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QUALIFICATION OF A CRIME AS A PART OF MODERN REALITY IN TERMS OF LAW AND ORDER AND PHILOSOPHICAL APPROACHES TO ITS COMPREHENSION

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ABSTRACT

Purpose: The purpose of this work consists of defining the qualification premises of a crime based on modern understanding of law and order reality and methods designed to comprehend this aspect of life.
Introduction: Philosophical principles of crime qualification methodology can be defined through their synthetic impact on the cognitive process dedicated to understanding of criminal (deviant) behavior that is reflected in the model of the created in accordance with law and constitution limits. This aspect justifies the attempts to invent new innovative approaches and adjust their usage in the cognitive process of the crime event which is regarded as a specific occurrence in the modern reality in terms of law and order. Such events need to be adequately assessed by lawyers and all those whose competence includes the right to give an estimate with regard to such events.
Methodology: The study in question was conducted in accordance with the principle of methodology pluralism, which means that multiple methods were deployed while planning as well as doing the research. The methods used include such as dialectic, natural law, hermeneutic – phenomenological, structurally – functional, and epistemological explication approaches.
Results: The philosophical and methodological premises, or principles, that play a major role in the attempts to qualify a crime have a special meaning, namely a meaning of the postulating ideas that are often viewed as directing the cognitive process and are buttressed by the main branches of philosophical knowledge: ontology, axiology, and epistemology.

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In the jurisdiction, the term „Law and order reality" (or, as many know it, „legal reality") came to the fore in the late 1880's of the XX century. The renowned specialist in the field of law named S.S. Alekseev viewed law and order reality as something that was comprised of four aspects. Those aspects included, according to the scientist, regulators (the occurrences that had a regulating effect on the crime rate) that constituted the base as well as foundation of regulating in terms of crime and deviant behavior. Under the term regulators, he understood the law itself, rights, duties, rules and responsibilities that all citizens have. Another aspect, noted Alekseev, should be defined as the so – called precept effect, which marks normative and individual acts in terms of law. As the third aspect, he regarded the lawmaking process itself, enforcing the law and its interpretation. And, finally, the fourth aspect should be the subjective side of the law – the innate sense of justice, subtle and subjective elements in terms of law obedience and culture as well, and science related to the law and ways to enforce it[1].

Considering the width of the ways to interpret the law and order reality, we have a handful of reasons to assert that the significant place in the structure of it should be given to its qualification and methods to do so properly and in accordance with the law. The qualification of any crime is based on the Criminal Code of the country and legal provisions of judicial practice. Both of the mentioned require to be interpreted and understood the correct way when it comes to lawmaking and enforcing the law. The official version of a crime qualification is composed by those who have necessary qualification and it is regulated by the constitution, law and the severity of the crime. The conclusion reached should be registered in the official judicial acts and preserved, so that it will not get lost.

[1] S. S. Alekseev, *Pravovie sredstva: Postanovka problem, poniatie, klassifikacia*, „Sovetskoe gosudarstvo I pravo", 1987, №6, p. 14.

It is widely known that various elements of the culture such as innate sense of justice and other aspects in relation to judicial system may exert an influence on the lawmaking process and making any decision in terms of punishing criminals. The crime qualification theory itself, being comprised of judicial rules, principles and ideas, can be viewed as an intrinsic component of the law and order reality. However, all said above can be tied to the already established reality due to the statistical assessment of criminal behavior, no matter how versatile it is. That being said, the crime qualification should be based on certain methodological premises that are not only the result of the judicial system and law-related science, but also philosophical ideas and principles of the ways our society functions and develops. In this regard, it would be appropriate to quote the Belarussian scientist B. M. Khomich: „The main premise of the philosophical approach to the works of the judicial system is that there are subtle, even more deep-going norms and principles that are independent from state. Those norm and principles reflect justice, consciousness, objective order of human values. All those aspects have a tremendous impact on our lives and it happens independently from the judicial system and established laws". That seems to be the key aspect of jurisdiction and the touchstone of all the lawmaking processes. The said above have a direct connection to the methodology of all the activities, processes and law-related realities. From our point of view, in terms of methodology, the judicial science does not thoroughly delivers the rational and objective sides of assessment all the potential aspects, that are included in the Criminal Code. There is no doubt that this conclusion is inextricable from the crime qualification theory[2].

However, there is a question of what philosophical approach should be used as grounds for the crime qualification theory. For example, another Belarussian scientist V.N. Kudriavcev, as a theoretical basis of crime qualification, sees the dialectic method and epistemological nature of the enforcing process of Criminal Code. According to him, the right solution would be to apply the from-total-to-individual principle in terms of philosophical categories[3]. It is noteworthy that in their latest works, dedicated

[2] V. M. Khomich, *Princip normalizacii basovich nachal (institutov) ugolovnogo zakona I „novaja" kvalifikacia*, sbornik „Problemi kodifikacii ugolovnogo zakona: istoria, sovremennost I buduchee": materiali VIII Rossiiskogo kongressa ugolovnogo prava (Moskva, 30–31 maya 2013 g.),V. S. Komissarov et al. (ed.), Moskva 2013, p. 658.

[3] V. N. Kudriavcev, *Obchaya teoria kvalifikacii prestuplenii*, Moskva 2004, p. 48.

to the special crime qualification studies, the authors don't pay much attention to the philosophical grounds of the crime qualification. Apparently, it has to do with the fact that, until today, there is no thorough explanation of methodological directions in the philosophy dedicated to the law and order. One of the reasons that the methodology of the modern jurisdiction processes are in crisis might be the fact that there is no special studies dedicated to the specific of using dialectical – materialistic methodology in the lawmaking science and its inability to provide clear answers to the array of questions present in the field of modern understanding of judicial processes[4].

It is undisputable that dialectical methodology of cognitive processes plays a major role in crime qualification activities. In spite of that, lawyers can't ignore the ongoing processes that have long been sighted in the field of the modern cognitive methodology. It is advisable to take into account that, as of today, in the philosophical stream of cognitive theory, whose task is to determine the cognitive methodology as well, we can witness a great turn in terms of rethinking of classical cognitive paradigm. There is a noticeable reassessment going on, which has befallen the status quo of tradition and innovations, the grounds for cognitive activities, cognitive subject, etc. Apart from this, it is noteworthy that there is a broadening of the philosophical reflection in theory – oriented systems, the philosophical and methodological stream of studying law and order included.

As of late, some authors have taken to viewing the term „Law and order reality" as consisting of two worthy of taking a look at aspects. In the broad sense of the word, the law and order reality can be regarded as the compilation of all the jurisdictional aspects, which include norms, regulations, laws, limits, rights, etc. Another meaning of the word alludes to the fact that one aspect of law and order reality is proclaimed as the major one, the others, however, as minor ones, or functional[5]. Understanding the law and order reality in the frame of one of those approaches can determine the cognitive methodology we will use as a foundation for further researches. As for philosophical science, today there is a split into the classic and, respectively, neoclassic methodology based on those differences. A specialist in the field of jurisdiction and law science,

[4] V. M. Siriech, *Rossiiskie pravovedi na pereputie: materialisticheskiy racionalism ili subiektivniy idealism*, „Jurnal rossiyskogo prava", 2016, №1, p. 85.

[5] A. V. Stovba, P*ravovaya situacia kak istok bitia prava*, Charkov 2006, p. 25.

S. I. Maksimov, based on the presented generalization, tied to the classic methodology three main approaches of the modern philosophical understanding of law and order reality: 1) legal positivism (on the outside of the law and order reality, a group of norms, enforced by the jurisdictional machine of the state) 2) Jurisdictional objectivism (based on the social generalization of laws, regulations and limits and their deep roots in everyday life) 3) Jurisdictional objectivism or the classical conceptions of natural law (they are based on the moral aspects of law, which are subtle in the consciousness of the subject idea of law). In his work, the author goes through advantages and disadvantages of the philosophical approaches described above[6].

Within the positivist approach to understanding of law and order reality, formally dogmatic method of the law science was conceived. This method is now used very widely in various fields of jurisdiction as well as in the cases that are subjects to the Criminal code. It also mainly used when it comes to inventing normative acts, logical and linguistic analyze of the jurisdictional norms meaning, establishing problems related to law and order. On the whole, the main method of studying the law and order reality in the positivism philosophy is imperative (order), which could be found in a certain jurisdictional norm that is enforced by the state. Such approach exerts significant influence on science that more often than not is content with the role of impartial observer and delivers the observation results of a certain jurisdictional norm without mentioning its possible connections with other aspects of jurisdictional importance. Despite the fact that it has some advantages, such as strictness, clearness of the professional terms, being easy to follow logically, persuasiveness, the positivist approach to understanding jurisdiction came under fire due to the critique it brought about. The main argument the adherents of this approach encounter is that it is unjustified to liken the rights to norms; rights, they assert, constitute the phenomenon more sophisticated than the norms.

From the stand of the positivist approach to understanding of the law and order reality, its foundation is formed by social relationships, whereas other aspects of law and order (such as norms, enforcing the law, justice, etc.) are regarded as secondary elements, or elements that are functional. Even if this approach has some indisputable advantages that provide us

[6] S. I. Maksimov, *Pravovaya realnost: opit filosofskogo osmislenia*, Charkov 2002, p. 35 – 143.

explanation of the influence that is exerted by the economic and political factors on the judicial system, judicial objectivism has proven to be indifferent to the question of justice and other values that should be congruent with jurisdiction as well. The main reproach that judicial objectivists are fought with is the fact that law and order can't be determined solely by social, historical, political, and economical factors.

As a part of jurisdictional relationships concepts, rather interesting models of the jurisdictional views have been developed (from personal rights to jurisdictional ideas of the state). Within the theory of natural law approach as basic elements are viewed jurisdictional ideas that have a natural (theological, rational, anthropological) descend and play the central role in inventing jurisdictional norms, jurisdictional relationships, regulations and other elements of law. Considering how deep-rooted are the meanings of jurisdiction and laws at the subconscious level, natural law theories reveal certain detachment of their ideas from the situations in real life.

All the approaches described above and methods attached to them are based on the differentiating of the terms such as essence and existence, object and subject, subjective and objective; they are interwoven with the position of the researcher as the observing tools. A.V. Stoba highlights two important characteristics that describe methodology used by the adherents of classics to understand the law and order reality: „Selecting one of the elements of law and order reality as the main one with subsequent derivation of the rest from it (in positivism it is norms, in natural law – ideas, in objectivism – relationships) and allowing for „omniscient subject", that has kind of monopoly on the true knowledge and construction of law and order reality (a lawmaking machine widely exploited by a state (positivism), God, Absolute mind or transcendental subject (natural law approach)"[7].

There is a juxtaposition consisting of classic methodology of comprehension of the law and order reality, which are compared to the neoclassic approach that is based on striving to overcome the shortsightedness of the other approaches – jurisdictional intersubjectivism and neoclassical concepts of natural law (they are based on the certain aspects of jurisdiction that show in the process of communication of subjects as well as interpretation of the results of such communication). At that, the position of intersubjectivism, which is based on the assumption that the researcher

[7] A.V. Stovba, *Pravovaya…*, p. 31.

appears to be a part of the jurisdictional – related relationships, is mostly realized in two forms: phenomenological – hermeneutical and communicative – discursive ones.

According to the neoclassic methodology, jurisdiction can be defined as a multifaceted, ever – changing phenomenon that doesn't tend to have one referent. That is the reason there are always many ways to describe and modify almost every element of it. In accordance with the opinion of I. L. Chesnov, „as the most important aspects, judging by the postulates of postclassical methodology, can be regarded symbolic, practical, and anthropological aspects of the law existence that complement each other. Law can also be seen as a text, or a system of symbols, that is built and modified by people who have been socialized in the respectively law – abiding culture"[8].

In the frame of neoclassic methodology, S. I. Maksimov suggests a more broad way of looking at the law and order reality – namely, what he offers is seeing it as a compilation of all law – related occurrences and activities (norms, regulations, limits, jurisdictional relationships, etc.). Besides, it is noteworthy that he ties not only jurisdiction – related occurrences to the law and order reality but also all the relevant occurrences – for example, a crime (relevant to the law, that is)[9].

Interesting as it is, law and order situation is tightly interwoven with the term „legal situation". The definition of such term is rather ambiguous due to the existence of various methodological approaches to understanding law and order. For example, A. S. Alekseev explains the term through the lenses of positivism and provides definition as follows: „ all the occurrences that need jurisdictional interference"[10]. With that in mind, it becomes clear that the jurisdiction with regard to a legal situation acts form the outside. However, there is another approach that was developed in the phenomenological – existential field of modern western philosophy of law. Specifically, a Sweden existentialist J. Kon makes the following remark: „Law and order reality is alive only within a certain case, jurisdictional conflict and its resolve… That being said,

[8] I. L. Chesnov, *Effektivnoct prava s posicii postklassiceskoy metodologii,* sbornik naucnich trudov „Klassiceskaya i postklassiceskaya metodologia razvitia uridiceskoy nauki", Minsk 2013.

[9] S. I. Maksimov, *Pravovaya…*, p. 177–181.

[10] S. S. Alekseev, *Pravo na poroge novogo tisyaceletia: nekotorie tendencii mirovogo pravovogo razvitia – nadejda I drama sovremennoy epochi*, Moskva 2000, p. 24 – 29.

the place where the law is at home doesn't seem to be a norm but a specific situation, for every norm must prove its ability to be applied to every single case we have on the table"[11]. Unfortunately, J. Kon didn't give us a straightforward definition of a legal situation, but by means of the law and order reality he shows us the jurisdictional coordinates, where it might be found. First, there must be an occurrence, an act, then a norm, which can be applied to the occurrence in question and other elements of law and order reality.

When it comes to qualifying a crime, the specific of a legal situation is that it is a subject to the Criminal code. Apart from the suspect, who allegedly committed a crime, and the victim, there is a need for another person, who could resolve the conflict. This third person is also described as an agent of jurisdiction, or justice. As such can be counted not only prosecutors and the like, whose duty is to press charges, but also attorneys, whose prime mission is to protect the suspect at the jurisdictional level.

Thus, as legal situation we can consider a conflict – something that is brought about by means of going against the law actions, which prompts those, whose responsibility it is to legally interfere, to provide fair and legal assessment of the crime committed. It is understandable that the qualification alone is unable to resolve the situation itself. But it sheds light on the consequences that the suspect must face in case they have indeed committed a crime. Enforcing those consequences constitutes a whole new stage in law and order reality – it consists of sentencing and subsequent enforcing it by the law and responsible for upholding it (prison term, recompensing for the damage done, etc.).

The neoclassic methodology offers various methods of studying different aspects in terms of law and order activities, such as: discourse analysis, social ideas concept, participant observation method, social constructivism program, philosophical hermeneutics, phenomenology, etc.

In this context, determining of philosophical questions that are to be observed while committing or preparing to commit a crime has acquired significant importance. Philosophy of law states that there is a noteworthy impact on the process of shaping such principles the ideas of integrative jurisprudence have. Integrative jurisprudence is based on the combination of means, methods and approaches coming from different areas of knowledge; need for understanding law and order reality from the viewpoint

[11] After A. V. Stovba, *Pravovaya*…, p. 21.

of pluralism of jurisdictional ideologies and methodology synthesis of cognitive processes.

As for the modern philosophy, there are a wide array of methodology principles. The main ones, however, are the principles of development, determinism, and systematic approach. These principles reflect the established at the philosophical level universal characteristics of natural and social realities. They can be applied to every aspect of cognitive activity, just like to the qualifying a crime.

The mentioned above development principle lies at the core of dialectic cognitive process. This principle allows for non-stop changing, transformation and development of all the objects and occurrences happening in reality, their metamorphosis form one state to another in other words. When it comes to studying specific objects and occurrences, the principle of development suggests that we fulfill certain requirements such as the following: while studying any object we apply historical and logical approaches alike; taking into consideration the main laws of dialectic, often contradictory unity of general and individual, essences and happenstances, forms and their environments, necessities and accidents, possibilities and reality, etc.[12]

V. N. Kudrjavcev correctly showed the specifics of philosophical essence in the process of crime qualification: establishing dialectic correspondence between unitary (a specific criminal act) and general (Criminal code)[13]. In addition, the development principle explains the significance of usage of historical and logical approaches in the crime qualification process.

As a matter of fact, the determinism principle demonstrates most strongly the intentions that always play significant role in the cognitive processes. This principle provides a suitable explanation as to why there are both universal and natural correlation and connection between different occurrences[14]. In accordance with the principle, there is no occurrence that doesn't have any cause or reason behind it; in other words, one happenstance brings about the other. As the simplest form of causality we can regard the so – called elementary causality that has the following traits and characteristics: the time sequence (the reason comes beforehand); the organic relationship (that is where the reason genetically allows

[12] E. V. Ostrovsky, *Filosofia: Ucebnik,* Moskva 2013, p. 207 – 208.

[13] V. N. Kudriavcev, *Obchaya…*, p. 43 – 48.

[14] E. V. Ostrovsky, *Filosofia…*, p. 208 – 209.

for the consequences); irreversibility (the consequence can't be the reason of the reason, however sophisticated it may sound); necessity and generality (the same reason in the same environment brings about the same consequences). There are hardly any specialists in the field of law that are not aware of the importance of this principle while qualifying a crime.

The consistency principle is based on the premise of the whole world being comprised of combined elements (that are objects, subjects, occurrences, acts, etc.), that, together, constitute a certain kind of unity, a wholeness. There are some principles within this approach that are the following: any study should be conducted in consistency with structural and functional approach that has a goal of determining the main elements of cognitive process. Further on, it suggests that not only they should be determined, but also divided into groups based on the role they have, after which the groups should be placed in a certain hierarchy. Apart from that, this approach suggests shedding light on the functions that each element has within this system and groups[15].

The principles above demonstrate the fundamental ideas of the very reality we live in. Here, as well, we can view them as a part of the ontological aspect of reality: the law enforcer takes in, analyses, and interprets the data about the crime committed dependent on the connections and causality he can find. While doing so, he also, based on his sense of judgment, qualifies the data in terms of jurisdiction and law. It is also worthy of noticing that the sheer fact of the reality existence understood is logically rationalized in terms of the once accepted in some historical environment norms and laws that lay down limits on the behavior in question.

To the one of the most important existence principles can be counted the principle of definiteness. This principle suggests that everything exists because it is definite in its existence, which means that there is nothing that is not determined by the reality, for „every existence is a definite occurrence"[16]. The definiteness of the existence is that can be said or done with regard to this. If existence is given and its characteristics are very clear, the definiteness means pretty much the same thing as its stability, clearness and limits in its comprehension[17]. In this respect, J. Eles noted

[15] Ibidem, p. 209 – 210.

[16] J. Eles, *Problema bitia I mislenia v filosofii Ludviga Faierbacha*, Moskva 1971, p. 37.

[17] *Filosofskiy enciklopeddiceskii slovar*, E. F. Gubskiy, G. V. Korabliova, V. A. Lutcenko (ed.), Moskva 2009, p. 320.

that „The premise of anything in existence being able to be defined constitutes the core of the objective cognitive principle, which is against any kind of agnosticism. Besides, the definiteness principle can also be described as the principle of logic and there is no impact that difference in understanding may have – you may see this uncertainty through the lenses of dialectic or metaphysics… The reason for that is that we can comprehend something by means of the objective approach only if this something is defined as such – as something that can be defined as something. Thus, it is not possible for one to be a materialist and deny the universal reality at the same time"[18].

When it comes to qualifying a crime, the principle mentioned acquires the possibility for all the variety of meanings to be funneled into one with the subsequent creation of a certain definiteness. As such, this principle grants stability in the regulating in terms of law and order. Apart from this, the principle rules out the wide array of the meanings that can be ascribed to the various elements of the Criminal code, which tends to have a positive impact on lawmaking and law – enforcing activities. Especially, the prime importance it bears for the terminology quality of the Criminal Code. This may be the cause for the single way of interpreting and, consequently, enforcing the law, for, if doing as the principle suggests, there would not be any deviations from the only way of comprehension while creating laws and norms. Of course, it is of crucial importance to understand any terms of the law correctly.

The principles above are widely acknowledged and used in the cognitive methodology. However, the integrative method of comprehension of the law and order reality allows one to derive other principles that might be of effect when it comes to qualifying the criminal acts committed. As such, the consistency principle might contribute to the systematic organization of the cognitive process that contains axiological and epistemological aspects of a study[19]. In this regard, special importance for the process of qualifying a crime have the ideas that describe axiological character of the crime. Within the branch of philosophy dedicated to studying various aspects of law and order reality, there is a special place for the process of determining the jurisdictional values, their characteristics, meaning and consequences in the life of a human being. It is widely

[18] J. Eles, *Problema…*, p. 42 – 43.

[19] E. V. Ostrovski, *Filosofia…*, p. 210.

asserted that this aspect should be best studied from the point of view of cognitivism and evidence approach.

In accordance with the cognitivism principle, awareness can be divided into learning and understanding, which can be shown in the epistemological aspects of jurisprudence (for example, the truth) that are to present and resolve axiology – leaning problems[20]. Cognitive activities of a human being are determined by one's ability to fathom the world around and acquire knowledge – learn, that is. The effectiveness of the determinism principle is tremendously dependent on the abilities described. As seen through the lenses of hermeneutical discourse approach, the axiological aspect of the qualification process reflects social as well as legal assessment of the practical usage concept in the field of enforcing the law. Interestingly enough, when it comes to the crime qualification itself, the awareness, or, to put it more precisely, the ability to comprehend, might be reduced to merely enforcing the law. The authorized specialist who is responsible for this and qualified enough to take part in such processes, should in that case include into the whatever decision was reached during the process such aspects as what had been understood in terms of details of the incident as well as what the law demands. For that matter, a practical understanding, depicted in the process of enforcing the law, also points out to what kind of direction the development in terms of law and law – enforcing is preferred within the dominating value system there is. The procedures of hermeneutical character are thought to form the specifics of legal way of thinking. They direct social way of understanding as well as the social role of the subject that is enforcing the law. This type of thinking constitutes a very special frame of comprehension that mainly consists of from-understanding-to-enacting principle.

It is also important to note that, in the sense of axiology, we can view the crime qualification process as the assessment that concerns social and jurisdictional aspects of the act committed. This axiological aspect bears significant importance; however, it is not widely recognized and appreciated by all the authors who have been known to study crime qualification methods. Unfortunately, only a handful of researchers have ever paid sufficient attention to the social aspects in the crime qualification. The rest put emphasis on the jurisdictional part of the matter only. For ex-

[20] S. I. Maksimov, *Koncepcia pravovoi realnosti*, sbornik „Neklassiceskaya filosofia prava: voprosi I otveti", Charkov 2013, p. 53.

ample, P. F. Grishanin adds to the crime qualification content such aspects as social and jurisdictional assessment alike. According to the researcher, „Social assessment manifests in determining to what extent the act committed is socially dangerous and, if it is dangerous, what are the criteria we should apply to deem the act criminal or solely detrimental. Jurisdictional part of the assessment is regulated by law and the Criminal Code respectively, whereas the social aspect of the assessment is designed to help one differentiate between the crime and other type of mischief"[21]. Thus, the material aspect of the crime is considered to be the object of the social assessment of the crime. While socially assessing a crime, the person responsible for that is faced with the questions of the qualification – restrictive character.

The obviousness principle is regarded as the core aspect of phenomenology. This principle is deeply rooted in the works of E. Gusserl, who came up with the idea that it would be incorrect to proclaim any assessment correct unless „it is based on experience and resulting from it evidence where all the objects and things are seen as they are within the context". Therefore, the determining of this evidence resulting from the experience should gain the most important priority"[22]. And, speaking of this, isn't it what a researcher should do while establishing all the circumstances that may be of assistance and use in the process of crime qualification?

As for the process of qualification, there are some philosophical principles that appear to be of great significance; all of them characterize epistemological process. As the main ones can be defined such as objectivism principles; reflections that describe the role of practice and creative activity of the cognitive process subject; generalizations and abstractions; going from the abstract to specific; the indisputable truth[23].

In essence, objectivity principle means that the object of the cognitive process exists independently from the subject and process itself. This observation brings forth the assertion that any researcher should view any object while studying it the way it is. The research results ensuing should be subjectivity – free and completely objective with regard to the aspects

[21] P. F. Grishanin, *Puti ukreplenia zakonnosti v praktike kvalifikacii prestupleniy*, „Sovetskoe gosudarstvo i pravo", 1985, №1, p. 52.

[22] *Noveishiy filosofskiy slovar*, A. A. Gricanov et al. (ed.), Minsk 2001, p. 276.

[23] I. I. Kalnoy, U. A. Sandulov, *Filosofia dlia aspirantov: ucebnik*, Sankt – Peterburg 2003, p. 395–402.

studied. There should be no pretense and no delusions like disguising the real aspect for a fake one. An approach such as this is not only used in the dialectical materialism, but also in the modern neoclassic interpretations. Thus, M. S. Kunaev makes a remark, that „according to the neoclassic interpretation of the objectivity principle, the intellect role manifests in preserving the dynamic balance between all the possibilities that objects have and the meanings of words. The process of thinking and taking in is nothing but a function designed to help constantly specify the actual meanings of words used. If we interpret the objective reality through the lenses of a language, it can lead to the neoclassic way of understanding of ontological and epistemological aspects of the objectivity principle which is built on the premise of „the objective world being independent from us"[24].

Consequently, objectivity is an absolute must within any type of research, especially one dedicated to the crime qualification. Any authorized person responsible for this must hold back in terms of their tastes, beliefs and any other traits that my lead for the results to be subjective. This is especially true if we talk about law science and enforcing the law. There also must not be any other types of distraction; for instance, opportunistic intentions which may arise when a certain kind of law enforcing activities takes place (corruption cases, etc.).

Within hermeneutic – phenomenological approach, as it happens, in order to maintain the objectivity principle in the process of interpreting and understanding the aspects of the Criminal code and other legal elements, of significant importance is a method put forth by M. Heidegger. This method is called „a cognitive triangle". When in the process of crime qualification, the authorized official tasked with enforcing the law or interpreting it, should try to connect with the time and environment that was present at the time of the law in question being conceived and firstly enforced. To successfully do so, they must think in terms and language of the time in question – namely, when this law or norm was cited for the first time and subsequently accepted. Thus, it is not impossible to achieve what is called „a historical objectivity".

The reflection principle is usually thought of in philosophy as a way of comparing the original with its reflection. Their likeliness is possible

[24] M. S. Kunafin, *Princip obiektivnosti: sovremennaya neklassiceskaya interpretacia*, avtoreferat dissertacii na soiskanie stepeni doktora filosofskich nauk: 09.00.01, Ufa 1999, p. 9.

under certain circumstances – each element belonging to the original highly resembles each element of the reflection and, respectively, each relationship between all the elements of the original equals that of the reflection[25]. This is the task the person carrying out the crime qualification is burdened with when they establish connections between all the visible elements of the crime and the corpus delicti that is a subject to the Criminal code.

The practice importance principle, when it comes to the cognitive process, suggests that the practice itself should be regarded as a fundament of any cognitive activity, as well as its purpose and criteria. There is no question that practice is the field and opportunity where all the knowledge acquired finds its usage. Its only when one gets significant amount of practice that they will ascend to understanding of the objective laws, world developments tendencies, and, more importantly, acknowledging the necessity of gaining more knowledge through learning and first – hand experience[26]. In this, practice related to developing law – related assessments manifests itself as the main cognitive tool in order to garner knowledge. Through practice, one can easily spot the existing problems in the field of crime qualification, the reasons of which have been analyzed and described by this article's author. In those problems, we can find roots of all impulses to gaining new knowledge within the crime qualification theory. It is noteworthy that in this sense not only investigatory and jurisdictional practice in terms of enforcing the law helps establish the trueness of the crime qualification theory, but also the true, scientifically supported methodology of crime qualification should act as a criteria of the degree to which investigative and judicial practice is correct.

The creative activity principle determines the direction of the cognitive process and its depth[27]. In the crime qualification task, this principle defines the ability of the person, who conducted the crime qualification, to establish the whole event of the crime committed by the suspect. The peak of the crime qualification process is the hermeneutical procedure of enforcing the law that immediately follows afterwards. The procedure consists of accumulating all the life experience and intuition of the person

[25] R. M. Mamedov, *Princip otrajenia I nauchnoe poznanie*, avtoreferat dissertacii na soiskanie stepeni kandidat filosofskich nauk: 09.00.01, Baku 1987, p. 9 – 15.

[26] I. I. Kalnoy, U. A. Sandulov, *Filosofia…*, p. 399.

[27] Ibidem, p. 399–400.

conducting qualification by means of establishing all the details of the case, the art of understanding and interpreting the Criminal code, jurisdictional knowledge, and culture in terms of law and order.

The abstraction and generalization principle in epistemology is seen as the reference point in terms of methodology to construct a general picture of the object of various degrees of activity. It is of great importance when it comes to the process of the crime qualification to utilize the methods and approaches of analysis, synthesis, induction and deduction, all of which have been developed in the field of philosophy.

The going – from – abstract – to – general principle suggests that between the actual reality and the way thoughts reflect it there is a special in – between place that helps us edit the concreteness of the way of thinking we employ. It happens based on the empirical knowledge we are in possession of. It also able to assist in resolving the unclearness that shows up between the actual image and the abstract one. In addition, it is also helpful in showing the so – called „openness" of the generalized image with regard to the new information received[28]. It is assumed that within the hermeneutic – phenomenological approach this principle contributes to the creation of the so-called hermeneutical circle which helps the person tasked with enforcing the law to solve arising problems when trying to qualify a crime committed. It happens based on the dialectic of the part and the whole.

The principle of the truth definiteness is to be considered in philosophy when there are some requirements that underline the need for specific epistemological premises. In the process devoted to researching the subject they are not seen as isolate, but as the interconnected terms. This interconnectedness is sustained due to conclusions and thoughts that are born out of the cognitive process. Due to the logical constructions being built, the subject of the cognitive process is supporting his hermeneutical element in the act of stating something or rather asserting; the same holds true even if the subject denies something[29]. Of course, it all happens when the situation studied is seen as the object in terms of studying. Within the categorical syllogism approach, any assertion being regarded as significant will be true only if all the circumstances of a crime have been taken into account.

[28] Ibidem, p. 401–402.

[29] F. M. Suleimanov, *Princip konkretnosti istini*: avtoreferat dissertacii na soiskanie stepeni kandidata filosofskich nauk: 09.00.01, Alma-Ata 1982, p. 12–14.

It is hardly easy to agree with those experts whose position on the crime qualification only includes evincing based on the Criminal code and other regulations. For example, Z. V. Makarova writes the following „Considering as an intrinsic part of the truth all the elements such as crime assessment and the actual punishment, apart from the act committed, may lead to the jumbling of the hermeneutical and axiological aspects of establishing the extend of guilt. The jurisdictional assessment might be changed or even abolished at all. This will not happen to the truth that has been thoroughly established and correctly studied. Besides, mixing the facts with the subjective assessment is likely to lead to supplanting the established facts with their qualification"[30]. T. V. Klenova sees such inconvenience as the so-called „jurisdictional bias". While criticizing the method, she mentions that „from the point of view of the authenticity, not only procedural, but also the related – to – the – Criminal code conclusions must be assessed". The conclusion with regard to the extent to which the act can be considered criminal, as well as the establishing of all the facts related to the matter, must not be interpreted differently, reflect what happened in reality in order to be viewed as correct. The process of establishing all the elements of a crime, as well as crime qualification, is seen as inseparable parts of jurisdictional cognition[31].

Conclusions

Philosophical and methodological origins of the crime qualification process which determine the direction of the cognitive activities when qualifying a crime, are seen through the lenses of hermeneutical, axiological and epistemological aspects.

Ontological aspect of the crime qualification manifests in the fact that the person tasked with it takes in, analyses, and interprets all the data they have about the crime committed as interwoven, interconnected and interdependent. Apart from this, they, of course, give them fair assessment based on the specifics of the law. In addition, the fact realized and accepted undergoes logical rationalization in terms of the established norms and as-

[30] Z. V. Makarova, *O polze „starich" predstavleniy v ugolovnom processe*, „Ugolovnoe pravo", 2008, №4, p. 101.

[31] T. V. Klenova, *Protivorecia Ugolovnogo I Ugolovno – processualnogo kodekso Rossiyskoy federacii: priciny I problema preodolenia*, Materiali 6 Mejdunarodnoynaucno – praktícheskoy konferencii „Ugolovnoe Pravo: Strategia rasvitia v XXI veke" (Moskva, 29–30 Yanvaria 2009), Moskva 2009, p. 65.

pects of the law which prohibits such behavior. The main ideas, or rather principles in the crime qualification ontology, are that of development, determinism, synthesis and definition.

Axiological aspect in crime qualification reflects social and jurisdictional assessment of the current concept of enforcing and abiding the Criminal code. In terms of the hermeneutical discourse, the most important meaning in axiology of the crime qualification is based on the principles of congitivism and evidence.

Epistemological aspect of crime qualification process is supported by the objectivity and reflection principles that determine the role of practice, creativity of the subject of a cognitive process; generalization and abstraction, ascend from the abstract to the specific, or rather definition of the truth.

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