conviction shall be pointed out the Item, part and Article of the Criminal Code of the Russian Federation envisaging liability for the crime, of the perpetration of which the defendant is recognized as guilty.

The basic procedural documents containing the results of criminal-legal assessment fix specific crime with his signs. They indicate that the person has committed a specific crime and is liable for this.

The resolution of the Plenum of the Supreme Court dated 29 April 1996 № 1 "On judicial verdict" does not mention corpus delicti. It states namely the crime, the elements of the crime, and the nature and degree of social danger of the crime .

On our opinion, the law enforcement is based on the elements of the crime which are directly listed in the Criminal Code. These are general features of a crime under Part. 1, Art. 14 of the Criminal Code, as well as signs of specific offenses set forth in the dispositions of articles of the Special Part of the Criminal Code. The most important are general elements of a crime, and namely, guilt, public danger, illegality and punishability.

The term "corpus delicti" has been created by science in order to fully understand the content and disclosure of the crime and and its possible constructions. It is easier and more convenient to explain what elements is a crime when a crime is when - not, as well as to reveal the features that it has. Because of this, we take the view that as "corpus delicti" is an artificial concept. In practice, the only fact which takes place is the crime with its elements.

92% of those surveyed practitioners (investigators) indicated that they use common elements of a crime during qualification. The study and analysis of criminal cases on the most common categories of crimes considered by different courts of the Russian Federation showed that in 93.4% of sentences the courts refer to general elements of a crime without the use of the composition. 6, 6% of sentences contained mentioning both corpus delicti and the common elements of a crime. Therefore, the opinion of law enforcers and

analysis of court decisions once again prove that the criminal law assessment is carried out precisely on the basis of the common elements of a crime.

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