

CRIMINALLY LEGAL VALUE OF THE FACULTATIVE (NONOBLIGATORY) ATTRIBUTES OF THE OBJECTIVE PARTY OF THE CRIME AT THE QUALIFICATION OF CRIMINAL ACT

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ANNOTATION:

This article examines the importance of optional features of the objective side of the crime in the qualification of the act and their types in terms of criminal law, its application abroad and its positive aspects, the impact on the qualification of the crime. As a result of this analysis, scientific recommendations have been developed to address the problematic situations in the criminal law of our country.

Keywords: optional signs of the objective side of the crime; place, time, method, condition, weapon and means of crime; a necessary and aggravating (qualifying) sign of qualifying an act.

INTRODUCTION:

The qualification of a crime is always related to the selection and application of a norm of criminal law. As a result of the qualification, the correspondence between the signs of the act and the signs of a specific crime is determined [1].

Another group of scholars [2], pointing to the specific criminal significance of the optional features of the objective aspect of the crime, call them a "trinity" with a specific criminal significance. They are: a) the fact that it is directly provided for in the norms of

criminal law as a necessary (constructive) feature of the crime; b) the aggravating part of the article of the Special Part of the Criminal Code as an aggravating circumstance of the corpus delicti (objective side); (c) "mitigating or aggravating circumstances" in the imposition of a penalty.

We think that it would be expedient to consider the specific criminal-legal significance of each of the optional features of the objective aspect of the crime analyzed above in qualifying the act separately. They are as follows.

The place of the crime: a) the place of the crime as an optional feature of the objective side of the crime has a specific criminal-legal significance in the qualification of the act. In particular, the place of the crime may be considered by the legislator as the main (constructive) feature of the crime.

For example, Article 114 of the Criminal Code of the Republic of Uzbekistan (criminal abortion) specifies the place of the crime (outside medical institutions) as a necessary (constructive) feature of the objective side of the crime; the place of the crime exerts its influence in the qualification of the act. If an abortion is performed in a medical institution and the victim's health is harmed, it may be qualified for crimes against health (Articles 104, 105 of the Criminal Code of the Republic

of Uzbekistan); b) in addition, in cases where the place of the crime aggravates the liability, it may be considered as a separate qualifier of the corpus delicti, ie an aggravating (qualifying) sign of the qualification of the act. For example, Article 169 of the Criminal Code of the Republic of Uzbekistan, According to paragraph "g", theft is a special qualifying feature of the crime in aggravating circumstances, if it is committed "illegally entering a house, warehouse or other building."

When the crime of robbery or theft is committed "illegally entering a house, warehouse or other premises," it is necessary to follow the rules of "logical process" associated with a specific qualification in the qualification of the act. In particular, when the theft is committed by illegally entering a house, warehouse or other building, it is first necessary to correctly determine on a legal basis the fact that someone else's property was "hidden" (the fact of life). Only then can this act be properly qualified [3].

2) The time of the crime: a) the time of the crime by the legislator is provided for in the article of the Special Part of the Criminal Code as the main (constructive), necessary feature of a particular crime and has an indirect effect on the qualification of this act. For example, Article 99 of the Criminal Code of the Republic of Uzbekistan stipulates a mother intentionally kills her child "at birth" or "while still giving birth". Also, We can give as an example 114-a, 122-123-a, 146-a,147-a, 226-articles of Criminal Code of the Republic of Uzbekistan.

b) in cases when the time of the commission of the crime aggravates the liability, it may be considered as a necessary qualifying feature of the crime, an aggravating (qualifying) of the objective aspect of the crime. For example, according to Article 97, 2 part (e), 104, 2part (g) of the Criminal Code of the Republic of Uzbekistan, if a premeditated murder or intentional grievous bodily harm is committed

"in the course of riots", it is time to commit a crime. The process of mass riots" is a special qualifying feature of the crime in aggravating circumstances.

3) the method of committing a crime: a) the method of committing a crime may be provided by the legislator in the normative disposition of the Special Part of the Criminal Code as a basic (constructive), necessary feature of the objective party. For example, Article 166 (robbery), Article 167 (robbery by embezzlement or extortion), Article 168 (fraud), Article 169 (theft) and other articles of the Criminal Code of the Republic of Uzbekistan - Article 167 of the Criminal Code (robbery by embezzlement or extortion) provides for two methods of committing a crime, one of which is a criminal offense leads to liability. As Qalandarov M.M. stated "the difference between them is made according to the method of transfer of the property of another from the legal possession of the owner to the subject of the crime [4].

It is well known that the composition of a crime consists of a set of elements necessary and sufficient to identify a person as having committed a crime. Therefore, the fact that the method of committing a crime is directly specified in the disposition of the article indicates that it is a necessary sign of the crime [4].

b) Sometimes, the legislature directly implies its form and appearance, without specifying the method of committing the crime. In this case, too, the method of committing a crime is taken into account as a necessary feature of the objective aspect of the specific composition of the crime, provided for in the Special Part of the Criminal Code. For example, in Article 112 of the Criminal Code of the Republic of Uzbekistan "Intimidation with murder or use of force", the perpetrator commits the crime by threatening to kill as a manifestation of his act or by threatening to use force. Article 103 of

the Criminal Code of the Republic of Uzbekistan also stipulates that “cruel treatment” and “continuous humiliation of honor and dignity” are forms of the crime.

The above views of the method of committing a crime play a key role in the qualification of an act; c) the legislature envisages the method of committing a crime as an aggravating (qualifying) feature of the qualification of the act in the aggravating parts of the articles of the Special Part of the Criminal Code. For example, the Criminal Code of the Republic of Uzbekistan 97-article, 2 part "in a manner endangering the lives of others" in a crime of premeditated murder, a method endangering the life of others was considered a necessary qualifying feature in aggravating circumstances; g) the legislation included the method of committing a crime in the list of “aggravating circumstances” provided for in Article 56 of the Criminal Code of the Republic of Uzbekistan (Article 56, 1 part, “e” of the Criminal Code of the Republic of Uzbekistan “in a manner dangerous to the public”). It follows that the method of committing a crime must be taken into account in sentencing.

4) Status of the crime (situation): a) the status of the crime by the legislator is provided for in the article of the Special Part of the Criminal Code as a necessary feature of a particular crime and has an indirect effect on the qualification of this act. For example, Article 98 of the Criminal Code of the Republic of Uzbekistan “Intentional homicide in a state of strong emotional excitement” is a necessary condition for qualifying a crime. Also, according to Article 218, the conduct of a prohibited strike, as well as obstruction of the work of an enterprise, institution or organization, is qualified by this article only if the act is committed in a state of emergency; b) the legislature may find the circumstances of the crime as aggravating circumstances in accordance with Article 56 of the Criminal Code

of the Republic of Uzbekistan. For example, according to Article 56 1 part (o) (i) of the Criminal Code of the Republic of Uzbekistan, a crime is committed “using the conditions of a general disaster”, in accordance with paragraph “o” - under the influence of drugs or psychotropic substances or other substances aggravating circumstance.

5) Weapons and means of committing a crime: a) a weapon of a crime may be directly provided by the norm of criminal law as an aggravating (qualifying) sign of liability for the qualification of an act by the legislator. For example, hooliganism as a crime against public order - a crime committed with the use of a cold weapon or objects (as a weapon) that can cause harm to human health, threatening or using them, Article 277, 2 part “c” of the Criminal Code of the Republic of Uzbekistan ; hooliganism - if a firearm is committed by demonstrating, threatening or using a firearm, it is qualified by article 277, 3 part “b” of the Criminal Code of the Republic of Uzbekistan; b) In most articles of the Special Part of the Criminal Code of the Republic of Uzbekistan, the weapon and means of committing a crime are provided as an aggravating (qualifying) sign of liability.

For example, Article 164, 2 part, “a”, 277-a, 2 p “c” and 3 p “b”, 281-a, 2 p “b”, 283-a, 2 p “b” and so on.

As a result of the analysis of foreign countries and qualification problems in practice, we came to the following conclusion.

First of all, the objective part of the crime provided for in all articles of the Special Part of the Criminal Code of the Republic of Uzbekistan should be clearly stated in the eighth section of the Criminal Code of the Republic of Uzbekistan. Only those who have the authority to qualify know correctly the qualification, which is a logical process, if they know the exact legal meaning of the terms.

According to A.I. Plotnikov, knowledge of the basic structure of crime qualification is formed [6]. A group of scholars also recognize the qualification of action as a logical process associated with contemplation.

Secondly, it is necessary to clarify the word "intimidation" provided for in Part 1 of Article 118 of the Criminal Code of the Republic of Uzbekistan.

As A. Niyazov writes, "in cases where intimidation is an element of the objective aspect of another crime, it serves as a way and means to break the victim's resistance, if he does not comply with the demands of the perpetrator, to intimidate him with this or that trauma [7].

An analysis of the practice shows that it is the crime of rape that involves "intimidation with the use of force". Article 118 1 p disposition should be worded as follows: "Rape, that is, sexual intercourse with the use of force, threatening to use violence or taking advantage of the weakness of the victim."

Third, the weapon of crime is not included in the list of "aggravating circumstances" under Article 56 of the Criminal Code. Also, part 3 of this article stipulates that "the court may not find aggravating circumstances in the imposition of a sentence not provided for in this article." In our opinion, the weapon of a crime should be considered by the court as an aggravating circumstance and this article should be included in the list of "aggravating circumstances". But this issue has been resolved in foreign countries. For example, according to Article 63, part 1, "k" of the Criminal Code of the Russian Federation - weapons, ammunition, explosives or similar devices, specially designed technical means, toxic and radioactive substances, drugs and the commission of a crime using other chemical-pharmacological drugs is recognized as an aggravating circumstance [8]. It is also

enshrined in the Criminal Codes of Tajikistan [9], Kazakhstan [10], and Kyrgyzstan [11].

Using the experience of foreign countries, we consider it appropriate to include in the list of "aggravating circumstances" Article 56 of the Criminal Code of the Republic of Uzbekistan as a tool and instrument of crime. Theoretically, it is impossible to imagine a situation in which the commission of a crime by one or another weapon or means is recognized by the court as a mitigating circumstance. Because the weapons and tools used in committing a crime will always be necessary to facilitate the crime process.

In short, the specific features of the optional features of the objective aspect of the crime can be divided into two main categories: the specific criminal-legal significance of the so-called "trinity" and the specific criminal-legal significance in the qualification of the act.

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