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SIGNIFICANCE OF CORPUS DELICTI

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The considered article deals with the significance of the concept of corpus delicti. The Author states, that corpus delicti is sole, necessary and sufficient ground for criminal responsibility and the sole instrument for qualification of crimes. There are discussed principles of qualification of crime such as objectivity, validity, accuracy and completeness of qualification. Further it is reasoned that the main question is how to choose the features, which have a qualifying value. The construction of corpus delicti serves for that. Thus, corpus delicti, which contains necessary features for recognition of a person as guilty of committing a certain crime, operates as legislative model of qualifying the socially dangerous act. The necessity of features consists in the fact that missing at least one of them results with the absence of corpus delicti itself.

Keywords: *corpus delicti, criminal responsibility, qualification of crimes, object of crime, objective aspect of crime, subjective aspect of crime, subject of crime.*

Corpus delicti represents a complex of objective and subjective signs provided by criminal statute, which characterise socially dangerous act as a crime. Its main significance is expressed in the fact, that it is **sole, necessary and sufficient ground for criminal responsibility**.

The ground for criminal responsibility is the pivotal problem of criminal law. Its correct decision has not only legal, but also great political and social importance. This problem is discussed in two aspects:

- philosophical aspect;
- legal aspect.

The philosophical aspect of the ground for criminal responsibility is expressed in explanation of reasons and grounds of committing crime. The person, who has committed a crime, had a chance not to commit it and to be law-abiding. However, he/she violates the penal interdiction and ignores the law-abiding behavior. Philosophically questions on the following are discussed:

- by what the person is guided, who has chosen a criminal way of the behaviour?
- how free is he/she in choosing his/her behavior?
- when can he/she be responsible for the committed crime?

Since XVIII century there are disputes between determinists and indeterminists in response to these questions.

Indeterminism as an idealistic direction in philosophy proceeded from the fact, that human behavior isn't conditioned by anything and it is always and everywhere free to behave and behaves as it pleases.

Such declaration of the absolute freedom of will, its independence from external circumstances doesn't substantiate the causality of human behavior.

Differently was substantiated the basis of responsibility by representatives of *determinism*. Determinism is pointed out in two versions:

- mechanical determinism;
- dialectical determinism.

Representatives of mechanical determinism argue, that external circumstances rigidly control the man, cause his/her behavior, force to behave just so, and not otherwise. It means that man never and in no way is free, and his/her actions are always determined by external circumstances. In their opinion, society should combat crimes like natural disasters. Such fatalistic view on human behavior regards it as a marionette, which is mechanically subordinated to the controlled circumstances and unable to resist them.

Dialectical determinism denies indeterministic and fatalistic view of human behavior. Its representatives recognized the active role of human consciousness on his/her behavior. However, dialectical determinism attaches the leading role to environment.

A man cannot be independent from the surrounding circumstances, that is, from the natural phenomenon and society. But this doesn't create absolute dependence of human activity from the objective circumstances. Man has consciousness and will, and therefore he/she cognizes circumstances of the environment and uses them in his/her activity. This speaks of the freedom of will. As to Hegel, the right is the will, because the ground of law is spiritual, and its starting point is the will, which is free. Freedom forms its substance and definition. The law system is a kingdom of realized freedom, the world of spirit, generated by itself as a kind of second nature.

If a man didn't have freedom in choosing behaviour by the reason of insanity or as a result of insuperable compulsion, his/her deeds don't have penal value and cannot cause the criminal responsibility.

The mentioned is the initial basis of criminal responsibility. If a man has the possibility to choose his/her behavior, the State has the right to require him/her to abstain from commitment of socially dangerous acts, and if such has been committed, then it is necessary to decide the question on bringing the offender to criminal responsibility.

The **legal aspect** of the ground for criminal responsibility contains the solution of the following questions:

- for what specifically should criminal responsibility occur?
- for what kind of behavior should criminal responsibility occur?
- under what conditions should criminal responsibility occur?

It is indicated in the art.3 of the Criminal Code: the commitment of a

deed, containing all signs of corpus delicti provided only by the Criminal Code, shall be the ground for criminal responsibility.

On the corpus delicti, as containing in the deed and forming the bases of criminal responsibility, speaks also the Criminal-procedural Code. For example, art.39 of this code provides, that criminal case cannot be instituted, and the instituted criminal case shall be terminated if the deed doesn't contain corpus delicti.

The norms providing ground for criminal responsibility are the legal guarantee of citizens from lawlessness. They concentratly express criminal law principles, especially the principle of legality and equality of individuals before the statute. Their essence contains the following: the first, to criminal responsibility shall be liable only the person, who has committed a crime, and the second, any person, who has committed a crime should bear criminal responsibility.

As to legislative view, the committed act should contain objective and subjective signs, characterizing the necessary and sufficient elements of corpus delicti.

Objective signs of corpus delicti characterize the object of crime and the objective aspect of crime. Determination of the object of encroachment means the definition of social values or interests, which were harmed in concrete situation. But determination of signs of the objective aspect of crime is expressed in the detection of the following questions:

- what kind of deeds provided by Criminal Code, was committed by the person?
- what consequences were caused by this deed?
- whether there was a causal link between deed and the occurred consequences?

Subjective signs of corpus delicti characterize the subject of crime and the subjective aspect of crime. Determination of the signs of subjective aspect of crime means the definition of guilt of the person in the committed deed and forms of its expression: intention or negligence. From the provision on the subject of crime as an element of corpus delicti derives the conclusion, that to criminal responsibility can be brought not every person, who has committed dangerous act, but only the one, who by age and mental condition is able to control and lead his/her actions.

What does the bringing of a person to criminal responsibility mean? The concept of corpus delicti as the sole ground for criminal responsibility would be incomplete without explaining the contents and nature of this term.

The society imposes certain demands on its members, inobservance of which causes occurrence of responsibility. Depending on nature of the offended prohibition, this responsibility could be moral or legal. Legal responsibility represents the process of realization of legal norms and the final stage in the execution of legislative will, expressed in the legal norm. Criminal responsibility is a type of legal responsibility, alongside civil-legal, administrative, disciplinary responsibilities. Criminal responsibility is the closest to administrative responsibility, because both of them have the same grounds of occurrence — commitment of the offense, and the same tasks — prevention and suppression of offenses and punishment of perpetrators. As basis for civil-law responsibil-

ity operate non-performance or improper performance of obligations or infliction of harm. Generally, it has the property nature and the purpose of restoring the violated right, and also civil-law relations. The basis for administrative responsibility is administrative offense. Such responsibility shall be imposed by the official on employee subordinate to him/her on service. The administrative responsibility is regulated, for example, by internal labor regulations, special disciplinary regulations operating, for example, in army, on transport, etc.

The criminal responsibility has the following features, which allow distinguishing it from other types of legal responsibility:

- *criminal responsibility is imposed only for commitment of deed, containing all signs of corpus delicti, provided by the Criminal Code*. Other types of responsibilities may occur for commitment of crimes, and also other offenses;
- *to the person who has committed a crime, criminal responsibility shall be imposed only by court.* Other types of legal responsibility may be imposed by court, and also by other bodies or persons;
- *criminal responsibility includes the State censure of person and the committed deed.* In imposition of other types of legal responsibilities State censure is absent, because they are imposed not by the State.

It is possible to speak of the criminal responsibility in three aspects:

- determination of criminal responsibility in the statute;
- occurrence of criminal responsibility;
- realization of criminal responsibility.

As to the art.1 of the Criminal Code, criminal legislation **determines criminal responsibility**. It means, that the legislator formulates penal interdictions, for violation of which any person shall be liable to criminal responsibility.

In criminal law the expression of "criminal responsibility" is quite widespread. So, art.2 of the Criminal Code speaks of the determination of basis and principles of criminal responsibility, in art.3 of the Criminal Code — on the basis for criminal responsibility, articles 19— 23 of the Criminal Code — on the persons which are subject to criminal responsibility, articles 27—28 of the Criminal Code — on criminal responsibility for incomplete crime, articles 72—75 of the Criminal Code — on release from criminal responsibility, art.290 of the Criminal Code — on knowingly bringing an innocent person to criminal responsibility, art.291 Criminal Code — on illegal release from criminal responsibility, etc.

The **occurrence of criminal responsibility** is related to the fact of committing crime by a concrete person. When the crime is committed, the offender becomes obligated to undergo state-compulsory influence. A person makes himself/herself to be so obliged, and the State, represented by law-enforcement bodies gets the right to use such influence on this person. It means that without obligation of the person, who has committed a crime, of course, there cannot be a criminal responsibility.

Therefore, in the moment of committing a crime criminal responsibility exists as its sole element — obligation of the offender to undergo conviction and

penal measures. However, this obligation is not yet a responsibility, because it could be unrealized, for example, in case of non-disclosure of crime. In this case, criminal responsibility doesn't get its development in other elements, and therefore, the person shall not be deemed as bearing criminal responsibility.

The imposition of criminal responsibility needs the court to adjudge, on the basis of which the person shall be deemed as guilty in committing a crime. Only in such case it is possible to speak of the occurrence of criminal responsibility.

Realization of criminal responsibility — is a difficult and dynamic process, consisting of special penal means. Basic elements for the mechanism of realization are formed on these means. The realization of criminal responsibility is a process of the actual execution of obligations, coming from the contents of criminal responsibility. The State imposes criminal responsibility on a perpetrator compulsorily and regardless of desire of the offender. Certainly, the criminal responsibility should always correspond to the gravity of the offense. Proceeding from it, criminal responsibility is divided into two types:

- criminal responsibility with imposition of punishment;
- criminal responsibility without imposition of punishment.

Criminal responsibility with imposition of punishment. The most widespread form of realization of criminal responsibility is punishment. Realization of criminal responsibility in this form consists in the following:

- the court adjudges the person who has committed a criminal deed;
- in this judgment committed act is deemed as a crime;
- the person, who is deemed as a guilty in crime, shall be punished as a most repressive form of penal influence;
- having served the punishment involves a specific legal consequence in the form of conviction.

The criminal responsibility is possible without real serving the punishment. This form of realization of criminal responsibility is used in suspended sentence. Here the criminal responsibility consists of the judgment and suspended sentence. The probationary period in suspended sentence is also period of conviction. If suspensory convicted person during the probationary period observes the statutory requirements, the main punishment will not be really imposed.

The second form of realization of criminal responsibility is the *conviction without imposition of punishment*. It derives from art.89 of the Criminal Code, which states, that a juvenile convicted for commitment of crime, not representing great social danger or less grave crime, may be released from punishment with application of compulsory measures of reformative influence. It speaks of the releasing of juvenile only from punishment. In these cases the court adjudges the juvenile, but doesn't impose the punishment. In exchange for punishment the juvenile shall be imposed the compulsory measures of reformative influence.

Thus, the criminal responsibility is a composite socio-legal consequence of the crime, which includes the obligation of person, based on the pe-

nal norms, to give account of his/her deed before the state; a negative evaluation of the committed act and censure of the person who committed this act; the imposed punishment or other penal measure; conviction as a specific legal consequence of adjudgment with serving the punishment.

The presence of corpus delicti in the deeds of person is a necessary basis for bringing him/her to criminal responsibility. It is evidenced by the fact, that no act, even objectively socially dangerous, can entail criminal responsibility, if it doesn't contain all signs of corpus delicti provided by the Criminal Code. For example, the driver of car has grossly violated the traffic rules and as a result of crash with other vehicle caused large property damage and, consequently, objectively committed socially dangerous act. But it can be recognized as a crime only in case of occurring serious or less serious injury to human health. Non-occurrence of such consequences means the absence of corpus delicti and excludes criminal responsibility as to p.1, art.263 of the Criminal Code.

Thus, as to the direct order of statute and judicial practice, the task of law-enforcement bodies is fixing in actions of perpetrator the presence or absence of corpus delicti as a sole ground for criminal responsibility.

Crime always has concrete character. Therefore criminal responsibility may occur not in general, but for concrete crime. Determination of what kind of crime is committed by the person in a particular situation, speaks of qualification of crime. And the crime may only be qualified by means of such instrument as corpus delicti. Therefore, one more importance of corpus delicti consists in the fact that it serves as **sole instrument for qualification of crimes**.

In criminal law theory and practice the qualification of the crime is understood as determining features of respective corpus delicti in the committed socially dangerous act. In this respect it should be noted, that the qualification is not a singular act, but a consistent, logical process, directed to determination of exact correspondence between the actual circumstances of the offense and the signs of corpus delicti (2, 450).

Scientific fundamentals of the qualification of crime are based on certain principles, compliance with which ensures maximum efficiency and fairness of the process of cognition, i.e. the establishment of genuine legalcharacteristics of the socially dangerous act.In legal literature, the following principles of qualification of crime are shown:

- objectivity of the qualification;
- validity of qualification;
- accuracy of qualifications;
- completeness of qualification.

The essence of **objectivity**as a principle of qualification of crimes is in conditionality of qualification by two interrelated moments: the factual circumstances ofcommitting crime, and their genuine penal meaning. This is ensured by fulfillment of the following requirements:

- fairness, completeness and comprehensiveness of study of all the circum-

stances of the committed crime (it should be fixed not only by those facts, that fall in within the main version, but also by the facts, which refute the main version and point to one or another variant of the main version (11, 31);

- correctness of choice of the penal norm, fixing liability for crimes of this kind, and objectivity of clarifying its meaning;
- punctuality and impartiality of the operations on precisely establishment of correspondence of legal features, that are defined by legislator and legal features, intrinsic to a particular socially dangerous act.

The next principle of qualification of crimes is its **validity.** In juridical literature it's noted, that to ensure the validity of qualifications the followings are needed: the first, that the applied norm should correspond to the reality, and the second, that the factual circumstances of the case should be completely and objectively fixed, the third, that there should be no mistake in the qualification process(9, 65).

Accuracy of qualification involves determination of that penal norm, which most completely and specifically describes the factually happened socially dangerous act. As it is noted in the juridical literature, the accurate qualification of crimes involves a reference to the article of the Special part of the Criminal Code, and if an article consists of several parts, items, it is necessary to select the appropriate item and part of this article (10, 32). It should be noted, that in a case of necessity for the accuracy of qualification the norm of the General part of the Criminal Code, which fixes punishability of preparation, attempt or complicity is determined.

Completeness of qualification requires the establishment of all penal norms, in which, even partially, the characteristic of the committed offense is contained. Compliance with the principle of the completeness of qualification is ensured by the following requirements:

- all articles of the Criminal Code, which provide responsibility for crimes committed by the perpetrator, and also all parts and items of these articles should be specified;
- if the penal norm alternatively contains some objective features of act, then the qualification should include all features of the committed crime;
- all obligatory elements of corpus delicti should be specified, regardless of their being fixed directly in the statute or not;
- not only norms of the Special part, but also the General part of the Criminal Code should be fixed and taken into account.

Since the qualification of the crime is a logical process and the process of cognition taking place in a special period of time, it is possible to emphasize its certain stages, which reflect a qualitative originality of any part of the qualification process.

Pre-condition for the correct qualification of crime is the **activity on fixing and assessment of legally important factual circumstances of committed deed.** As we know, every crime is accompanied by a lot of different

circumstances and facts. Nevertheless, not all of them have a penal significance, and even if they have very important evidentiary value, they may be indifferent to the criminal law. Only those factual circumstances, which are simultaneously signs of the relevant corpus delicti, have penal significance.

In fixing the factual circumstances of the offense is performed the classification of features, inherent to any corpus delicti as to the object, objective aspect, subjective aspect and subject of crime. Here features of the deed are determined, the qualities of the subject of offense, the purposes and motives of deed, nature of the consequences are found out.

After fixing all important factual circumstances of the case **the choice of right penal norm** is performed**,** as to which should be qualified the committed socially dangerous act, prohibited by criminal statute. This kind of choice of penal norm is not only expressed in the mechanical selection of norms, but also includes verification of its authenticity, operation in space and as to time. In fixing the penal norm it should be checked up whether the norm is in force, whether it isn't excluded or changed. We should also check up the validity of the text of norm, which is chosen for qualification of deed. The correct qualification of the crime is impossible without understanding the meaning and contents of the specific legal norm, i.e. without its competent interpretation.

The next stage of qualification of crimes is **determining the conformity of corpus delicti of the committed socially dangerous acts to corpus delicti described in the chosen norm.** The conclusion on such adequacy is performed by comparing the signs of factually committed deed with the signs of penal norm formulating penal prohibition, which is supposed to be broken by this deed.

Implementation of the comparison of factual circumstances of the case and penal norm represents the most important stage of qualification and is performed with special methodology, developed by the theory of criminal law and criminal procedure, tested by long-term court practice and practice of investigation and prosecution authorities. The above-mentioned comparison takes place only as to the ground of relevant penal norm. Other characteristics of the committed deed, not covered by it, are not taken into account, although they may be important for the criminal responsibility of the person, for example, for imposition of punishment, for evidential plan, etc. (5, 315).

The main question is how to choose those features, which have a qualifying value. The construction of corpus delicti serves for that. Thus, corpus delicti, which contains necessary features for recognition of a person as guilty of committing a certain crime, operates as legislative model of qualifyying the socially dangerous act. The necessity of features consists in the fact that missing at least one of them results with the absence of corpus delicti itself.

As it is known, features of corpus delicti of crime are divided into four groups, which characterize: the object of crime, objective aspect of crime, subjective aspect of crime and the subject of crime. Likewise, we may classify the

factual circumstances of the committed socially dangerous act. This feature of corpus delicti of crime and socially dangerous act is used in the realization of qualification. Rules of qualification provide for its realization based on the elements of corpus delicti.

Kinds of social values and interests, on which the deed was directed, are determined by the object of crime. It allows fixing the section, chapter of the Special part of the Criminal Code, and thereafter the violated penal norm. Having defined the object of criminal encroachment, it is possible to fix in general the degree of the social danger of the committed socially dangerous act.

Qualification as to the objective aspect is implemented with the consideration of not only the features defined in penal norm, but also the features contained in the rules of other legal branches. The qualification of crime represents a certain difficulty, when some of the features are fixed in the statute as evaluative concepts, the contents of which should be specified depending on certain circumstances. This method is usually used by legislator in the description of socially dangerous consequences. For example, the types of consequences, such as: "any other grave consequences," the "significant harm", "a large scale", etc. are indicated in statute. During the process of qualification it is necessary to establish the sources of estimated feature, its conditionality by the character and contents of harm and damage.

Signs of the subjective aspect in qualification are used in several directions. Legal assessment is largely conditioned by form of guilt, because in criminal legislation the responsibility in some cases varies depending on intention or negligence of the act. For example, art.186 of the Criminal Code provides the responsibility for the intentional destruction or damage of property, but art.187 of the Criminal Code — for the same act, if committed by negligence. Qualification of crimes as to motive and purpose involves their consideration as a necessary condition for occurrence of criminal responsibility for the act, commitment of which isn’t considered a crime without specifying in the statute motive and purpose of act (for example, any stealage involves mercenary purpose, but abuse of official powers as a motive supposes mercenary or other personal interest), and also as aggravating circumstances, which change the basic corpus delicti to its qualified type (for example, the purpose of removal of victim's organs or tissues for transplantation is a qualified form of human trafficking (it.9, p.2, art.144-1 of the Criminal Code).

Qualification as to the subject of crime is performed with account for age criteria and the presence of features characterizing the special subject of crime. Thus, the criminal responsibility as a general rule takes place from sixteen years, and for specified in p.2, art.20 of the Criminal Code — from the age of fourteen. However, for a number of offenses responsibility can occur only when the perpetrator reaches the age of eighteen. Signs of a special subject in the criminal statute aren’t often specified. Therefore, the during qualification of socially dangerous acts it is necessary to refer to the legislation of other legal bran-

ches. Moreover, the absence of feature of special subject doesn't necessarily mean the absence of corpus delicti, but only testifies that the deed should be qualified by the norm, which for the same offence provides responsibility of general subject.

In many cases, the coincidence of certain signs is also the basis for distinguishing one crime from the other. In this sense, the qualification of the crime represents the means of distinguishing crimes.

Primarily crimes differ from each other as to the object. The object of crime allows distinguishing similar deeds. For example, crimes against property and some crimes against public safety, coinciding on other grounds, are distinguished as to the object of crime.

Differentiation of crimes can also be made as to the features of objective aspect of crime, subjective aspect of crime and subject of crime.

So, for example, for corpus delicti of intentional murder, provided by p.1, art.120 of the Criminal Code, time and place of committing murder are not considered as features of corpus delicti. In contrast, for corpus delicti of illegal hunting such feature, as place committing a crime is the obligatory, and this feature together with other features, specified in the criminal statute, formulates the corpus delicti of this crime, and the question of recognizing the relevant deed as criminally punishable hunting depends on that (in it.4, p.1, art.258 of the Criminal Code such feature is the reserve territory).

Features of the subjective aspect play a great role for distinguishing intentional crimes from negligent ones, which seriously changes the qualification of the offense, and at the same time — responsibility and punishment of the guilty person associated with it. In terms of distinguishing crimes the motive and purpose of crime may also operate.

It should also be noted that while fixing the coincidence between features of the committed deed and features described in the relevant article of the Criminal Code, it is necessary to find out whether the committed crime is completed or it is just an attempt to commit a crime, whether the crime is committed by one person or in complicity. If it is determined that the crime was only on the stage of preparation or attempt, then the appropriate application of articles 28 and 29 of the Criminal Code is required.

An essential element of the qualification of crime should also be the **verification of the real possibility for bringing the person to criminal responsibility**. It consists in answer to the question whether there are grounds excluding the criminal proceedings due to insignificance of the deed (p.2, art.14 of the Criminal Code), or due to circumstances, excluding criminality of deed (articles 36—40 of the Criminal Code), or because of voluntary refusal to commit a crime (art.30 of the Criminal Code), or due to obligatory release from criminal responsibility on the basis of notes to specific articles of the Special part of the Criminal Code. In fixing each of listed grounds the need in subsequent stage of qualification disappears.

The results of the qualification process, i.e. conclusion on the fact that a

particular deed contains corpus delicti, appropriate to penal norm, is reflected in the basic criminal-procedural documents, and, first of all, in judgement. In these documents qualification of crimes is fixed by the way of exact naming of those penal norms, as to which the person, who has committed a crime, is liable to criminal responsibility and punishment. It would be desirable to note that during the qualification of the deed articles of both General and Special parts of the Criminal Code, which somehow formulate the features of corpus delicti, should be precisely indicated.

Thus, the qualification process consists in comparison of factual data with penal norm based on all elements of corpus delicti: the object of crime, the objective aspect of crime, the subjective aspect of crime and the subject of crime. If all circumstances connected with the commitment of socially dangerous act strictly correspond to features appropriate corpus delicti provided by criminal statute, then the crime is qualified correctly.

The correct qualification of crimes has a great legal importance. Thus, it:

- allows to distinguish the criminally punishable acts from other offences and immoral acts;
- is an important pre-condition for imposition of lawful and fair punishment;
- is a necessary pre-condition for determining the conditions of punishment;
- is the basis for definition of simple, dangerous and especially dangerous recidivism;
- has influence on decision of questions on conditional release from serving punishment, replacement of the unserved part of punishment with milder one, the expiration of limitation period, possibility of releasing from criminal responsibility, application of amnesty;
- is a pre-condition for proper application of many of the criminal-procedural provisions.

Incorrect qualification of the crime may entail the imposition of unreasonably severe or unreasonably lenient punishment and may cause other negative consequences both for the convict, and for society. In other words, as a result of improper qualification interests, rights and freedom of the convicts, and also others, society and State may be significantly violated. Accurate and complete qualification of the crime is one of the guarantees of legality and public order in democratic lawful State.

LIST OF USED LITERATURE

1. Ağayev İ.B. Azərbaycan Respublikasının cinayət hüququ. Dərslik. Bakı: Nurlar, 2010.
2. Ağayev İ.B. Cinayət tərkibi. Bakı: Təhsil, 2005.
3. Qarayev T.E., Şəmsizadə R.Ə. Cinayətin tövsifinin nəzəri əsasları. Bakı, 1989.
4. Ebu Zehra. İslam hukukunda suç ve Ceza. İstanbul, 1994.
5. Агаев И.Б. Состав преступления: понятие, элементы, значение. М.: Юристъ, 2008.
6. Состав преступления. Серия Энциклопедия уголовного права. Том 4. СПб., 2005.
7. Гаухман Л.Д. Квалификация преступлений: закон, теория, практика. М.: 2003.
8. Кудрявцев В.Н. Общая теория квалификации преступлений. М.: Юристъ, 2004.

9. Кудрявцев В.Н. Теоретические основы квалификации преступлений. М.: 1963.
10. Куринов Б.А. Научные основы квалификации преступлений. М.: 1984.
11. Рарог А.И.Квалификация преступлений по субъективным признакам. СПб.: Юридический центр Пресс, 2003.
12. Трайнин А.Н. Состав преступления по советскому уголовному праву. М.: Юридическая литература, 1951.
13. Трайнин А.Н. Общее учение о составе преступления. М.: Госюриздат, 1957.

CİNAYƏT TƏRKİBİNİN ƏHƏMİYYƏTİ

İ.B.AĞAYEV

XÜLASƏ

Sözügedən məqalədə cinayət tərkibinin əhəmiyyətindən bəhs edilir.Müəllif qeyd edir ki, cinayət tərkibi cinayət məsuliyyətinin vahid, zəruri və yetərli əsasıdır, habelə cinayətlərin tövsifinin yeganə vasitəsidir. Cinayətlərin tövsifinin obyektivlik, həqiqilik, dəqiqlik və tamlıq kimi funksiyaları müzakirə edilir. Daha sonra əsaslandırılır ki, əsas məsələ tövsifedici əhəmiyyəti olan əlamətlərin müəyyən edilməsidir. Buna cinayət tərkibinin konstruksiyası, yəni cinayət qanunu ilə müəyyən olunmuş və ictimai təhlükəli əməli cinayət kimi səciyyələndirən obyektiv və subyektiv əlamətlərin məcmusu xidmət edir. Beləliklə, şəxsin müəyyən bir cinayətin törədilməsində təqsirləndirilməsi üçün zəruri olan əlamətləri özündə əks etdirən cinayət tərkibi ictimai təhlükəli əməlin tövsifinin qanunvericilik modeli kimi çıxış edir.Bu əlamətlərin zəruriliyi ondadır ki, onlardan hər hansı birinin olmaması cinayət tərkibinin də olmamasına gətirib çıxarır.

Açar sözlər: cinayət tərkibi, cinayət məsuliyyəti, cinayətlərin tövsifi, cinayətin obyekti, cinayətin obyektiv cəhəti, cinayətin subyektiv cəhəti, cinayətin subyekti, cinayətin əsas tərkibi, yüngülləşdirici hallar, ağırlaşdırıcı hallar

ЗНАЧЕНИЕ СОСТАВА ПРЕСТУПЛЕНИЯ

И.Б.АГАЕВ

РЕЗЮМЕ

В статье рассматриваются вопросы общего понятия состава преступления. Автор отмечает, что состав преступления является единственным, необходимым и достаточным основанием уголовной ответственности, а также единственным инструментом квалификации преступлений. Обсуждаются принципы квалификации преступлений, такие как объективность, истинность, точность и полнота квалификации. Далее, в качестве главного аргументируется вопрос о выделении тех или иных признаков, имеющих квалификационное значение. Этим целям служит конструкция состава преступления. Таким образом, законодательной моделью квалификации общественно опасного деяния выступает состав преступления, содержащий необходимые признаки для признания лица виновным в совершении определенного преступления. Необходимость признаков заключается в том, что отсутствие хотя бы одного из них влечет отсутствие самого состава преступления.

Ключевые слова: состав преступления, уголовная ответственность, квалификация преступлений, объект преступления, объективная сторона преступления, субъект преступления.