

SIGNS OF CONTINUING CRIME AND ISSUES OF DETERMINATION OF TIME OF ITS COMMITMENT

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ABSTRACT

Continuing crimes (delictum continuatum), like continuous crimes, are considered as the single complex crimes. Continuing crimes are characterized by a number of specific objective and subjective signs. Most of authors believe that the time of the commission of a continuing crime should be recognized as the time when the last of similar offenses was committed. There are moments of legal (de jure) and factual (de facto) completion in continuing crimes, as well as in continuous crimes, that the crime continues to actually take place even after legal completion, and, of course, these completion times do not possibly coincide. The time of commission of a continuing crime is the time of the commission of the last (factual completion) of several acts constituting it.

KEYWORDS: *Delictum continuatum, objective and subjective signs, time of the commission of a continuing crime, moment of legal (de jure) completion, moment of factual (de facto) completion.*

INTRODUCTION

Continuing crimes (*delictum continuatum*[1]), like continuous crimes, are considered as the single complex crimes. The main difference between them is that in a continuous crimes, the final result of criminal significance is achieved, while in a continuing crime, the objective side of the action is achieved in parts and in sequence.

According to Part 3 of Article 32 of the Criminal Code of the Republic of Uzbekistan, a crime consisting of several similar criminal acts, covering a general intent and forming a single purposeful crime, is a continuing crime. In the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 13 of May 5, 2008, it is explained that The repetition of crimes must be distinguished from the continuing crime, which consists of a number of identical acts, although committed at different times, but covered by a single intent, similar to each other in the method of commission and object, as well as the homogeneous consequences that have occurred[2].

Accordingly, continuing crimes are characterized by a number of specific objective (a series of actions, their criminal nature, similarity to each other, sameness of object, method of commission, consequences, commission at different times) and subjective (covered with a single intent, common goal-oriented) signs.

Objective Signs. During the commission of a continuing crime, several acts are committed, i.e., their number is more than one. The position of the legislator on the nature of these acts is that they are all criminal, that is, a continuing crime, even in isolation, consists of acts that have all the

characteristics of a particular crime.

According to Article 56 of the Criminal Code of the Kingdom of the Netherlands, "If several offences are related in such a way that they have to be considered as one continuing act, notwithstanding the fact that each in itself constitutes a serious offence or a minor offence, only one criminal provision shall apply. Where these provisions differ, the one which carries the severest punishment shall apply"[3]. Hence, according to this norm, continuing crimes consist of a number of actions, and it does not matter whether they are criminal or non-criminal acts when taken separately.

So what is the significance of the nature of the acts that constitute continuing crimes? Should continuing crimes be defined as "consisting of criminal offenses" as in Article 32 of the Criminal Code?

In our view, it does not matter what the nature the acts, they are not taken separately and independently, they get a legal assessment in total as a single criminal act. There is no need to evaluate them individually.

So it does not matter what the nature of acts constituting continuing crimes. Given that there is no need to assess them individually, we consider it appropriate to remove the word "criminal" from the sentence "... consists of criminal acts ..." in part 3 of Article 32 of the Criminal Code.

When it comes to the sign of the similarity of several acts that make up a continuing crime when all the actions are combined, it is the subject of a separate study on what criteria determine the similarity of actions or what they manifest.

According to A.N. Kulagin, the similarity of the acts constituting a continuing crime can be determined on the basis of two alternatives - legal and factual. Illegal acts are recognized as legally similar if for each of them (separately) legal (criminal, administrative, disciplinary) liability is provided for in one article of the normative act. In turn, factual similarity implies that all offenses have similar (same type) objective characteristics[4].

As for the important features of a continuing crime, such as the sameness of the object, method and harm, paragraph 4 of the above-mentioned Plenum resolution refers to "... a continuing crime consisting of mutually similar acts in terms of object and method of commission, consequences[5]". In another resolution of the Plenum of the Supreme Court, paragraph 2[6], the use of force or similar violence, which began with the stealing of another's property, but was not felt by the victim or other persons, in order to take possession of the property by the accused it was explained that acts of intimidation should be classified as **robbery**, and **plunder** when using violence that endangers life or health, or threatening to use such violence.

At this point, the question arises: if, for example, the act begins with the stealing of another's property, but the robbery has a continuous character, and when the methods of committing the last of the several acts constituting it change, how does the act be qualified, as continuous theft, as continuous robbery or continuous **plunder**? In our opinion, even in this case, depending on the change of method, the act is qualified as robbery or **plunder**. This means that the method of execution may not be the same in this case. Therefore, it is advisable to make appropriate changes to these resolutions.

The next sign of a continuing crime can be the time interval between separate acts. In our view, how long the time interval is also important. The time interval between actions can be very short, short, long, very long. It is not clearly defined, and in our opinion, it is not even possible to define it. However, it should be noted that a continuing crime does not exist when the time interval between the acts that constitute it is too short (seconds, minutes). When the time interval between actions is too long (months, years), there may be no continuing crime. For example, a person

guilty of premeditated murder inflicts multiple injuries on the victim in a matter of seconds, and only the last of these is considered fatal, with no continuing crime (very short). However, the premeditated killing of "two or more" persons under Article 97, Part 2, paragraph "a" of the Criminal Code may be a continuing crime committed at the same time. In the deliberate murdering of two or more persons, there may not be a continuing crime when the time interval between the murders of each person is extended to years (due to the length of the time interval being too long).

Subjective Signs: As for the subjective signs of a continuing crime, it is a single intent and a common goal, which is one of the features that allows distinguishing continuing crimes from the totality of crimes. However, this raises a number of questions:

- 1) What type of intent is committed continuing crime: premeditated or sudden?
- 2) Is intent concretized or not concretized?
- 3) What is meant by a common goal?

In our opinion, these questions need to be clarified.

It is important to determine with what type of intent the act committed in a continuing crime, and the issue of determining the time of completion of a continuing crime depends on it.

If the intent is a premeditated, it must have arisen before the first of several acts constituting a continuing crime. When intent emerges suddenly every time an act is committed, the unity, continuity, is lost, even though the encroachment is directed at the same object.

In cases where the intent of the subject is concretized, the crime is considered completed when all the socially dangerous acts are committed, aimed at the goal and ensuring the appropriate criminal outcome. However, it should also be noted that when a guilty person intends to achieve a certain criminal result, he does not act based on a specific article, part or paragraph of the criminal law. Simply put, a specific intent must be viewed not only from the point of view of the subject's consequences, but also from the point of view of criminal law.

For example, if the intention of a person to steal 500 million soums is concretized and the offender commits theft of this amount, this is qualified with paragraph "a", Part 4, Article 169 of the Criminal Code. That is, the person has committed a completed theft in a extra-large amount (equal to 500 or more BCV[7] (150 million soums) and more).

There are two aspects to consider here. If a person's continuing theft is stopped before he stole 150 million soums (extra-large), because of the person's intent is to steal 500 million soums of money act is qualified as an uncompleted crime due to the partial achievement of a criminal purpose (with art. 25, para. "a", p.4, art. 169 of CC). If a person's continuing theft is stopped after the theft of more than 150 million soums for example, when 200 million soums are stolen, because of the fact that the act had already a criminal consequence (i.e., caused a harm in extra-large amount), the act should be qualified as a completed crime under para. "a", p.4, art. 169 of CC (despite the person's intent at 500 million soums and the goal is partially achieved). Otherwise, that is, if it is qualified as an unfinished crime, the principle of justice will be violated. This is because, in this case, despite the fact that the crime has been legally completed, according to Article 58 of the Criminal Code, a maximum of 3/4 of the maximum penalty provided for in the sanction will be allowed.

In abovementioned case when the intent is concretized, we can see that the crime actually kept continuing (up to 200 million soums), although it ended with the most serious consequence in the article - extra large amount (150 million soums). Thus, there are two completion times here - the legal completion time and the actual completion time. We will return to this issue again, below.

In cases when the intent of the person is not concretized, the crime is considered completed when any qualitative and quantitative criminal acts are committed from the moment of the harm of criminal significance. For example, in the above case, if a person intends to steal any amount of money without prior knowledge of the amount of money to be stolen, the crime is considered to have been committed at the time of the first act. However, the offense may continue to the maximum extent of the consequence of criminal significance.

As for the common goal, some researchers have suggested that it is more appropriate to use the term "single consequence" instead, and that the subject testifies to the single purpose of the offense that has existed since the initial stage of the continuing crime[8]. We also agree that one of the subjective signs of a continuing crime is the definition of "single consequence".

As for the time of the commission of a continuing crime, most of authors believe that the time of the commission of a continuing crime should be recognized as the time when the last of similar offenses was committed[9]. In particular, according to one of our national scholars[10], a crime is considered to be completed when the perpetrator commits a final criminal act.

In addition, in a number of resolutions of the Plenum of the Supreme Court of the Republic of Uzbekistan, for example, Resolutions: No. 11 of April 17, 1998[11], No. 4 of May 21, 2004[12], No. 16 of December 22, 2006[13], No. 13 of May 5, 2008[14], No. 35 of October 11, 2017[15] provide clarifications on the completion of continuing crimes. In our opinion, there are some aspects that need to be addressed.

The Resolution of the Plenum of the Supreme Court "On the issues of the qualification of acts with a plurality of crimes" stipulates that "**a continuing crime is considered completed from the moment of the last of several acts.**" Since the continuing crime is not considered to have been completed until the last act has been committed, the above-mentioned theft in the amount of 500 million soums is divided into eight parts, each time it is committed in the amount of 62.5 million soums, it must be considered completed when the last (62.5 million soums), i.e. the eighth act was committed. However, on the third attempt, he exceeded the limit of 150 million soums (extra-large). So, was the crime completed on the third attempt or the eighth (last)? The same amount of theft is divided into three parts, the first time 200 million soums, the second and the third time 150 million soums, it should be considered completed when the last (150 million soums), i.e. the third act was committed. However, it exceeded the limit of an extra-large on the first try. So, was the offense completed on the first or the third (last) attempt?

In our view, a **continuing** crime: in the first case, in the third attempt, and in the second case, in the first attempt, it was already legally completed. But in fact it was completed in the last attempt. Apparently, this interpretation of the decision did not take this situation into account.

This means that there are moments of legal (*de jure*) and factual (*de facto*) completion in continuing crimes, as well as in continuous crimes, that the crime continues to actually take place even after legal completion, and, of course, these completion times do not possibly coincide.

Based on the above, the following is offered:

1) Supplement Article 13 of Criminal Code with the norm, due to the fact that the moment of *de jure* and *de facto* completion in continuing crimes does not always coincide and the time of commission of a continuing crime is the time of the commission of the last (factual completion) of several acts constituting it.

In this regard, to amend paragraph 9 of the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of application of amnesty acts by courts", subparagraph 2 of paragraph 2 of the resolution "On the issues of the qualification of acts with a plurality of crimes."

2) To amend Part 3 of the Article 32 of the Criminal Code on the grounds that it does not matter what the nature of the offenses is and there is no need to assess them individually.

3) Paragraph 4 of the resolution of Plenum of the Supreme court of the Republic of Uzbekistan "On some issues of application of the law on liberalization of punishments for crimes in the sphere of economy " must have an inclusion in paragraph 3, which also takes into account the circumstances in which a part of an entire property may constitute an extra-large amount.

4) In the explanation in paragraph 2 of the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice in cases of theft of others' property by stealing, robbery and plunder " to clarify how the act should be qualified in the event of a change in the method of last act in a continuing crime.

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