

## Subject Of Crime And Qualification Of Crimes

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### Abstract:

The article outlines the values and some issues of qualification for the subject of the crime, the analysis of the views and opinions of scientists on these issues. The article reveals the issues of qualification of crime 'subject as well as the crimes, also analyses the opinions and ideas of researchers about this sphere.

**Keywords:** crime, punishment, responsibility, subject, special subjects, dangerous act, sanity, criminal personality, legal criterion.

### Introduction

The subject of a crime is one of the integral elements of a crime. The subject of a crime in most norms of a special part of the criminal code of the Republic of Uzbekistan is indicated by the word "person" (**N: in 2-, 4-, 6-, 7-, 8-, 9-, 10- and other articles of the Criminal Code**). The word "subject" is used not only as a necessary element of the corpus delicti, but also in the expression of other meanings. In particular, the word "subject" is used in the expressions "business entities", "business entities" (**Articles 180-, 181-, 191-, 192-, 1927- of the Criminal Code, in the title of Chapter XIII1 in the expression "business entity", in Articles 188-, 1923-, 1924-, 1926-, 1928 - the expression "subject of business"**).

In the norms of the main part of the Criminal Code of the Republic of Uzbekistan. as a special subject of the crime, the official, employee, obstetrician, gynecologist, minors, convict, recidivist, parents, man, mother, etc. are designated. In addition, most of the norms of the Criminal Code contain only objective signs of corpus delicti, and the articles are written so that the subject is "read" from the meaning of this definition. For example: article 97 is defined as "Premeditated homicide", article 100, "Deliberate causing death if the limits of necessary defense

are exceeded,” article 102, “Causing death by negligence,” does not indicate who committed the crime. The subject of a crime can be any person who meets the requirements on the basis of crime. The norms of the law of this order make up a large part of the special part of the Criminal Code.

Criminal law as a necessary sign of criminal liability establishes the possession of sanity and the ability to realize committed socially dangerous acts and manage their actions. That is why the criminal law establishes the need for the following features: the possession of the proper age and sanity.

In the theory of criminal law, there are many opinions that characterize the very concept of the subject of the crime, which are worthy of attention. For example, M. Usmonaliev claims that the subject of the crime is a person who has committed a socially dangerous act and is able to bear criminal responsibility under the criminal law [1].

Some legal scholars consider the subject of crime as a criterion for identifying the identity of the offender [2].

V.G. Pavlov believes that the concept of “subject of crime” should be based on specific provisions formulated in the criminal law and proceed from the methodological prerequisites of philosophical and criminal law theories [3].

The subject of the crime as one of the elements of the crime is characterized by the signs formulated in Art. 17, 18, 19 of the Criminal Code of the Republic of Uzbekistan. The legislator included in them only the main features that are relevant for criminal prosecution. Some criminal laws specifically establish that only persons possessing additional specific characteristics may be the subjects of a crime. For example, the law states that only an official can be the subject of a crime of abuse of official authority (article 205 of the Criminal Code), only an official can be the subject of bribery (article 210 of the Criminal Code). According to the scientific research of professor B.D. Akhrarov signs of an official should be one of the following: the official abuses his official powers or the fulfillment of them with violations or gaining official authority or without the right to fulfill the authority of a superior or other official in their place [4].

According to Part 1 of Art. 17 of the Criminal Code are liable for individuals who are sixteen years old before committing a crime. However, the law states that in cases of changing the age of responsibility, liability for certain special crimes may be established. In this definition of age limits for bringing a person to criminal responsibility, first of all, the level of improvement of the psychophysiological

abilities and the socio-spiritual state of the growing person, understanding of the correct assessment of the social danger of the act and its consequences, a sense of responsibility and, most importantly, managing yourself in any circumstances, the development of thinking and consciousness, and secondly, the characteristics and level of danger of crime. In particular, in accordance with the second part of Article 17 of the Criminal Code, persons who are thirteen years old before committing a crime are liable only for intentional murder under aggravating circumstances (part two of Article 97 of the Criminal Code). In this matter, scientists offer the following interpretation: a teenager who is thirteen years old may not be aware of the social danger of other crimes, but may realize that deliberate aggravated murder is a socially dangerous crime.

In accordance with part three of Article 17 of the Criminal Code, persons who are fourteen years old before committing a crime are liable for crimes provided for in the first part of Article 97, Articles 98, 104 - 106, 118, 119, 137, 164 - 166, 169, parts two and three of Article 173, Articles 220, 222, 247, 252, 263, 267, 271, parts two and three of Article 277.

In some cases, to determine the age of the subject of the crime, the subject has reached the age of majority. This is due to the fact that only adult citizens can act as subjects of a number of attacks. For example, criminal responsibility for evading parental support (Article 123 of the Criminal Code), or military service as a duty of citizens, is fulfilled by them when they reach adulthood. Naturally, a violation of these provisions is possible in the presence of that mandatory condition as coming of age. Considering the fact that persons are able to occupy an official position after they have reached the age of 16 and 18, the persons who have reached the age of sixteen are identified as the subjects of some official crimes. For example, violation of the right to work (Article 148 of the Criminal Code), theft by appropriation or embezzlement (Article 167 of the Criminal Code), violation of the requirements for combating diseases or plant pests (Article 199 of the Criminal Code). The subjects of the majority of malfeasance defined persons who have reached the age of eighteen. For example, abuse of power or official authority (Article 205 of the Criminal Code), receiving a bribe (Article 210 of the Criminal Code), holding an innocent accountable (Article 230 of the Criminal Code).

It should be noted that in some articles consisting of several parts, the age of the subject of the crime, taking into account aggravating circumstances, may be different. For example, the subject of part 1 of art. 173 of the Criminal Code

(intentional destruction or damage to property) is a person who has reached the age of 16 years, 2 and 3 of this article are persons who have reached the age of fourteen. Or, the subject of Part 1 of Art. 277 (hooliganism) is a person who has reached the age of 16, and the subjects of parts 2 and 3 of this article are persons who have reached the age of 14.

For example, the subject of Art. 155 Criminal Code (terrorism) is a person who has reached 16 years of age. If such actions involved persons under the age of 16, then they are involved in committing specific crimes - murder, grievous bodily harm, deliberate destruction of another's property, etc., according to Articles 97, 104 and 173 of the Criminal Code. for which crimes the law allows criminal liability below 16 years of age. Also, the subject of Art. 161 (sabotage) is a person who has reached the age of 16. If such actions involved persons under the age of 16, then they shall be held liable for crimes against human life or health or property.

Or, if a person under 16 years of age participated in the riots (Article 244 of the Criminal Code), then his actions are qualified according to Article 277 of the Criminal Code (hooliganism).

One of the essential features of the subject of crime is his sanity. Only a person who possesses the necessary intellectual and volitional qualities, who consciously perceives the phenomena of the world around him, who is able to critically evaluate his actions, who understands the rules of behavior established in society, can be prosecuted.

Sanity is the ability of a person to recognize the socially dangerous nature of his act and to supervise it [5].

Only the guilty person is prosecuted, therefore the subject of the crime should be mentally healthy, i.e. sane person. There are two inextricably linked criteria for recognizing a person as mentally ill, i.e. insane: firstly, legal, i.e. psychological, and secondly, medical, i.e. biological criteria.

The legal criterion of insanity consists of two signs: an intellectual sign, i.e. the inability of a person to be aware of his actions during the commission of a crime, and a strong-willed sign, i.e. impossibility of a person due to a mental disorder, i.e. painful condition, direct your actions.

The medical criterion includes conditionally four groups of mental illnesses: 1) a chronic mental illness; 2) a temporary mental disorder; 3) dementia; 4) other painful mental disorder [6].

Chronic mental illnesses include diseases of the human psyche that are long-lasting and practically incurable. For example, schizophrenia, epilepsy, manic-depressive psychosis, progressive paralysis, paranoia, brain syphilis, etc. Temporary mental disorders are exceptional conditions that occur suddenly in connection with an external situation and are accompanied by a short-term disorder of consciousness. In most cases, these diseases can occur suddenly and end with a complete recovery of the patient. Such diseases are often found among people who have experienced severe mental upheaval and chronic alcoholics.

Dementia (oligophrenia - gr. Oligos - few, insignificant + gr. Phren - mind) is a pathological condition caused by brain damage during childbirth or acquired in early childhood as a result of painful mental conditions of the child.

According to the degree of depth of congenital or acquired underdevelopment, three types of dementia are distinguished:

- 1) debility (mild form) (lat. Debilis - weak);
- 2) imbecility (less deep) (lat. Imbecillus - weak, weak);
- 3) idiocy (the most severe form) (gr. Idioteia - ignorance).

In addition to the above, other painful mental disorders include various mental disorders after severe infectious diseases, neuropsychic disorders in drug addicts during drug starvation, mental personality changes associated with deafness or complete blindness, etc.

It should be noted that the French Criminal Code contains three criteria of insanity: medical - the presence of a mental or neuropsychiatric disorder and psychological - the lack of the ability to realize or control their actions [7].

In the Article. 18 of the Criminal Code of the Republic of Uzbekistan it is determined that "compulsory medical measures may be applied by a court to a person who has committed a socially dangerous act and declared insane." Chapter XVII of the General Part of the Criminal Code "Grounds and Appointment of Compulsory Measures of a Medical Character" specifies the goals and general grounds for application, types and purpose of compulsory medical measures, the extension, modification and termination of their application, the procedure for applying medical measures to persons suffering alcoholism, drug addiction or substance abuse.

The main content of the topic we are studying is that insane, i.e. A mentally ill person who has committed a socially dangerous act is not subject to criminal liability, because he cannot be the subject of a crime. Only coercive medical

measures may be applied to such a person. If a person at the time of the commission of a socially dangerous act did not have a mental disorder, but he had a mental disorder after committing a crime, then he will first be subjected to compulsory medical measures, and upon recovery he will be prosecuted and punished. The reason for bringing him to criminal responsibility is that at the time of the commission of the crime, he was able to realize the meaning of the actions committed by him, sane, i.e. mentally healthy.

If there are doubts about the sanity or mental health of the suspect or accused, then according to Art. 567 Code of Criminal Procedure of the Republic of Uzbekistan, a forensic psychiatric examination is mandatory. The examination helps to identify the nature of the deviation and the severity of the psyche of the individual, the exclusion of the criminal simulating a mental disorder in order to avoid criminal liability. The results of the forensic psychiatric examination are comprehensively examined by the court, which makes a final decision on recognizing the person as insane. It should be noted that according to Art. 19 of the Criminal Code, a person who has committed a socially dangerous act while intoxicated or under the influence of drugs, psychotropic and other substances that affect intellectual and volitional activity is not exempted from criminal liability. Those. such a circumstance is not grounds for declaring a person insane. On the contrary, in Art. 56 of the Criminal Code, it is indicated that aggravating circumstances recognize the commission of a crime while intoxicated or under the influence of narcotic drugs, psychotropic or other substances that affect intellectual and volitional activity.

As you know, the subject of a crime is only an individual. Legal entities may not be the subject of a crime under the criminal law of the Republic of Uzbekistan.

You should also pay attention to the fact that a person can carry out his criminal intent through other persons who are not the subjects of the crime. This is the commission of a crime through incitement (deceit, request, bribery, threat, etc.) of a minor or a person who is known to a guilty person suffering from a mental illness to commit a crime. The subject of such crimes are persons who involve minors or mentally ill persons to achieve their criminal intentions.

Deliberate crimes against human life or health can also be committed using domestic or wild animals. For example, set animals on people. In such cases, the subject of the crime is a person who committed a criminal offense with the help of domestic or wild animals.

Unfortunately, the question remains when, due to the negligence of citizens, violations of the rules for keeping dogs are committed where there may be serious consequences (bites with serious bodily injuries or death). In such cases, the law is limited to administrative liability (Article 110 of the CAO). The author is supported by the opinion that in case of malicious violation of such rules, which entailed grave consequences, it is necessary to raise the issue of careless infliction of grievous bodily harm or death.

It should be noted that the Law of the Republic of Uzbekistan dated January 9, 2018, as a circumstance excluding the crime of an act, introduced Article 411 “Physical or mental coercion or threat” into the Criminal Code, according to which “harming the rights and interests protected by the Criminal Code is not a crime inflicted as a result of physical or mental coercion or threat of applying such coercion, if as a result of such coercion or threat, a person could not manage and (inaction)”. So, as noted above, in this case, the contractor, i.e. the subject of a crime is a person who has exerted physical or mental coercion or the threat of such coercion.

It should be noted that in criminal law, in addition to the three characteristics of the subject of the crime listed above, there are so-called special subjects where the person has, in addition to the general, additional specific features that are taken into account when qualifying the crimes.

According to S.V. Maximov in criminal law uses several techniques for describing the relevant features of a special subject. This is 1) listing in an independent norm additional features related to the homogeneous category of special crimes; 2) an indication in the disposition of the article of the Special Part of the Criminal Code of a special subject, which is the exception of a homogeneous group of subjects of crime; 3) listing in the disposition of the norm the signs of a specific special subject of a crime [8].

#### **Special subjects are divided according to the following criteria:**

1. According to the citizenship of the subject. For example, the subject of espionage (Article 160 of the Criminal Code) is a foreign citizen. If espionage was carried out by a citizen of the Republic of Uzbekistan, then he is held liable for treason against the state under Art. 157 of the Criminal Code.

2. By gender of special subjects (male or female). For example, the subjects of Art. 118 of the Criminal Code (rape), Art. 120 of the Criminal Code (sodomy), Art. 126 of the Criminal Code (polygamy), Art. 225 of the Criminal Code (evasion

of military or alternative service) are only men. If women participated in these crimes, they are held liable for complicity in the crime under Art. 28 of the Criminal Code. Also, the subject of Art. 99 of the Criminal Code (intentional killing by a mother of a newborn baby) can only be a mother in childbirth.

However, it should be noted that, taking into account the degree of danger of the crime and the complicity of the subject in it, the woman who participated in the crime against sexual freedom can be considered together with the man the co-executor of the crime. This is also indicated in the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 13 dated October 29, 2010 “On judicial practice in cases of rape and sexual satisfaction in an unnatural form”, according to which “under paragraph “c” of the second part of Article 118 or clause “c” of the second part of Article 119 of the Criminal Code should qualify not only the actions of persons who directly committed rape or sexual satisfaction in an unnatural form, but also the actions of persons who assisted them through the use of violence or and threats to the victim. At the same time, the actions of persons who did not personally commit the actions provided for by the objective party of these crimes, but through the use of violence or threats that assisted other persons in the commission of the crime, should be qualified as co-execution in gang rape or in satisfying a sexual need in an unnatural form without reference to Article 28 of the Criminal Code .

The actions of a person who did not directly enter into sexual intercourse or who did not take actions to satisfy sexual need in an unnatural form with the victim and did not use violence or threats to him when another person committed these actions, but only facilitated the commission of a crime by advice, instructions, provision of information to the guilty person or the elimination of obstacles, etc., should be qualified as aiding with reference to the fifth part of Article 28 of the Criminal Code”.

3. The relationship of special subjects provides for the availability of reviews and tasks between the accused and the victim. This is a necessary sign of the following crimes. For example, criminal liability is provided for evading the maintenance of minors or disabled persons (Article 122 of the Criminal Code), for evading the maintenance of parents (Article 123 of the Criminal Code) or for marrying or marrying a person who has not reached the age of marriage, by parents or persons, their replacing (part 2 of article 1251 of the Criminal Code).

It should be noted that if the crime was committed against a close relative, this is an aggravating circumstance. For example, when committing crimes under



Art. 118 or 119 of the Criminal Code, against a close relative, an act as an aggravating circumstance is qualified under part 3 of these articles.

4. The subjects of some crimes are only officials, therefore they are considered special subjects. Most of these crimes relate to crimes against the functioning of government bodies and public associations, as provided for in chapter XV of the Special Part of the Criminal Code. For example, abuse of power or official authority (Article 205 of the Criminal Code), abuse of power or official authority (Article 206 of the Criminal Code), official negligence (Article 207 of the Criminal Code), inaction of the authorities (Article 208 of the Criminal Code), official forgery (Article 209) CC), receiving a bribe (Article 210 of the Criminal Code).

In addition, most environmental crimes are committed only by officials. For example, violation of environmental safety standards and requirements (Article 193 of the Criminal Code), deliberate concealment or distortion of information about environmental pollution (Article 194 of the Criminal Code), failure to take measures to eliminate the consequences of environmental pollution (Article 195 of the Criminal Code).

It should be noted that in some cases the qualification of crimes varies depending on whether the subject is an official or not. For example, a crime such as forced unlawful deprivation of liberty is indicated in article 138 of the Criminal Code. If such an act is committed by a law enforcement official, he will be prosecuted under Article 234 of the Criminal Code for unlawful detention or detention. Or another example: liability for causing property damage through fraud or breach of trust is specified in article 170 of the Criminal Code. If such an act is committed through abuse of power, then a person is held accountable under Article 205 of the Criminal Code for abuse of power or authority. Or if the subject of bribery is an official, such an act is committed by a person who does not have a position, then the perpetrator is held accountable under article 214 for the illegal receipt by employees of a state body, organization with state participation or self-government body of citizens of material values or property benefits.

Here one should pay attention to one important circumstance: if such actions were committed by officials or employees of non-governmental non-profit organizations or other non-governmental organizations, the acts are qualified under Art. 1929 of the Criminal Code (commercial bribery) and 19210 of the Criminal Code (bribery of an employee of a non-governmental commercial or other non-

governmental organization) specified in chapter XIII1 “Crimes related to obstruction, illegal interference in entrepreneurial activity, and other crimes encroaching on the rights and legitimate interests of business entities” introduced in the Special Part of the Criminal Code by the Law of the Republic of Uzbekistan dated August 20, 2015. Therefore, the subjects of crimes against the functioning of government bodies, of public associations provided for in Chapter XV of the Special Part of the Criminal Code are only officials or employees of a state body, organizations with state participation (a commercial organization with a state share in the authorized capital or a non-profit organization fully or partially established or created by a state body or state organization), or self-government bodies of citizens.

It should also be noted that the responsibility of persons who participated in crimes committed by officials requires special attention. As stated in the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 19 dated August 24, 1999 “**On judicial practice in cases of bribery**”, qualifying signs characterizing the increased social danger of the crime (extortion, large or especially large size of the bribe, responsible position of the bribe taker ), shall be charged with and partners in receiving a bribe, if these circumstances were covered by their intent. At the same time, in qualifying the actions of accomplices in a crime, circumstances that characterize the identity of other accomplices in the act (the frequency of receiving or giving bribes, mediation in bribery, as well as past criminal records for bribery) should not be taken into account.

5. Special subjects for professional duties. For example, if a criminal abortion was committed by a doctor, obstetrician or gynecologist, the act is qualified by Part 1 of Art. 114 of the Criminal Code, and if the abortion was performed by a person who does not have the right to do so - part 2 of Art. 114 of the Criminal Code. Or, the disclosure of the secret of adoption by any person is qualified by Part 1 of Art. 125 of the Criminal Code, and if such an act was committed by a person obliged to keep this secret in connection with professional activities or his official position - Part 2 of Art. 125 of the Criminal Code.

The subjects of improper performance of their professional duties (Article 116 of the Criminal Code), as well as those left in danger (Article 117 of the Criminal Code) may be persons endowed with certain professional duties.

6. Special subjects in relation to military service. If the crime was committed by a military man, he shall be held liable according to the norms provided for in Section VII of the Special Part of the Criminal Code “Crimes Against the Order of

Military Service”. For example, causing bodily harm (Article 283 of the Criminal Code), destruction or damage to military property (Article 296 of the Criminal Code), as well as violation of the rules for driving or operating vehicles (Article 298 of the Criminal Code). If such actions were committed by persons who are not in military service, in turn, they are held liable under Art. 104 of the Criminal Code (intentional grievous bodily harm), Art. 105 of the Criminal Code (intentional moderate injury), Art. 173 of the Criminal Code (intentional destruction or damage to property), Art. 266 of the Criminal Code (violation of traffic safety rules or the operation of vehicles).

It should also be noted that if the military personnel committed crimes not provided for in Section VII of the Special Part of the Criminal Code “Crimes against the Order of Military Service”, they are held accountable in the general manner. For example, premeditated murder (Article 97 of the Criminal Code), rape (Article 118 of the Criminal Code), taking a bribe (Article 210 of the Criminal Code).

7. Special subjects in recidivism. In Art. 34 of the Criminal Code describes the concept of three types of relapse: simple, dangerous relapse and especially dangerous relapse. It should be noted that in some articles of the Special Part of the Criminal Code, a number of aggravating circumstances (qualification type) stipulate liability for the commission of such crimes by dangerous recidivism or especially dangerous recidivist. For example, in Part 2 of Art. 165 provides liability for the commission of such a crime by a dangerous recidivist, in part 3 - a particularly dangerous recidivist. Or, in part 2 of article 1861 of the Criminal Code provides for liability for a dangerous recidivist to commit illegal production or trafficking in ethyl alcohol, alcohol and tobacco products.

Consequently, the commission of any crime prescribed by law by dangerous recidivism or a particularly dangerous recidivist is an aggravating circumstance and is qualified by part 2 or 3, if available, then part 4 of the corresponding article. For example, when theft of another's property is insignificant, the act is qualified under Part 1 of Art. 169 of the Criminal Code. And if another person's property of this size is stolen by a dangerous recidivist or a particularly dangerous recidivist - Part 3 or 4 of Art. 169 of the Criminal Code. In conclusion, it should be noted that the study and identification of features, similarities and different sides of the subjects of crime is of great importance for determining the degree of their danger and proper qualification.

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