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CRIMINAL AND LEGAL ESTIMATION OF BEHAVIOUR OF PERSON

Summary. The article is devoted to the problems of criminal and legal estimation of behaviour of person. Correlation of criminal and legal estimation of behaviour of person and qualification of crime is set. Investigational stages of criminal and legal estimation, found out its criminal and legal value. The expounded suggestions are in relation to expediency of the legislative fixing of algorithm of criminal and legal estimation.

Key words: criminal and legal estimation, behaviour of person, qualification of crime.

Problem setting. In case of committing of act, that involved or put under the real threat the damnification to the law-enforcement public relations, values, blessing, laws and interests of person, to society or the states, a person, it is necessary to give the proper legal estimation to it. Such legal estimation will give an opportunity to decide a question about expedience of bringing in of person to legal responsibility. Founding of criminal responsibility is a committing by a person publicly of dangerous act that contains a corpus delict foreseen by the Criminal code (part of CC). For this reason the criminal and legal estimation of behaviour of person consists in establishment in the committed by a person act of elements (their signs) of corpus delict foreseen by a criminal and legal norm.

Analysis of recent research and publications. A large value is given in science of criminal law to the question of criminal and legal estimation of behaviour of person, as correct legal opinion of committed act is the necessary condition of achievement of legality at administering law in connection with realization of criminal realization (investigation). Any error at the estimation of behaviour of person can pull at after itself its conviction is groundless, or groundless acquittal, or application, to owe norms CC, that does not contain all criminal and legal signs of committed by its act.

Such scholars as L.D. Haukhan, M.Y. Korzhanskyi, V.N. Kudriavtsev, B.A. Kurinov, V.V. Marchuk, V.O. Navrotskyi, O.I. Raroh, S.A. Tararukhin and others studied the fundamental issues of crimes classification in their works at different times. Ye.V. Blahov, V.V. Kolosovskiy, V.O. Navrotskyi, R.A. Sabitov and other scientists considered separate aspects of this problem, related to the study of the classification of other criminal and legal acts (minor acts, socially dangerous acts committed by insane persons, acts lawfully causing damage to law enforcement interests, etc.). At the same time, a number of problems of criminal and legal assessment of individual behavior were not given sufficient attention.

The objective of the article is to study the problems of criminal and legal assessment of personal behavior, to establish the stages and the relationship with the crime classification, to determine the criminal and legal significance.

Basic material. The basic setting of criminal and legal estimation of behaviour of person (its aim) is attributing of act to multiplicity of crimes. The result of such estimation is qualification of crime, namely an exact and complete reflection of committed

act is in the formula of qualification (reference is in a corresponding judicial document on digital denotation (number) of the article (parts of the article, point) of Special part of CC, and on occasion – and on the article (part of the article) of its General part, that foresee a committed act).

A search of criminal and legal norm at the estimation of behaviour of person is a task of considerable complication. The object of such estimation actually is behaviour of person (an act is committed by its) too, that is examined from the point of view of criminal illegality, i. e. foreseeing of its in a penal law as to the crime. The types of unlawful behaviour are described in corresponding criminal and legal norms that is contained in Special part of CC, and compositions of crimes have the name. For this reason, at the criminal and legal estimation of behaviour of person of value gets to all individual not circumstances (to the signs) that take place at the committed of particular act, but only those that have a legal value, i. e. present a certain corpus delict. From totality of signs that characterize behaviour of person, a subject that carries out the criminal and legal estimation of such behaviour elects those that is marked in the norm of penal law only, as signs of certain corpus delict. The use of pointing on a corresponding criminal and legal norm the internal, substantial in content aspect of criminal and legal estimation of committed a person act allows to represent.

We should note that classification is traditionally associated with the commission of a crime both in the theory of criminal law and in investigative and judicial practice. However, in addition to the crime classification, there is also a classification (criminal and legal assessment) of an act that is not criminal, although it is provided for in the Criminal Code (in particular, the classification of a minor act; an act committed under circumstances that exclude its criminal nature, etc.) and classifications (criminal and legal assessment) of personal post-criminal behavior. The classification of a crime, the classification of an act, which is not criminal, and the classification of personal post-criminal behavior are covered by a broader (generic) notion – «criminal and legal classification». That is why the characteristics inherent in the criminal and legal classification (its main characteristics) are also characterized by the classification of a crime, and the classification of an act, which is not criminal, and the classification of personal post-criminal behavior, considering the peculiarities inherent in this particular notion (categories).

At the same time, it should be noted that since classification involves evaluating a certain legal fact (events, case, and behavior) from the etymological point of view, an act, which is not criminal, and personal post-criminal behavior for criminal law can be assessed only from the point of view of criminal and legal assessment. In this regard, we believe that criminal and legal assessment of an act that is not criminal and personal post-criminal behavior should be considered as types of criminal and legal classifications.

The above gives grounds to assert that the *criminal and legal assessment of personal behavior (classification) as a generic no-*

tion (phenomenon) is divided into such types (includes three groups of assessments): a) crime classification; b) classification of an act that is not criminal; c) classification of post-criminal personal behavior. The given terms correlate as generic and species ones.

Summarizing the positions of scientific literature, we can conclude that the term of classification is considered in two aspects: a) as a process – the activity of certain subjects as of assessment and establishment of conformity (identity) of the actual and legal features of an act committed by a person (the features of an act committed by a person and the features of a crime or features of an act that is not criminal or signs of personal post-criminal behavior under the criminal law), and b) as a result of such activity – the legal consolidation of the established conformity (identity, identity), the definition of the criminal-law norm to be applied.

Personal behavior is criminally assessed by establishing the criminal and legal (criminally significant) features, a definition of a criminal and legal norm to be applied, and establishing the conformity (identity) of the features of the committed act (behavior) to the features (requirements) of a particular criminal and legal norm.

The criminal and legal assessment of personal behavior is one of the stages of the criminal law application, and in fact, is the application of its disposition and hypothesis, which is traced in the appropriate stages of classification. In a law theory distinguish from three to six stages (phases) of law application (what, in turn, also it can divide into certain kinds), in particular: a) establishments of actual circumstances, on that a legal norm is counted; b) choice of norm that is subject to application under the circumstances; c) analysis of norm that is subject to application, from the point of view of its legality; d) verification of action of norm in space, in time and after the circle of persons; e) decision of collision (competition, inconsistencies) of norms of law and establishment of blanks (defects) in a law; f) raising act of application of norm of law and his implementation.

Also and in science of criminal law scientists spare considerable attention to development of algorithm of criminal and legal estimation of behaviour of person. So, in opinion of L. D. Gauchman, the criminal and legal estimation (qualification) of committed by a person act consists of totality of four components. The first consists in that qualification of crime shows by itself a legal estimation exactly of criminal act, i.e. act that contains all signs of corpus delict, foreseen by CC. A scientist considers that establishment of that is an act by a crime, or not lies outside qualification. The so-called negative, uncompleted qualification of crime, that is incompatible with positive, complete qualification, takes place in such case, as is absent its legal founding. The second component of qualification are signs of committed by a person act, i.e. totality of actual signs of committed crime. The third component are legal signs of corpus delict, foreseen by CC, that is contained not only in the norms of Special part of CC but also in the norms of General part of CC and in those laws and normatively-legal acts on that is reference in blanket dispositions of the articles of Special part of CC. A fourth component is establishment and legal fixing of exact accordance between the signs of committed crime and signs of corpus delict, foreseen by CC [1, p. 14–18].

Supporting this position A. I. Rarog marks that it is legitimate to talk about qualification in wide sense, i.e. about criminal and legal estimation of act to establishment of its criminal character, and about qualification in narrow sense, i.e. about qualification exactly of crimes [2, p. 15].

With the aim of correct criminal and legal estimation of behaviour of person Ye. V. Blagov offered all signs of corpus delict to divide into two groups: a) signs that characterize a self-crime: publicly dangerous act, publicly hazard effects, causal connection between an act and consequences, method, instruments and facilities of commission of crime; b) signs that characterize the terms of commission of crime, in particular: object of crime, place, time and situation of its commission, physical person, achievement of corresponding age, from that a person can be subject to criminal responsibility, obligation, data that characterize the special subject of crime, and also guilt, reason, aim and emotions. It, in opinion of scientist, grounds a decision-making sequence about criminal and legal estimation committed, namely: first made decision about foreseen (unforeseen situation) of the set actual circumstances to those signs of composition, that characterize a self-crime (publicly dangerous act, publicly hazard effects, causal connection between an act and consequences, and also method, instruments or facilities of commission of crime), and then made decision about foreseen (unforeseen situation) of the set actual circumstances to those signs that characterize the terms of commission of crime (object of crime, subject (general and special) of crime, guilty, reason, aim and emotions) [3, p. 111–113].

In cases when a legal estimation brings committed over to the conclusion, that it is not criminal, i.e. does not contain signs none of syllables of the crimes foreseen by a penal law, then such estimation does not result in qualification of act in default of its legal founding. It is predefined also by that, firstly, the choice of criminal and legal norm in the process of estimation of behaviour of person means a decision-making, that is fixed in the legal act of organs of pre-trial investigation and court in case (to realization), and, secondly, in itself conceivable process of estimation of behaviour of person does not have a legal value, generates no law consequences until its result will not be foreseen in a law applicable act during realization of qualification committed.

Thus, in an order to decide the question of criminal and legal estimation of behaviour of person it is necessary to conduct corresponding actions (operations). Persons that carry out pre-trial and judicial investigation holding to set procedure of actions develop the plan of realization of necessary inquisitional actions, as a criminal and legal estimation of act requires skills, knowledge of criminal legislation, logic and corresponding methodology.

Research of scientific literature results in a conclusion that different positions speak out authors in relation to the stages (phases, algorithm) of criminal and legal estimation of behaviour of person. The stages of criminal and legal estimation are elements (constituents) of certain activity that is separated in time and are characterized the specific set of operations (actions), that peculiar each of them. At the same time all of them interlace from each other and complement each other. During realization of the mark, to our opinion, it is possible to distinguish such stages (phases):

1. Establishment of all actual (objective and subjective) signs of behaviour of person and finding out, that the committed owns or not owns the sign of illegaty, what inherent for a certain crime, foreseen by CC. On this stage of criminal and legal estimation: a) set the most general generic features, what inherent offence in general; b) set type of legal relationships; c) decides question about that, or a case that is examined belongs, to the group of crimes or its belongs to other type of offence and d) turns out what branch of the law regulates such legal relationships. Only after establish-

ment of fact of commission of act that owns the signs of crime, person that carries out criminal and legal estimation, a presence in committed of signs of certain corpus delict, penal law foreseen by a norm sets.

2. Finding out of all signs, that inherent to behaviour persons that have criminal and legal value. Depending on that, all actual circumstances of criminal case (realization) are full set as far as, as far as exactly they are investigational and analysed, the correct criminal and legal estimation of behaviour of person will be given.

It should be noted that at opening of criminal realization sufficiently often there is only a minimum volume of information about a commission of crime. In the process of pre-trial investigation, an amount (volume) and quality of facts that have a criminal and legal value increase, and in the moment of completion of investigation of case the corresponding subject of qualification must own all necessary and substantial data about committed crime. Depending on that, all actual circumstances of criminal case (realization) are full set as far as, as far as exactly they are investigational and analysed, correct qualification of committed crime will be carried out.

3. Establishment of criminal and legal norm (article, part, point of the article of penal law) that most full and exactly foresees responsibility for a committed a person act. I.e. after the decision of question about family legal opinion of behaviour of person, admitting that an act contains the signs of crime, passing comes true to the third stage. On this stage is an estimation after the type of crime, i.e. a question decides about that, what norm of penal law embraces an act that is examined. The sequence of executions on this stage consists in comparison of signs that characterize an *object, objective side, subject, subjective side* of committed act and signs of corpus delict foreseen by a corresponding criminal and legal norm. At establishment of likeness (to equality) of these signs it is possible to estimate behaviour of person as criminal. And in case of *absence* of such likeness (to equality), behaviour of person as criminal estimating is impossible. In addition, the criminal and legal estimation of behaviour of person foresees differentiation of alike (similar) syllables of crimes.

It should be noted that on this stage of criminal and legal estimation of behaviour of person it is necessary also to set: a) limits of action (actions) of penal law at times, in space and after the circle of persons, b) authenticity of text of criminal and legal norm taking into account changes and additions, c) type of disposition of criminal and legal norm (simple, descriptive, reference, blanket), d) or does not have circumstances that eliminate possibility of bringing in of person to criminal responsibility, e) or committed crime individually or in participation, f) or committed complete or unfinished crime, g) or committed form single crime or multiplicity crime (repeated, totality, relapse), and other like that.

Consider that the result of criminal and legal estimation of behaviour of person must be admission of presence in the act of person of elements (their signs) of corresponding corpus delict committed individually or in participation, complete or unfinished, in default of signs: 1) act that is unimportant (P. 2 Article 11 CC); 2) circumstances that eliminate criminality of act (necessary defensive; detention of person that committed crime; absolute necessity; physical and somatic compulsion; and other like that); 3) acts that are not a crime, for lack of its separate elements, their signs (absence of the article of crime, subject of commission of crime, guilt, and other like that); 4) voluntary abandonment at an unfinished crime; 5) effective repentance, in cases specially of foreseen by

a penal law; 6) termination of limitations of bringing in to criminal responsibility and other like that.

4. Establishment of accordance of signs of committed act (actual circumstances of case) to the signs of crime, penal law and fixing of such conclusion foreseen by a norm in a corresponding judicial document. On this stage of criminal and legal estimation of behaviour of person actually and qualification of committed by its act comes true.

A criminal and legal estimation, as a result of thinking, is subject to the legal (judicial) fixing in corresponding judicial documents, what employees of corresponding public authorities fold within the limits of the plenary powers. The marked estimation comes true in a statutory judicial form (to the order), for this reason the judicial result of criminal and legal estimation of behaviour of person is raising of judicial act (decision or sentence). Thus, in an eventual account the criminal and legal estimation of behaviour of person foresees an obligatory conclusion (result) – qualification of committed crime.

It is expedient to mark, that qualification of crime, as a result of criminal and legal estimation of behaviour of person, and actually such estimation does not coincide, as separate norms of General and Special parts of penal law are used at a criminal and legal estimation, however on them can be absent reference during qualification of crime. What be more, in the act of person can be present row of characterizing (aggravating) signs that is foreseen by different parts of the corresponding article of Special part of CC, however during qualification in the certain cases of reference it takes place only on part of the article with a most sequence number.

It should be noted that in inquisitional-judicial practice can be a question about the additional criminal and legal estimation of behaviour of person or in general about its new estimation. An additional criminal and legal estimation takes place in case of establishment of absence of complete (exact) accordance (to equality) between the signs of committed a person act and elements (by their signs) of corpus delict foreseen by a certain criminal and legal norm. A new criminal and legal estimation (overvalue) of behaviour of person is the repeated process of establishment of accordance (to equality) of signs of committed act to the signs of corpus delict foreseen by a penal law, and also comparison of both groups of signs, from before set, that results in a new result and determines what crime it quite and what criminal and legal norm it is foreseen in a penal law. Thus, the *alteration of crime classification* is the adjustment of the previous (primary and subsequent) classifications results. Classification change is a change in the criminal and legal assessment of a committed act by replacing or changing (clarifying) the criminal and legal regulation that is to be applied, in whole or in part [4, p. 333].

It should be noted that from a legal point of view, changes in classifications include no changes in assumptions (versions) put forward during the collection and evaluation of the actual case (proceedings) circumstances as of the possible applicable regulation, arising in the mind of the classification subject, but only changes reflected in the procedural documents.

The Criminal Procedural Code sets rules (limits) for alteration of the criminal and legal classification. That is, such a change will meet the law, if there are appropriate grounds, certain conditions and procedures are met including guarantees of ensuring the rights of the suspect (an accused, a convict) and the victim. For example, the procedure for changing the information (criminal

and legal classification) includes the steps as follows: 1) drafting and approval of a new indictment, stating the changed information and the justification of the decision (part 1 Art. 341 of the Criminal Procedural code); 2) providing copies of a new indictment to participants of court proceedings; 3) explaining the victim the right to support the charges in the previously submitted amount, in case the prosecution is raising the question of criminal law application in the changed indictment, providing for liability for a less serious crime, or reduction of the charge (part 3 Art. 338 of the Criminal Procedural code); 4) explaining the victim the change of information; 5) adjourning the trial to give the, accused person, defense lawyer the opportunity to prepare for defense against the new charge (part 4 Art. 338 of the Criminal Procedural code).

At the same time, the Criminal Procedural code also gives *restrictions* on the alteration of criminal and legal classification by the relevant courts.

The correct, stable and reasonable criminal and legal estimation of behaviour of person has a fundamental value, as it: a) provides legality during realization of justice; b) guarantees laws and legal interests of victim and person that committed crime, promotes individualizations of criminal responsibility and punishments in exact accordance with the norms of Special and General parts of CC; c) provides realization in the general lines of legal and criminal and legal principles (values) of application of norm of law (justice, humanism, guilty responsibility, and other like that); d) determines legal and reasonable application of institutes and norms of General part of CC, that regulate awarding punishment, release from criminal responsibility and from punishment or its serving, redemption of previous conviction, and other like that; e) founding of application of force events of educator character for minor, force events of medical character or other events criminally of legal character; f) stipulates the judicial order of investigation of crimes, set by a criminal judicial legislation; g) allows correctly to describe the state, structure and crime tendency, creates pre-conditions for the exposure of tendencies of the last and development of the most effective events of fight against criminality and separate types of crimes, in particular, by the improvement of criminal legislation.

Conclusions. It all goes to show that a criminal and legal estimation of behaviour of person is the fundamental, essential, central,

cored part, by the kernel of application of penal law in inquisitional and judicial practice. For this reason deem it wise to set the stages (algorithm) of criminal and legal estimation of behaviour of person at legislative level, to work out its single logical system that will allow maximally to bring down the risk of investigators and judicial errors.

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Ус О. В. Кримінально-правова оцінка поведінки особи

Анотація. Стаття присвячена проблемам кримінально-правової оцінки поведінки особи. Встановлено співвідношення кримінально-правової оцінки поведінки особи та кваліфікації злочину. Досліджені етапи кримінально-правової оцінки, з'ясоване її кримінально-правове значення. Висловлені пропозиції щодо доцільності законодавчого закріплення алгоритму кримінально-правової оцінки.

Ключові слова: кримінально-правова оцінка, поведінка особи, кваліфікація злочину.

Ус О. В. Уголовно-правовая оценка поведения лица

Аннотация. Статья посвящена проблемам уголовно-правовой оценки поведения лица. Установлено соотношение уголовно-правовой оценки поведения лица и квалификации преступления. Исследованы этапы уголовно-правовой оценки, выявлено ее уголовно-правовое значение. Высказаны предложения о целесообразности законодательного закрепления алгоритма уголовно-правовой оценки.

Ключевые слова: уголовно-правовая оценка, поведение лица, квалификация преступления.