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CARACTERISTICILE EXCESELOR FĂPTUITORULUI LA SĂVÂRȘIREA INFRACȚIUNII ÎN COMPLICITATE

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Prezentul articol abordează caracterizarea excesului făptuitorului și forma de complicitate în excesul făptuitorului. Este analizată evaluarea juridico-penală a acțiunilor complicilor în condițiile exceselor executorului unei infracțiuni, când sunt evidențiate o serie de probleme, în special: stabilirea caracteristicilor de calificare în funcție de un tip de excese ale executorului unei infracțiuni; calificarea faptelor coautorilor la comiterea de către aceștia a unor infracțiuni "excedentare"; calificarea infracțiunilor pe motivul comiterii lor de către un grup de persoane în baza unei conspirații planificate în prealabil; calificarea faptelor complicilor pe baza celei mai grave caracteristici de calificare a structurii unei infracțiuni etc. Caracteristicile calificării infracțiunilor în condițiile exceselor autorului unei infracțiuni în știința dreptului penal sunt considerate în mod tradițional în raport cu excesele cantitative și calitative.

Cuvinte-cheie: *exces al executorului, complicitate, complice, exces cantitativ și calitativ, răspundere.*

CHARACTERISTICS OF EXCESSES OF THE PERPETRATOR WHEN COMMITTING A CRIME IN COMPLICITY

This article considers the characteristic of excesses of the perpetrator and the form of complicity in excesses of the perpetrator. The criminal-legal assessment of actions of accomplices in the conditions of excesses of the perpetrator of a crime is analyzed, when a number of problems are revealed, in particular: establishment of peculiarities of qualification depending on the type of excesses of the perpetrator of a crime; qualification of acts of co-perpetrators when they commit "outgrowing" crimes; qualification of crimes on the grounds of committing them by a group of persons by pre-planned conspiracy; qualification of acts of accomplices on the most serious qualifying feature of the crime, etc. Features of qualification of crimes in conditions of excesses of the perpetrator of a crime in the science of criminal law are traditionally considered in relation to quantitative and qualitative excesses.

Keywords: *excess of the executor, complicity, accomplice, quantitative and qualitative excess, responsibility.*

CARACTÉRISTIQUES DES EXCÈS DE L'AUTEUR LORS DE LA COMMISSION D'UN CRIME EN COMPLICITÉ

Cet article examine la caractérisation de l'excès de l'auteur et la forme de complicité dans l'excès de l'auteur. L'évaluation pénale et juridique des actions des complices dans des conditions d'excès de l'exécutant d'un crime est analysée, ce qui révèle un certain nombre de problèmes, notamment : l'établissement de caractéristiques de qualification en fonction d'un type d'excès de l'exécutant d'un crime ; la qualification des actes des coexécutants lors de la commission par eux de crimes "en expansion" ; la qualification des crimes au motif qu'ils sont commis par un groupe de personnes dans

le cadre d'une conspiration planifiée à l'avance ; la qualification des actes des complices sur la base de la caractéristique de qualification la plus grave du corps du délit, etc. Dans la science du droit pénal, les caractéristiques de la qualification des crimes dans les conditions d'excès de l'auteur d'un crime sont traditionnellement considérées en relation avec les excès quantitatifs et qualitatifs.

Mots-clés: *excès de l'exécutant, complicité, complice, excès quantitatif et qualitatif, responsabilité.*

ХАРАКТЕРИСТИКИ ЭКСЦЕССОВ ИСПОЛНИТЕЛЯ ПРИ СОВЕРШЕНИИ ПРЕСТУПЛЕНИЯ В СОУЧАСТИИ

В данной статье рассматривается характеристика эксцесса исполнителя и форма соучастия в эксцессе исполнителя. Анализируется уголовно-правовая оценка действий соучастников в условиях эксцесс исполнителя преступления, когда выявляется ряд проблем, в частности: установление особенностей квалификации в зависимости от вида эксцессов исполнителя преступления; квалификация деяний соисполнителей при совершении ими «перерастающих» преступлений; квалификация преступлений по признаку совершения их группой лиц по заранее запланированному сговору; квалификация поступков соучастников по наиболее тяжкому квалифицирующему признаку состава преступления и т.д. Особенности квалификации преступлений в условиях эксцессов исполнителя преступления в науке уголовного права традиционно рассматриваются применительно к количественным и качественным эксцессам.

Ключевые слова: *эксцесс исполнителя, соучастие, соучастник, количественный и качественный эксцесс, ответственность.*

Introduction

The clarification of the definition of excess of the perpetrator of a crime, its importance in the criminal law system of the Republic of Moldova is facilitated by the differentiation and correlation of the considered category with a number of other similar criminal-legal situations, in particular, such as complicity, gathering of several persons in one crime (careless infliction of harm), mistake and voluntary abandonment of the crime.

Research methods used. In order to achieve the goal set, the general scientific and private-scientific methods, universal principles of cognition of objective reality, the use of which allowed to comprehensively and comprehensively consider the stated topic. Deductive and inductive methods allowed to formulate private conclusions from general judgments and private conclusion from the general understanding of the concepts of criminal legal responsibility of the excess of the perpetrator of a crime. The use of system-structural method made it possible to study the concept of criminal liability in the case of excess of the perpetrator of a crime as a complex phenomenon, which is a set of logically interrelated elements.

Basic research content

Based on the provisions of Article 48 of the Criminal Code of RM, the excess of the perpetrator of a crime presupposes such conditions as, firstly, the presence of signs of complicity in the preparation or commission of a crime, covered by the intent of all accomplices, and secondly, the commission by the perpetrator of acts not covered by the intent of other accomplices, which constitute an excess. In other words, in the case of excess, the deed is broken down into two components: the act of the perpetrators before the perpetrator's excess, and the act of the perpetrator not covered by the intent of other accomplices.

Correlating the excess of the perpetrator of a crime with such a phenomenon as complicity, A.Yu. Korchagina concludes that some signs of complicity can be simultaneously signs of excess, and singles

out such signs as plurality of subjects; continuation of initially planned criminal activity without actions aimed at maintaining the crime-excess on the part of at least one accomplice; joint actions at the stages of preparation or attempt to commit a crime or in the commission of the main crime, which is performed by all accomplices. [1, p. 196].

The following should be noted with regard to such an approach.

Indeed, the signs of complicity take place only in the act of the perpetrators before the perpetrator commits an excess. As V.F. Shchepelkov notes, if the perpetrator initially had no intention to commit the crime provided for by the preliminary agreement, together with other persons, then the deed cannot be attributed to excess, as there is no intention of the perpetrator to commit a crime in complicity. [2, p.76]. At the same time, excess as a criminal act of the perpetrator of a crime, which goes beyond the intent of other accomplices, is a criminal-legal phenomenon that is beyond the limits of complicity, and what is a sign of complicity, in the case of excess acquires a different meaning. Thus, in case of complicity it is obligatory to have two or more persons who are the subjects of the crime, while one of the accomplices may allow excess, while the commission of a crime by several persons, of whom only one has the signs of a subject, is not complicity in the criminal-legal sense. Such a sign of complicity as jointness implies integrated actions of all accomplices aimed at achieving a common criminal result. It is indeed present at the initial stage of committing a crime, but the act that constitutes the direct excess of the perpetrator of the crime does not contain this attribute in view of the departure of the perpetrator from the common intent of other accomplices. In contrast to complicity in excess, the actions of the perpetrator of the crime, which go beyond the intent of the other accomplices, are not covered by a common intention with them, are not aimed at achieving a single result. Even if the jointly conceived result exists to some extent (for example, when the perpetrator commits a crime that was covered by the intent of other accomplices, but under qualifying circumstances not covered by their intent), it is achieved in a way that the other accomplices did not realize, did not foresee and did not desire. Moreover, in excess, there is no causal and culpable connection between the consequences resulting from the crime committed by the perpetrator and the act of other accomplices, while in complicity, as noted, there is such a connection. Complicity differs from the general type of gathering of the guilty in one crime in that instead of personal responsibility of each of the reunited persons for what they have done, there comes the responsibility of each for the common cause". Excess of the perpetrator of a crime represents a kind of confluence of several persons in a crime, since only the perpetrator who has gone beyond the intent of the other co-conspirators of the crime is responsible for it. [3]. Criminal law knows different varieties of concurrence of several persons in one crime: accessory to a crime, mediated causation, reckless causation, group way of execution of a crime and other types of concurrence of several persons in one crime. [4, p.5]. Excesses of the perpetrator of a crime have certain similarities with careless causation.

The following specific features are characteristic for negligent causing: a single crime, participation of several subjects of criminal responsibility; internally interconnected and mutually conditional nature of behavior, which caused the occurrence of the result; creation of a threat of occurrence or occurrence of a single for all subjects criminal consequence, provided for by the specific composition; the presence between the behavior of subjects and the occurrence of the criminal result on the causal relationship; commission of encroachment with a non-negligent form of guilt. Unlike other facts of negligent criminal offenses, in which the behavior of several persons

somehow manifests itself, in negligent infliction the perpetrators were obliged (in order to avoid undesirable consequences) to act in concert in one direction, but due to negligence or bad faith they interrelated, joint actions allowed the occurrence of harmful consequences, assessed as a negligent crime committed by several persons. When analyzing the criminal-legal assessment of actions of accomplices in the conditions of excesses of the perpetrator of a crime, when a number of problems are revealed, in particular: the establishment of peculiarities of qualification depending on the type of excesses of the perpetrator of a crime; qualification of acts of co-perpetrators when they commit "outgrowing" crimes; qualification of crimes on the basis of committing them by a group of persons by pre-planned conspiracy; qualification of acts of accomplices on the most serious qualifying feature of the corpus delicti, etc.

Before the legislative enshrinement of the norm on criminal liability in case of excess of the perpetrator in the theory of criminal law, there were different points of view on the qualification of the deeds of accomplices in the commission of excess of the perpetrator of a crime. At the same time, the differences were conditioned, firstly, by the author's position on the theory of complicity in general and whether the author adhered to the accessory or independent theory of responsibility of accomplices, and, secondly, by the proposed types of excesses of the perpetrator of crimes. Despite the enshrinement in the current legislation of the provision, according to which for the excess of the perpetrator of a crime other accomplices may not be liable, the criminal-legal assessment of the actions of accomplices associated with the excess of the perpetrators of a crime is still controversial. Features of qualification of crimes in conditions of excesses of the executor of a crime in the science of criminal law are traditionally considered in relation to quantitative and qualitative excesses.

Taking into account the different views on the grounds for the allocation of these groups of excesses, to which attention was paid earlier, different variants of qualification of acts of both the perpetrator, who allowed excesses, and other accomplices of the crime are also considered. In the science of criminal law do not cause disputes situations in which the perpetrator of a crime in addition to the conceived crime, agreed with accomplices, commits a new crime. The responsibility of accomplices comes for participation in the crime to which they gave their consent and which, as a rule, was covered by their intent; the perpetrator will be liable for the totality of crimes. In the opinion of A.Yu. Korchagina, in all cases of excesses related to the commission of the same number of crimes, and in relation to planned crimes, the actions of other accomplices should be qualified as failed complicity. [1]. In the case of excesses related to the commission of a greater number of crimes and in relation to the planned ones, the rules of Art. 84 of the Criminal Code of the RM - cumulative offenses - are applied when deciding on the qualification of crimes of the person who committed the excess. [6].

In case the perpetrator commits a homogeneous crime, which was not covered by the intent of other accomplices, M.I. Kovalev believes that the perpetrator should be responsible for complicity in the originally planned crime, in other cases both instigator and accomplice are no longer considered as accomplices, they should be held responsible according to the rules on the stages of development of criminal activity - for preparation for a crime (if it is punishable by law). [7, p. 230]. It is also considered that if the perpetrator committed a different crime, covering the intent of the other accomplices, but homogeneous with it, the actions of the perpetrators are qualified by the direction of intent. If the perpetrator committed another heterogeneous crime, to the commission of which there was no consent of the other

accomplices, the actions of the latter are qualified as failed complicity - preparation for a crime.

The point of view, according to which the responsibility of accomplices comes according to the rules on the stages of committing a crime, is supported in the academic literature. Thus, when committing a homogeneous crime, accomplices are responsible either for an unfinished crime (preparation, attempt), or for a completed crime covered by their intent. In other cases, the perpetrator is liable on the aggregate for preparation for a jointly conceived crime (if the crime is grave or especially grave) and another actually committed crime or on the aggregate of the committed crimes. Other co-conspirators are held liable either for the preparation of a jointly conceived crime or for the crime that was initially and covered by their intent.

There is also a point of view according to which in case of failure of the perpetrator to bring the crime to an end, the accomplice shall bear criminal liability for complicity in an unfinished crime, i.e. for organizing, inciting or aiding and abetting the attempted crime, depending on the stage at which the criminal activity of the perpetrator was interrupted. In cases when the perpetrator committed another crime, which was not covered by the intent of the organizer or instigator, their actions should be qualified as an attempt on organizational activity or on incitement, since the perpetrator did not commit any actions to implement the intention of the accomplices.

But such a construction does not meet the permissible requirements of justice, forcing the law enforcer to exempt the instigator from criminal liability for complicity in the preparation of crimes of minor or medium gravity - if the instigator succeeded in inducing the perpetrator to the crime, and the activity of the perpetrator was interrupted at the stage of preparation for the crime; and to bring to criminal liability an unsuccessful instigator to commit the same crimes for attempted incitement - if the instigator has attempted to commit the crime. This artificially inflates the degree of public danger of unsuccessful incitement compared to successful incitement. Besides, in criminal law there is no such crime as complicity, but there is the concept of complicity in a crime. Qualitative excess we have when the perpetrator commits acts that are not homogeneous with those for which he was set up or in which he was assisted [8, p.117].

The doctrine states that qualitative perpetrator excess includes two hypotheses: a) the perpetrator commits a new intentional crime to replace the one that was within the intent of the other participants, and b) the perpetrator commits another intentional crime to replace the one that was within the intent of the other participants [9, p. 7]. In the context of perpetrator excess, the question naturally arises: how should the actions/inaction of the instigator, organizer, accomplice and perpetrator be qualified in the hypothesis of qualitative perpetrator excess, if the perpetrator commits a crime of a different nature, which is not covered by the intent of other participants.

In order to answer this question, let us distinguish two situations:

1) the perpetrator commits the crime with the assistance of other participants, both in a coordinated and uncoordinated manner, and then commits the crime, over and above. Thus, in addition to the main crime, the perpetrator commits another crime (of a different nature) that was not covered by the intent of the other participants;

2) the perpetrator voluntarily abandons the crime in which he cooperated with the other participants, committing a crime in excess.

In the first situation, the decision on the qualification of the criminal acts of the perpetrator and other participants:

a) if the activity of the perpetrator is interrupted at the stage of preparation for the crime in which he

cooperated with the other participants and he resorts to committing another crime that was not covered by the intent of the other participants, his actions should be qualified as preparation for the crime in which he cooperated, plus the crime committed in addition, and the actions of the other participants should be qualified as attempted crime;

b) if the activity of the perpetrator is interrupted at the stage of committing the acts, after which he resorts to committing another crime that was not covered by the intent of the other participants, his actions should be qualified as attempted crime in which he cooperated plus the crime committed in excess, and the actions of the other participants should be qualified as attempted crime in which they cooperated with the perpetrator, with the application of the norm of Article 42 of the CC RM, in order to specify the legal role played by each participant;

c) if the perpetrator has reached the stage of completion of the criminal act;

d) if the perpetrator reaches the end of the criminal act, after which he resorts to the commission of another crime, which was not covered by the intent of other participants, his actions shall be qualified under the norm of the special part of the CC incriminating the criminal act in the commission of which he cooperated with other participants, by approving one of the rules provided for in Art. 26. or 27 of the Criminal Code of RM, plus the committed crime in excess, and the actions of other participants of the crime shall be qualified according to the norm of the special part of the CC incriminating the criminal act, in the commission of which they cooperated with the perpetrator, by referring to one of the rules provided for by Art. 26 or 27 of the Criminal Code of RM, but with reference to the norm of Art. 42 of the Criminal Code of RM, in order to specify the legal role played by each participant in the crime.

Much more problematic is the solution of the issue of qualification in the second situation, when the perpetrator voluntarily refuses to commit a crime in which he cooperated with other participants, resorting to committing the crime in excess. In fact, qualification issues arise in connection with the actions/inaction of other participants, except for the perpetrator. It is obvious that the perpetrator, by virtue of the rule stipulated in part 1 of article 56 of the Criminal Code of Moldova, will not be criminally liable for the crime he voluntarily renounced, unless the act itself contains signs of another corpus delicti, in which case his actions will be qualified according to the incriminated crime. In this case, the actions of the perpetrator will be qualified in accordance with the norm providing for punishment for an act committed in excess.

But how should the actions of other participants be qualified? We can say with certainty that they will not be held liable for their excesses. Such decision follows from the legal provision of Article 48 of the Criminal Code of the Republic of Moldova, according to which other participants are not subject to criminal prosecution for the excesses of the perpetrator. They are subject to punishment in accordance with the norm providing for criminal liability for the criminal act to be committed by the perpetrator, which the latter abandoned in favor of committing the crime in excess. This raises the question: will the actions/inaction of the other participants constitute a completed or incomplete crime? And if incomplete, in what form: in the form of prior conspiracy or attempt, similarly, the following question must be answered: whether the crime imputed to other persons should be considered as a crime of participation or not. As to the first question, I note that the possibility of committing a crime is excluded, but the intention of the participants was not realized by the perpetrator. What they intended and what they cooperated on was not reflected in objective reality.

We have nothing left but to choose between the possibility of preparation or attempt to commit a

crime. The solution of the issue of qualification is complicated by the possibility provided by the legislator of voluntary refusal to commit a crime both at the stage of preparation and at the stage of execution. In the doctrine there is no consensus on this issue. In the opinion of L. D. Gaukhman [10, p. 231]. in such cases, other persons should be held criminally liable for preparation or attempt, depending on the stage at which the perpetrator voluntarily renounced the commission of the crime. T. Plaksina adheres to a different point of view, considering that such qualification is impossible in cases where the perpetrator at the stage of attempt voluntarily refused to commit a crime. In the opinion of the author quoted above, the qualification of unsuccessful incitement as an attempted crime would lead to distortion of the role of the instigator. [11, p. 51]. In our opinion, it would be incorrect to qualify the actions of other persons as an attempt on a crime, when the executor voluntarily refused to commit a crime at the stage of commission of executive actions. It is even more incorrect to qualify actions as preparation for a crime, if the actions of the executor, who refused to commit a crime, contain signs of another corpus delicti. That is why we support the position of L. D. Gaukhman stated above. Gaukhman stated above. Let us consider whether such a qualifying decision is fair and equitable. If we qualify the actions of the participants as preparation for a crime, which the perpetrator refused to commit, the question will arise: why, if the activity of the perpetrator is interrupted for reasons beyond his control at a certain stage of criminal activity, especially at the stage of execution, the actions of other participants should be qualified in accordance with the result of criminal activity achieved by the perpetrator, whereas if the perpetrator voluntarily refused to commit the crime, the decision should be different. Are the activities of other participants of the crime different in these two situations? In my opinion, no. In both cases the instigator, for example, cooperated in exactly the same way as the perpetrator. Why then should the qualification decision be different? As to the second question, in my opinion, the actions of other persons should be qualified according to the rules of criminal complicity. In other words, the rules of Article 42 of the Criminal Code of the Republic of Moldova should be applied to qualify their actions. And this is legitimate only if, in addition to the perpetrator, there are at least two persons subject to criminal prosecution. Otherwise, the criminal participation is not considered to be committed by virtue of the rule that at least two persons must be present when cooperating in the commission of a crime.

Conclusions

Having made a certain analysis of theoretically significant material on this article, allows us to note that the problem of excesses of perpetrators of a crime is of a debatable nature. There are different points of view on the definition of the concept of excesses of the perpetrator of a crime, on the allocation of quantitative or qualitative excesses of the perpetrator of a crime, on the consideration of the issue of causal and culpable connection of excesses of the perpetrator of a crime with the previous activities of other accomplices, on the solution of the problem of qualification and sentencing of accomplices in the conditions of excesses of the perpetrator of a crime. The existence of different points of view on the definition of the concept of excesses of the perpetrator of a crime who committed the crime, in the division of quantitative or qualitative excesses of the perpetrator of a crime who committed the crime, on the consideration of the issue of causal relationship with the perpetrator of the crime with other accomplices of the crime, on the solution of the problem of qualification and punishment of accomplices in the conditions of excesses of the person who committed the crime. Excess of the perpetrator of a crime assumes,

actions, when the perpetrator commits a crime, which was not covered by the intent of other accomplices of a crime. The excess of the perpetrator of a crime represents the commission by a co-conspirator of an act, not covered by the intent of other co-conspirators, but preserving with the initial acts of objective and culpable connection in relation to the object, objective or subjective side of the crime first conceived by him. We have established that the excesses of the perpetrator of a crime can be quantitative and qualitative. Quantitative is expressed in committing a homogeneous crime, but characterized by qualifying features and other circumstances that were not part of the intent of other accomplices. Qualitative excess consists in encroachment on another object: committing another crime instead of the intended one. As a rule, in the case of excess of the perpetrator, it is assumed that the perpetrator committed a crime that was not covered by the intent of other accomplices. It is established that excesses can be quantitative and qualitative. Quantitative excess is expressed in the commission of a homogeneous crime, but characterized by qualifying features and other circumstances that were not part of the intent of other accomplices. Qualitative excess consists in encroachment on another object: committing another crime instead of the intended one. It seems that such a legal category as excess of the perpetrator is complex and ambiguous, causing many errors in law enforcement activity.

Thus, excess represents the commission by a accomplice of an act not covered by the intent of the other accomplices, but maintaining an objective and culpable connection with the original act in respect of the object, objective or subjective side of the originally conceived crime. At qualification of the act of accomplices it is necessary to pay attention to the fact that it is possible excess on the part of each of the accomplices at the same time, therefore at individualization of criminal punishment for accomplices, at assignment of punishment it is necessary to take into account the nature and degree of social danger of the crime, constituting excess of the crime committed.

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