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THEORETICAL FOUNDATIONS OF THE PROCESS OF CRIMINAL LEGAL QUALIFICATION

Abstract. This article extensively explores the fundamental theoretical aspects of the process of criminal legal qualification. An analysis of key concepts and stages underlying this process has been conducted to elucidate its essence and significance.

It is noted that criminal legal qualification emerges as a complex and multifaceted process, demanding careful examination of each phase and stage. It constitutes an integral component of the judicial process, as it determines the legal assessment of actions, establishes liability for law violations, and holds significant importance in ensuring justice and the efficiency of the judiciary.

The process of criminal legal qualification is intricate, involving numerous interconnected stages and phases. The absence of any of these elements may raise concerns about the accuracy of the outcomes and require additional examination to detect potential errors. It is proved that criminal qualification helps ascertain whether an individual’s actions constitute a breach of the law and what consequences they entail according to legal standards.

The necessity for ongoing legislative improvement and refinement of methods in criminal legal qualification to ensure compliance with the law and the protection of human rights has been investigated. Crucial is the ability of qualification to reflect the essence and circumstances of the offense to ensure a fair and proper decision.

In further research, attention is recommended to be directed towards the practical aspects of criminal legal qualification and its impact on judicial proceedings and law enforcement. It is essential to explore methods for optimizing this process and ensuring its effectiveness in real-world law enforcement contexts.
Keywords: criminal legal qualification, theoretical foundations, judicial process, legal assessment, law violations, human rights, legislative improvement, method refinement, judicial proceedings, law enforcement, optimization.

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ТЕОРЕТИЧНІ ЗАСАДИ ПРОЦЕСУ КРИМІНАЛЬНО-ПРАВОВОЇ КВАЛІФІКАЦІЇ

Анотація. У статті досліджено фундаментальні теоретичні аспекти процесу кримінально-правової кваліфікації. Проведено аналіз ключових понять та етапів, що лежать в основі цього процесу, для з'ясування його сутності та значення.

Зазначається, що кримінально-правова кваліфікація постає як складний і багатогранний процес, що вимагає ретельного вивчення кожного стадії та етапу. Він є невід’ємною складовою судового процесу, оскільки надає правову оцінку діям, встановлює відповідальність за порушення закону, має важливе значення в забезпеченні справедливості.

Процес кримінально-правової кваліфікації є складним, включає численні взаємопов’язані стадії та етапи. Відсутність будь-якого з цих елементів може викликати сумніви щодо точності результатів і вимагати додаткового дослідження для виявлення потенційних помилок. Доведено, що кримінально-правова кваліфікація допомагає з’ясувати, чи є в діях особи порушення закону та які наслідки вони спричиняють.

Досліджено необхідність постійного законодавчого вдосконалення методики кримінально-правової кваліфікації для забезпечення дотримання законності та захисту прав людини. Вирішальне значення має здатність кваліфікації відображати суть та обставини вчиненого для забезпечення справедливого та правильного ухвалення рішення.

У подальших дослідженнях увагу рекомендується спрямовувати на практичні аспекти кримінально-правової кваліфікації та її вплив на судочинство та правоохоронну діяльність. Важливо вивчити методи оптимізації цього процесу та забезпечення його ефективності в контексті здійснення своїх повноважень суб’єктами кримінально-правової кваліфікації.

Ключові слова: кримінально-правова кваліфікація, теоретичні основи, судовий процес, правова оцінка, правопорушення, права людини, удосконалення законодавства, судочинство, правоохоронна діяльність, оптимізація.
Problem statement. In theoretical and practical activities, the process of criminal legal qualification is recognized as one of the important components of the legal system, which plays a decisive role in ensuring justice and the effectiveness of justice. Criminal legal qualification determines the legal assessment of the committed crime and defines the consequences imposed on the person guilty of the offense.

One of the most important goals of improving criminal responsibility law is to enhance the effectiveness of applying criminal law norms. This, in turn, is carried out step by step, with a special emphasis placed on the stage of legal application in the sphere of criminal law, particularly on the qualification of criminal offenses. This qualification should be based on the principles and norms of criminal law, take into account established judicial and investigative practices, and be scientifically justified.

Criminal legal qualification serves as an essential tool in the sphere of justice and law enforcement. Its significance lies in determining the legal assessment of actions, establishing accountability, safeguarding human rights, and ensuring law and order. Criminal qualification helps ascertain whether an individual's actions constitute a breach of the law and what consequences they entail according to legal standards. Based on criminal qualification, decisions are made regarding whether to hold an individual accountable for their actions and what sanctions may be applied. A clear definition of criminal qualification ensures the rights of suspects or defendants, preventing arbitrary or unjust application of criminal responsibility.

Criminal legal qualification is a complex process that encompasses multiple stages and phases, all intricately interconnected. The absence of even one of these elements may cast doubt on the reliability of the results of criminal-legal qualification and necessitate further scrutiny to identify any errors.

Analysis of research and publications. The issues of criminal offense qualification have been investigated by scholars such as Ya. Brainin, O. Hertsenzon, S. Kharytonov, M. Korzhanskyi, V. Kudriavtsev, V. Marchuk, V. Navrotskyi, K. Orobets, A. Osadcha, M. Panov, A. V. Savchenko, Ye. Streltsov, O. Us, and others. Scientific discourse continues in the literature regarding the definition of the concept of qualification in criminal law and the term that elucidates this concept. However, the lack of a unified understanding of this important criminal-legal process does not hinder the qualification of unlawful acts in contemporary criminal science.

The purpose of this article is to investigate the phases of criminal legal qualification, delineating the characteristics of the stages involved. Furthermore, the aim of the article is to provide a comprehensive and coherent elucidation of the entire process of criminal legal qualification, accompanied by illustrative examples.
The exposition of the main material. The practical aspect of studying the qualification of criminal offenses encompasses the development of scientific principles for the precision of matching the factual characteristics of the committed act with the elements of the criminal offense, the substantiation of the conclusions made by the legal practitioner, the correctness of the 'qualification formula,' compliance with the content and established form when drafting the relevant legal documentation, proposals for avoiding and addressing qualification errors in investigative and judicial practice. It is evident that this aspect is comprehensive, extending to the study of both criminal law and criminal procedural matters [1, p. 129].

The process of qualification involves three phases such as: the selection of a criminal law norm that encompasses the committed act, establishing correspondence between legally significant factual elements of the act and those prescribed by the law, as well as the legal substantiation of the conclusion regarding the applicability of a specific norm. Each phase comprises its own stage, which we propose to further elaborate.

The selection of the criminal law norm that encompass the committed act means that qualification begins with the stage of choosing the legal norm that encompasses the act. In legislation, there exists only one single norm designed to regulate the particular case, or several in the case of multiple criminal offenses. The legal norm is established or sanctioned by the state; it is obligatory and formally defined; it regulates (protects) specific societal relations that are typical and repeatedly occurring; it defines subjective rights and legal obligations of legal subjects; it operates in time, space, and among a certain circle of individuals; it has its structure, i.e., internal construction; it is enforced by state coercion [2, p. 9]. Therefore, it is important to analyze all the constituent elements of the qualification of criminal legal norms at the main stages. The selection of the criminal law norm involves the following stages: the stage of organizing the factual circumstances of the case, the stage of proposing qualification versions, the stage of distinguishing the elements of the act, and the stage of identifying the norm applicable.

The first stage of the process of selecting the criminal law norm involves organizing the established factual data and identifying those that are relevant for qualification. The organization of factual data entails that the data itself has already been gathered during investigative verification, pre-trial proceedings, or court hearings. The organization begins with categorizing the collected data into secondary to the law (such as those concerning the offender's parents, behavior of unrelated individuals) and legally significant. From these, characteristics are singled out, which have purely evidentiary significance, and characteristics that are considered in resolving substantive legal issues. The latter are further divided into those considered in questions of exemption from legal liability, punishment
imposition, and exemption from punishment, and those with qualifying significance. Qualifying significance is primarily attributed to characteristics specified in the dispositions of legal norms. Subsequently, from the characteristics with qualifying significance, the formation of legal constructs commences, which are utilized in the subsequent actions of qualifying the act.

The stage of proposing qualification versions involves identifying a group of related elements of offenses (elements of other acts) and norms that may encompass the committed act, or even just one such norm. Qualification versions are proposed based on certain characteristics. Most often, appropriate norms are identified according to the nature of the inflicted harm (to life, property, economic interests), the object (weapon, documents, narcotics), the victim (government official, judge, enterprise employee), the method of offense (violence, deception), or the special subject (public official, military personnel).

It can be concluded that all criminal offenses involving a special subject, as outlined in the Special Part of the Criminal Code of Ukraine, may involve collaboration with individuals lacking these special attributes. However, the classification of accomplice actions in such scenarios demands a nuanced approach, contingent upon the specific characteristics of the special subject and other elements integral to the criminal offense. The question of accurately categorizing the actions of individuals who are general subjects of a criminal offense and who participate as accomplices with a special subject remains a subject of debate in criminal law scholarship. This uncertainty stems from challenges in delineating the functional roles of individuals involved in such collaborations [3, p. 73]. Therefore, in the study of criminal law, it is important to identify the system of criminal legal norms, grouping such norms not only by the object but also by other characteristics.

During the proposal of qualification versions, the first comparison between the factual and legal elements takes place. This results in the formation of one factual composition of the offense (or another act provided for by criminal law) and, typically, several possible legal compositions corresponding to the identified factual composition.

The stage of distinguishing the elements of acts involves delineating legal constructs—the elements of acts that were created during the previous stage. This differentiation occurs vertically, meaning between specific branches of law. Additionally, differentiation occurs horizontally—between institutions and norms within the same branch of law. Differentiation is carried out by comparing corresponding positive (those that need to be established) or negative (whose absence needs to be proven) characteristics of the factual and legal compositions of offenses.

The stage of identifying the applicable norm involves identifying one or several (in the case of a complex of offenses) norms that are applicable. This occurs
through expanding the list of legal norms that may be applied during the proposal of qualification versions and subsequently narrowing down this list to one (or several) norms in connection with distinguishing between offenses and other acts.

The identification of the norm entails only the formal correspondence between the factual and legal characteristics of the act (the factual and legal elements of the offense). It occurs using only the constituent characteristics of the offense specified in the norms of the Special Part of the criminal law or the characteristics of the act indicated in the norms of the General Part of the criminal law. To establish that the committed act is indeed a criminal offense (or another offense), it is necessary to prove the presence of factual or substantive characteristics—such as the absence of insignificance of the offense, thus its societal danger, and the absence of characteristics that would negate the criminal unlawfulness of the offense.

**Establishing correspondence between legally significant factual characteristics of the act and the characteristics prescribed by law** involves proving that the act should be qualified precisely under the chosen norm, rather than another, and that there are no circumstances negating the criminal unlawfulness of the act. This process comprises several stages, such as:

— proving the presence of elements of the offense;
— determining the stage of committing the act;
— assessing jointly committed acts;
— evaluating acts covered by multiple norms;
— assessing the societal danger of the act;
— determining the presence of circumstances negating the criminal unlawfulness of the act.

**The stage of proving the presence of elements of the offense** involves sequentially comparing the factual characteristics of the offense with the elements of the criminal offense prescribed by the criminal law norm.

In criminal law theory and practice, the characteristics of a criminal offense are typically analyzed in a specific sequence, based on the elements of its composition. This analysis begins with objective characteristics (those related to the object and objective aspect) before moving on to subjective characteristics. Therefore, before discussing the mental attitude toward the committed act and its consequences, it is necessary to establish whether the person is culpable, and determine the motives and intentions behind their actions. Additionally, determining that the person who committed the act has not reached the age at which criminal responsibility can arise or is legally incapable excludes the question of their guilt regarding the committed act.

**Determining the stage of the commission of the act** involves establishing the stage at which the criminal wrongdoing was completed.
In the articles of the Special Part of the Criminal Code, the characteristics of completed criminal offenses committed by the perpetrator are formulated. Therefore, the absence of all the elements of the offense described in the article of the Special Part of the Criminal Code of Ukraine does not necessarily mean that the act cannot be qualified under this norm. The absence of socially dangerous consequences, the incomplete nature of the act described in the norm of the Special Part of the Criminal Code of Ukraine, with all other mandatory elements of the offense present, may indicate that it is an unfinished criminal offense or an attempt to commit it. Therefore, one of the stages of this qualification process is assessing whether the offense is completed or interrupted at previous stages. At this stage, it is determined whether there is a completed criminal offense, which is qualified only under the article of the Special Part of the Criminal Code of Ukraine, or whether it is preparation for or an attempt to commit it, which are qualified with reference to the respective parts of Articles 14 or 15 of the Criminal Code of Ukraine.

When assessing an act committed jointly by several persons, the assessment of the offense is conducted similarly to the assessment when two or more persons are involved, and in some cases, some of them lack all the elements of the offense described in the article of the Special Part of the Criminal Code of Ukraine. At this stage, the form of participation and the type of participant are determined, and these circumstances are taken into account when qualifying the offense. If there is joint participation in an unfinished criminal offense, the combination of these two criminal legal institutions is taken into account during qualification.

The stage of assessing an act covered by multiple norms involves resolving issues related to the relationship between a singular criminal offense and its multiplicity.

First and foremost, it is determined whether the committed criminal offense is singular. If so, its type is identified—whether it is simple or complex (continuous, ongoing, compounded). If there are multiple criminal offenses, the type of multiplicity is determined, and it is clarified whether individual simple criminal offenses that constitute the multiplicity require separate qualification or if they are all covered by the norm that provides liability for the multiplicity of offenses.

The stage of assessing the societal danger of the act involves proving the correspondence between the factual and legal characteristics of the offense.

Determining the societal danger of the offense during its qualification is possible only after the criminal legal norm (norms) that prescribe liability for it have been identified. However, the mere identification of the criminal law norm does not necessarily mean that the question of societal danger of the offense is unequivocally resolved. For instance, the theft of state property by breaking into a building or other storage facility is considered by the legislator as socially dangerous, and for such actions, criminal liability should arise even when the value of the stolen property is
less than three non-taxable minimum incomes. In other words, the societal danger of such theft is determined not so much by its socially dangerous consequences but rather by the place and method of property seizure.

Furthermore, an act or omission may formally contain elements of a criminal offense, but due to its insignificance, it does not pose societal danger, thus excluding qualification as a criminal offense under a specific article of the Special Part of the criminal law. However, an act cannot be considered insignificant independently of a specific criminal legal norm. There is no such thing as an insignificantly generalized offense; there are insignificantly small thefts, insignificantly forged documents, insignificantly stored ammunition, and so on. Therefore, the precondition for the application of Part 2 of Article 11 of the Criminal Code of Ukraine is the qualification of the offense based on formal characteristics under a specific article of the Special Part of the criminal law.

The stage of determining the presence of circumstances that eliminate the criminal unlawfulness of the act involves proving whether there are circumstances present or absent in the committed act that eliminate its criminal unlawfulness.

The application of relevant institutes of the General Part of the Criminal Code of Ukraine involves resolving issues of qualification both under the articles of the Special Part of the same Code. Acts of individuals who lawfully cause harm as well as acts of those individuals against whom necessary defense is applied, harm is caused in a state of extreme necessity, or in connection with the apprehension of a criminal should be qualified. Only when harm in a state of extreme necessity is caused to avert a threat posed by actions of animals, forces of nature, etc., qualification is required only for the actions of the person who caused such harm. It is important to note that the actions of individuals who caused harm under circumstances eliminating the criminality of the act are qualified by relevant law enforcement officers. However, actions that serve as a basis for necessary defense, extreme necessity, or apprehension of a criminal, as socially dangerous, must be assessed by the individuals who lawfully caused harm themselves.

The determination of necessary defense, extreme necessity, or apprehension of a criminal is possible only after the establishment of the formal elements of a specific crime provided for by a particular article of the Special Part of the criminal legislation. For necessary defense and apprehension of a criminal, these are indicators of crimes against persons - murder, infliction of bodily harm, unlawful deprivation of liberty. For extreme necessity, in addition to the mentioned consequences, it also includes destruction or damage to property.

The final stage of criminal legal qualification involves the juridical establishment of the conclusion regarding the application of a specific norm (legal consolidation of the qualification results). This stage encompasses the process of formulating the qualification results and providing justification for the qualification.
During the formulation of qualification results:
— the presentation of factual circumstances involves selecting relevant facts from all established case data, which are considered in its resolution and serve as the factual basis for the application of legal norms;
— the formulation of the qualification formula entails indicating the articles of the Special Part of the Criminal Code, and in certain cases its General Part, under which the committed act is classified, using abbreviated or conditional designations. It comprises a combination of numeric and alphabetic symbols indicating the articles (as well as their sections and subsections) of the General and Special Parts of the criminal law, by which the act is qualified.

The qualification formula, like any abbreviation, must adhere to certain rules to ensure clarity and decipherability.

General requirements for the qualification formula are as follows:
1) it must specify the criminal law under which the act is being qualified (for example, Part 1 of Article 212 of the Criminal Code of Ukraine, 2001);
2) if the article is divided by the legislator into several parts or paragraphs, the structural part of the relevant article should be indicated (for example, Part 2 of Article 224 of the Criminal Code of Ukraine, production for sale, sale, or other use of counterfeit securities (except state securities) existing in paper form, committed repeatedly);
3) if necessary, reference to the articles of the General Part of the Criminal Code of Ukraine should be made:
   a) if there is preparation for a criminal offense, the qualification should refer to Part 1 of Article 14 of the Criminal Code and to the article of the Special Part of the Criminal Code that provides for the corresponding completed criminal offense (for example, Part 1 of Article 14 and Part 1 of Article 206 of the Criminal Code of Ukraine);
   b) if there is an attempt to commit a criminal offense, depending on its type (completed or incomplete), reference should be made to Part 2 or Part 3 of Article 15 of the Criminal Code of Ukraine and to the corresponding article of the Special Part of this Code (for example, Part 3 of Article 15 and Part 2 of Article 222-1 of the Criminal Code of Ukraine);
   c) if the criminal offense is committed in complicity - and this is not complicity directly provided for by the article of the Special Part of the Criminal Code of Ukraine, then the qualification should indicate Part 5 of Article 27 of the Criminal Code of Ukraine, which provides for the activity of an accomplice of the kind of offense being qualified, or Part 28 of the Criminal Code of Ukraine, which provides for the form of complicity in which the criminal offense is committed, which is being qualified (for example, Part 5 of Article 27 and Part 1 of Article 206 of the Criminal Code of Ukraine).
d) in the qualification formula, it is necessary to correctly place punctuation marks, write it in a way to avoid ambiguity or confusion:

* if there is a plurality of criminal offenses, each article of the Special Part should be separated by a semicolon;
* references to articles of the General Part are separated from the articles of the Special Part by a hyphen;
* references to articles of the General Part are made separately for each article of the Special Part of the Criminal Code.

The stage of qualification justification involves the exposition of reasoning in procedural documents. The conclusion of investigative bodies, pre-trial investigation, prosecution, or court regarding the necessity of qualifying the act under certain norms of criminal law should not only be correct in substance but also well-grounded.

Qualification justification involves referencing acts of official legal interpretation, resolutions of the Plenum of the Supreme Court of Ukraine, universally recognized theoretical principles (rules for qualifying criminal offenses), reasoning, and statements made by the person performing the qualification. Therefore, qualification justification consists of provisions cited in procedural documents that substantiate the correctness of the decision regarding the qualification of the committed act, as expressed in the qualification formula and the formulation of the accusation.

Qualification should be justified in all cases, but the extent and detail of such justification depend on the complexity of the case.

The result of qualification should be understood as the final outcome, conclusion, or legal assessment of the act committed. If the stages and phases of qualification characterize the dynamics of the corresponding activity, then the result of qualification represents its static aspect.

Conclusions. This article has delved into the fundamental theoretical aspects of the process of criminal legal qualification. An analysis of key concepts and stages forming the basis of this process was conducted to elucidate its essence and significance.

The necessity for continuous improvement of legislation and refinement of methods pertaining to criminal legal qualification was explored to ensure compliance with the law and safeguard human rights. The ability of qualification to reflect the essence and circumstances of the offense is paramount in delivering fair and appropriate decisions.

References:


Література: