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Research Article

# THE ROLE OF A LAWYER IN ENSURING THE CORRECT CRIMINAL LEGAL ASSESSMENT OF THE ACT COMMITTED

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## ABSTRACT

The article presents certain requirements and rules for the criminal legal assessment of the committed act and examines aspects of the legal influence of a lawyer on the implementation of the correct qualification of a crime by an investigator, investigator, prosecutor, and court.

## KEYWORDS

Lawyer, action committed, evidence, law, qualification, rules, crime, process, criminal legal assessment, corpus delicti.

## INTRODUCTION

Today we are witnessing significant reforms in the judicial and legal system of the Republic of Uzbekistan, which is primarily aimed at ensuring the priority of legality and justice.

Of course, in ensuring these priorities, the correct and rigorous application of laws in law enforcement practice is important.

One of the important forms of law enforcement activity is the legal assessment of the committed socially dangerous act, which is defined as the qualification of a crime.

In the theory of criminal law, the qualification of crimes is understood as the establishment and legal consolidation of an exact correspondence between

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the signs of the committed act and the signs of the corpus delicti provided for by the criminal law norm [1].

Carrying out the qualification of the committed socially dangerous act, the authorized bodies determine the further fate of the materials collected under a specific circumstance.

## THE MAIN RESULTS AND FINDINGS

The qualification of the action committed also affects the legal status of the person who became involved in a particular circumstance. Naturally, the further status of such a person depends on whether the qualification is carried out correctly.

The essence of the qualification of crimes is to find out whether the event of the crime took place, who is guilty of committing it, as well as all other circumstances related to it.

The Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC), the clarification of these facts and circumstances, connects with the concept of "establishing the truth". At the same time, the inquirer, investigator, prosecutor, and judge are the persons whose duty it is to establish the truth in the case. Therefore, it can be stated that the establishment of the truth and the qualification of the crime are close in importance.

The qualification of a crime by the named authorized persons is carried out within the competence defined by the relevant articles of the criminal procedure legislation, and the decisions they make on a specific criminal case are of a mandatory legal nature and are implemented in the form of legal documents (indictment, sentence, etc.).

Because of this, the legal literature classifies the qualification of a crime into official (legal) and unofficial (doctrinal). At the same time, the official (legal) qualification of crimes is understood as activities related to the legal assessment of an act committed by employees of a state body with special powers (inquiry, investigation, prosecutor's office, and court), based on the requirements of criminal law and other legal norms. The unofficial (doctrinal) type of qualification of crimes is defined as a legal assessment of a socially dangerous act given in statements and complaints by lawyers and other persons, in the mass media, as well as in scientific papers and scientific publications [2].

Without questioning the above classification of the crime, at the same time, we believe that the broad rights granted allow lawyers, based on the results of their informal qualifications, to petition authorized persons for the reclassification of the act.

At the same time, at the stage of inquiry and preliminary investigation, such a petition may be conditioned in connection with the discovery of new circumstances in the case, and the unreliability of the evidence available in the case material. Filing a petition in court may be caused by the presence of investigative errors, inaccuracies, or distorted factual data.

The analysis of law enforcement practice shows that there are still some facts of incorrect qualification of the committed act, which naturally violate the rights and interests of citizens.

It is known that to establish the truth in a case, only the information that has been discovered and verified following the procedure provided by the CPC (Article 22 of the CPC) can be used. Consequently, in the process of inquiry, preliminary investigation, and

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judicial proceedings, the lawyer must establish that the named officials have inaction committed and complied with the requirements of the law. Accordingly, if, as a result of familiarization with the materials of the criminal case, the lawyer discovers that there is an incorrect qualification of the act (for example, "qualification with a margin"), he has the right to file petitions for the reclassification of the act or the termination of the criminal case due to the absence of an event or corpus delicti [3].

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It is known that to establish the truth in a case, only the information that has been discovered and verified by the procedure provided for by the CPC (Article 22 of the CPC) can be used. Consequently, in the process of inquiry, preliminary investigation, and judicial proceedings, the lawyer has to establish that the named officials have inaction committed and complied with the requirements of the law. Accordingly, if, as a result of familiarization with the materials of the criminal case, the lawyer discovers that there is an incorrect qualification of the act (for example, "qualification with a margin"), he has the right to file petitions for the reclassification of the act or the termination of the criminal case due to the absence of an event or corpus delicti [3].

The legislation does not establish a strict form of application for the reclassification of a crime. We believe that in such a petition, the reasons for the change in qualifications should be specifically stated, and documents and information confirming the unfaithfulness of the prosecution's position should be attached.

The list of information subject to proof and relevant to the qualification of the act committed is given in article 82 of the CPC, which provides grounds for accusation and conviction. Most of the information specified in this article relates to objective and subjective signs of a crime (corpus delicti) provided for by the relevant articles of the Special Part of the Criminal Code of the Republic of Uzbekistan (hereinafter referred to as the Criminal Code).

The establishment of the presence of elements of a crime in a committed socially dangerous act is a prerequisite for the correct qualification of the committed act and, accordingly, the basis of the prosecution and the reasoned referral of the case to the court for a verdict of guilty.

Naturally, the qualification of the crime is inherent in the degree of truth, which is due to the material based on which the conclusion is made – the legal assessment of the action committed. Therefore, the correct qualification of a crime can be achieved only based on the necessary and sufficient evidence base subjected

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to thorough, complete, comprehensive, and objective verification (article 94 of the CPC).

Here the task of the lawyer is to study the materials of the criminal case, which were the basis for the qualification of the committed act, by authorized officials. In particular, the sufficiency of evidence can be determined by a lawyer by examining procedural documents in a criminal case (for example, statements of the victim, explanations of other participants, protocols of inspection of the scene of the incident, interrogation, confrontation, results of examinations, etc.). So, we believe that the testimony of witnesses is not sufficient for the qualification of an act under the article of the Criminal Code, which provides for a crime with a material composition, in the absence of material evidence.

It is known that the evidence base is subject to assessment in terms of relevance, admissibility, and reliability (Article 95 of the CPC).

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In particular, the necessary quality of any evidence is its relevance to a specific criminal case. Evidence is recognized as relevant to a criminal case if it is information about facts or objects that confirm, refute or call into question conclusions about the existence of circumstances relevant to the case (part 2 of Article 95 of the CPC). Consequently, the advocate has the right to file a complaint against the actions of the investigator, who used as evidence information unrelated to the case.

Evidence is considered admissible if it is collected by the established procedure and meets the conditions set out in the Code of Criminal Procedure. Consequently, evidence collected in violation of the law can be interpreted as inadmissible [4]. Thus, the testimony of a witness, which is based on assumptions and guesses, the results of the interrogation of a minor suspect or accused without the participation of a defender, or a legal representative, are not permissible. In such cases, referring to the relevant article of the CPC, as well as to the explanation of the Plenum of the Supreme Court of the Republic of Uzbekistan that "any evidence obtained in violation of the law has no legal force, cannot be cited in the verdict, and even more so cannot be used as its basis," the lawyer within the framework of his rights must file a complaint [5].

Part 4 of Article 91 of the CPC ("Auxiliary methods of securing evidence. Annexes to the protocol"), defines the obligation to record a video recording of an inspection of the scene of an incident for particularly serious crimes, a search, verification of testimony at the scene of the event, an investigative experiment,

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detention of a person, refusal of a defender, as well as a personal search and seizure carried out during the detention of a person. Therefore, based on the letter of the law, carrying out these procedural actions without recording a video is illegal.

In this aspect, we believe that there are all prerequisites for inclusion in Article 951 of the Code of Criminal Procedure ("Inadmissibility of evidence"), the inadmissibility of using as evidence the said procedural actions that were carried out without video recording.

Reliable evidence is recognized that indisputably establishes the truth about every one of the circumstances to be proved. When establishing the reliability of evidence, the lawyer should find out that the facts and circumstances attached to the case by the inquirer, investigator, and court have evidentiary value and do not distort a specific event. Thus, contradictory testimony of witnesses in a criminal case cannot be recognized as reliable. In such cases, the lawyer has the right to petition the court for the re-qualification of the imputed corpus delicti, which was carried out by the investigator, investigator, and prosecutor.

The reforms carried out in our country in the judicial and legal sphere have made adjustments to the previously established opinion in criminal law science that the legal assessment of a socially dangerous act committed by a lawyer does not entail legal consequences. Thus, by article 87 of the CPC ("Collection of evidence"), the evidence collected and presented by a lawyer in a specific criminal case is subject to inclusion in the materials of the criminal case, as well as a mandatory assessment during the pre-investigation check, inquiry, preliminary investigation, and consideration of the criminal court case [6].

Consequently, it can be stated that, if there are sufficient grounds, the evidence presented by the lawyer may affect the qualification of the action committed, which may be expressed in the form of a decision by the inquirer, investigator, or court to reclassify the social dangerous act committed or to terminate the criminal case, due to the absence of an event or corpus delicti.

Evidence in the case can be collected by a lawyer by surveying persons who possess relevant information and receiving written explanations with their consent, sending a request, and receiving certificates, characteristics, explanations, and other documents from state and other bodies, as well as enterprises, institutions, and organizations.

Of course, for the correct qualification of a committed socially dangerous act, knowledge of the general rules for the qualification of a crime is necessary, which are based on the rules of logic, psychology, philosophy, and guiding explanations of the decisions of the Plenum of the Supreme Court.

The need for a lawyer to develop knowledge in this area is demanded by the existing facts of incorrect qualifications, which are allowed by individual employees of investigative bodies.

As a rule, such errors are associated with the determination of the signs of the corpus delicti (the object of encroachment, the objective side of the crime, the subject of the crime, and the subjective side of the crime). So, it seems interesting the situation when knowledge of the rules of qualification of a specific crime, in particular on the object of encroachment, allowed the lawyer to provide effective assistance to the client.

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According to the statement of citizen N., a criminal case was initiated by an investigator of the internal affairs bodies on the fact of theft of money (part 1 of Article 169 of the Criminal Code), concerning her husband, citizen S., the lawyer found that citizen N. and citizen S. are legally married, and the money recognized as "stolen" by Article 23 The Family Code of the Republic of Uzbekistan is the common joint property of the spouses. In this case, a complaint reasonably filed by a lawyer with higher authorities led to the termination of the criminal case for lack of corpus delicti (paragraph "2" of Article 83 of the CPC) and the release of citizen S. from custody.

As we can see, the incorrect definition of public relations representing the object of encroachment led the investigator to illegally bring the person to criminal responsibility. Similar qualification errors are also observed when actions that represent civil or economic relations are incorrectly qualified as crimes. Such cases include, for example, unjustifiably initiated criminal cases on the fact of human trafficking (Article 135 of the Criminal Code), fraud (Article 168 of the Criminal Code), and some other crimes.

The lawyer should take into account that the qualification of the crime, in connection with the clarification of the actual circumstances of the case, may change at any stage of the criminal process (at the preliminary investigation, during the trial, when considering the case in the appellate or cassation instances). Consequently, the lawyer's participation in the trial does not exclude his right to provide materials proving the infidelity of the legal assessment of the action committed, which was given during the preliminary investigation. Therefore, one of the main parts of the lawyer's speech at the trial is precisely the shortcomings made by the investigating authorities in the qualification of the action committed.

In this aspect, the proposal of the President of the Republic of Uzbekistan is significant, in his Message to the Oliy Majlis and the people of Uzbekistan indicated that "Now the courts will accept a criminal case not only with an indictment but also with the opinion of the defense" [7].

In the first part of Article 25 of the CPC of the Republic of Uzbekistan, it is noted that "In the court session of the court of first instance, as well as when considering cases by higher courts, the proceedings are carried out based on the adversarial nature of the parties."

In the theory of law, adversarial means such a construction of judicial proceedings in which the prosecution and the defense (parties) are endowed with equal rights to defend their claims of the opposing party, and the court also has the right to direct the process, actively investigate the circumstances of the case and resolve the dispute itself [8].

Article 25 of the CPC also ensures the principle of equality in legal proceedings, which means that the court does not act on the side of the prosecution or defense and does not express any of their interests, but at the same time, while maintaining objectivity and impartiality, creates the necessary conditions for the parties to fulfill their procedural duties and exercise the rights granted to them.

The existence of such a legally fixed principle provides broad powers to the lawyer to ensure the rights and legitimate interests of the client, including achieving the correct qualification of the committed act.

Therefore, it is important to create effective mechanisms to ensure in practice the principles of competition and equality in court proceedings, which is defined as one of the directions of the short-term strategy of raising the judicial system to a qualitatively

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new level for 2023-2026, approved by Decree of the President of the Republic of Uzbekistan on January 16, 2023, No. UP-11 "On additional measures to further expand access to justice and improving the efficiency of the courts" [9].

In addition, this Strategy defines "The expansion of the powers of a lawyer in procedural legislation, including the powers to collect and present evidence."

## CONCLUSION

Thus, it can be stated that the broad powers granted by the national legislation of the Republic of Uzbekistan allow lawyers, within the framework of the law, to apply for a change in the qualification of what they have done at all stages of the criminal process, and, accordingly, to protect the rights and legitimate interests of persons who have applied to them for legal assistance.

## REFERENCES

1. См.: Гаухман Л.Д. Квалификация преступлений: закон, теория, практика. – М.: АО «Центр ЮрИнфоР», 2001. – 316 с. /https://library.nlu.edu.ua/POLN_TEXT/KNIGI-2013/Gauxman_2001.pdf
2. Жиноятларни квалификация қилиш: ИИВ олий таълим муассасалари учун дарслик / Р.Кабулов, А.А.Отажонов, И.А. Соттиев ва бошқ. – Т.: Ўзбекистон Республикаси ИИВ Академияси, 2021. – Б.9.
3. См. об этом: Суханова Л.Г. Возможности влияния адвоката-защитника на изменение «квалификации с запасом» сформулированной по уголовному делу органами расследования//Известия АлтГу. Юридические науки. 2018. №6 (104) /https://cyberleninka.ru/article/n/vozmozhnosti-vliyaniya-advokata-zaschitnika-na-izmenenie-kvalifikatsii-s-zapasom-sformulirovannoy-po-ugolovnomu-delu-organami/viewer.
4. См.: Статья 951 («Недопустимость доказательств») Уголовно-процессуального кодекса Республики Узбекистан/ https://lex.uz/docs/111463.
5. Закон Республики Узбекистан от 27 декабря 1996 года за № 349-I (в редакции Закона Республики Узбекистан от 4 августа 2022 года №ЗРУ-786) «Об адвокатуре»/ https://lex.uz/docs/5837.
6. См.: Постановление Пленума Верховного суда Республики Узбекистан от 23 мая 2014 года № 07 «О судебном приговоре»/ https://lex.uz/ru/docs/2413564
7. Послание Президента Республики Узбекистан Шавката Мирзиёева Олий Мажлису и народу Узбекистана /https://president.uz/ru/lists/view/5774
8. См. подробнее: Шестакова Т.П. Состязательность и равноправие сторон как принцип уголовного судопроизводства / Т.П.Шестакова. – Текст: непосредственный // Молодой ученый. – 2018. – № 8 (194). – С.99-101. – URL: https://moluch.ru/archive/194/48493/
9. Указ Президента Республики Узбекистан 16 января 2023 года № УП-11 «О дополнительных мерах по дальнейшему расширению доступа к правосудию и повышению эффективности деятельности судов»/https://lex.uz/ru/docs/6358985