

ISSUES OF QUALITATIVE EXCESS OF ACCOMPLICES ACCORDING THE CRIMINAL CODE OF THE REPUBLIC OF ARMENIA

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Abstract. In criminal law theory, there are two types of excess: quantitative and qualitative. Qualitative excess occurs when the perpetrator commits a crime that is entirely different in nature from the planned crime or engages in a crime other than what was stipulated. The Criminal Code of the Republic of Armenia differentiates between quantitative and qualitative excess by establishing specific rules for criminal liability.

However, we believe the Criminal Code should explicitly state that if the perpetrator commits a crime different from the initial arrangement, the other accomplices must be held accountable for their complicity in the crime involved in their intent. Furthermore, in cases where the perpetrator commits a less dangerous crime instead of the agreed-upon offense - either by damaging the intended object or by causing harm to a different object - these scenarios should not be classified as excess. Instead, they fall under the concept of "failed complicity," which is already addressed in the existing regulations of the Criminal Code.

Thus, we argue that part 4 of Article 49 of the Criminal Code of the Republic of Armenia unnecessarily complicates the Code, as the provisions for criminal responsibility related to unsuccessful conspiracies are already adequate for assessing these cases.

Key words: *excess; quantitative; qualitative; accomplice; criminal liability; intent; serious crime; failed complicity.*

This scientific article addresses certain issues related to excess in the Criminal Code of the Republic of Armenia. The investigation into this matter has been conducted through a comparative analysis of current and previous criminal legislation, international practices, and judicial precedents, leading to the suggestion of viable solutions. The aim is to propose legislative changes that more accurately reflect the nature of excess, allowing for a precise criminal-legal assessment of offenders' actions. In conducting this study, the primary objectives included examining the fundamental principles of criminal law pertaining to the types of excess among accomplices and recommending suitable solutions based on those principles.

Excess.

According to widely accepted principles, the limits of criminal responsibility for accomplices are defined by the extent of their intent and the content of their agreement. However, in practice, there are instances where the perpetrator deviates from the agreed-upon course of action. Such deviations from shared criminal behavior are referred to in criminal law as the excess of an accomplice. The criminal liability of accomplices is not only contingent upon a causal link to the perpetrator's act but also

on their conscious and voluntary relationship to that act and its consequences. Issues of criminal liability arise not only when a crime aligned with the common intent of accomplices is committed, but also when the perpetrator engages in acts outside that shared intention. In this latter scenario, it is referred to as the perpetrator's excess. The regulation of accomplices' criminal liability in cases of the perpetrator's excess is addressed in Article 49 of the Criminal Code of the Republic of Armenia, titled "Excess of an Accomplice."

This article first defines the concept of an accomplice's excess. According to part 1 of Article 49, if an accomplice commits a crime that was not part of the shared intention, it constitutes an excess. The second part of the article establishes that the other accomplices will not bear criminal responsibility for any excess committed by one of them.

In criminal law theory, two types of excess are recognized: quantitative and qualitative. Quantitative excess occurs when the perpetrator inflicts greater harm than anticipated on an object initially included in the common intent of the other perpetrators.¹

Some issues of excess according to the Criminal Code of the Republic of Armenia.

The theory of quantitative excess in criminal law is outlined in part 3 of Article 49, which states: "If the perpetrator of the criminal offense causes harm to an object that was agreed upon with the accomplices but inflicts greater damage than was intended, or commits the agreed offense with an aggravating circumstance not included in the other accomplices' intention, or harms the agreed object while committing a more serious offense that also fulfills the accomplices' objective, then the accomplices will be held criminally liable for their complicity in the crime involved in their intent."

Part 4 of Article 49 of the Criminal Code of the Republic of Armenia further clarifies: "If the perpetrator commits a less dangerous crime instead of the agreed offense, causing harm to the agreed object, the other accomplices will be held criminally liable for the attempted crime as per their intent. Conversely, if the perpetrator commits a less dangerous crime by damaging a different object than originally intended, the other accomplices will face criminal responsibility for the preparation of the crime included in their intention."

In the aforementioned paragraph, the legislator identifies two scenarios as instances of excess:

- 1) when the perpetrator commits a less dangerous crime instead of the agreed-upon offense, causing harm to the intended object, and
- 2) when the perpetrator commits a less dangerous crime, damaging a different object than originally planned.

It is important to note that both of these cases essentially align with the concept of "unsuccessful crime," indicating that we are dealing with failed offenses rather than true excess. The distinction between these two concepts is quite subtle, which is why the Code specifically addresses failed conspiracies in Article 47, Part 3 of the Criminal Code of the Republic of Armenia. This article states that if the perpetrator does not complete the crime due to circumstances beyond their control, the other accomplices are responsible for the preparation of the crime or attempted crime. Additionally, Part 4 of Article 47 specifies that if actions intended to organize, incite, or assist in the crime do not succeed due to factors outside the individual's control, they will be held accountable for the preparation of the crime as outlined in their intent or for the criminal attempt, provided that part of the objective aspect of the crime has been fulfilled.

¹ See RA Criminal law, General part, textbook for universities, YSU, Yerevan, page 289.

In this instance, the legislator assigns criminal liability in the first case for an attempted crime and in the second case for the preparation of a crime. We argue that the situations outlined in Part 4 of Article 49 of the Criminal Code of the Republic of Armenia should not be classified as excess or recognized as a new type of excess. Instead, they fall under the concept of failed complicity, which is already addressed by existing regulations in the Criminal Code concerning the criminal assessment of such acts. Therefore, we believe that Part 4 of Article 49 unnecessarily complicates the Criminal Code, as the provisions for criminal responsibility related to unsuccessful conspiracies are already adequate for assessing these cases.

The other type of excess recognized in criminal law theory is known as qualitative excess. In cases of qualitative excess, the perpetrator commits a crime that is fundamentally different in nature from the planned offense or engages in a different crime altogether. For example, if accomplices agree to inflict serious harm on a victim's health, but the perpetrator also commits rape or murder in addition to the intended theft, this represents qualitative excess. Here, a "different crime" refers to a crime with a distinct object.

However, it is important to note that while life and health are different objects of criminal protection, if the perpetrator takes the victim's life instead of merely harming their health, the issue of criminal liability is addressed not through qualitative but through quantitative rules of excess. In this scenario, the other accomplices are held responsible not for the preparation of health harm but for the crime involved in their intent, specifically for their complicity in the harm to the victim's health, since this is absorbed by the more serious crime committed.

Many scholars have conducted studies to clarify the rules of criminal liability for accomplices in cases of the perpetrator's excess, distinguishing between quantitative and qualitative excess. For instance, Telnov argued that in both types of excess, other accomplices (those who did not intend to commit the specific crime) cannot be held responsible.¹

Prominent scholar M.D. Shargorodsky asserted that "the excess of the perpetrator does not increase the responsibility of the accomplice. Whether the perpetrator refrains from committing the intended crime or commits a more serious one should not alter or negate the accomplice's liability. The perpetrator's guilt is defined by their actions, knowledge, and intentions, while their social dangerousness is determined by their conduct."²

L.D. Gauchman stated, "In cases where the perpetrator commits a completely different crime than that intended by the accomplices, the other accomplices will be held liable for the preparation of the intended crime."³

Article 36 of the Criminal Code of the Russian Federation stipulates that other accomplices are not held responsible for the perpetrator's excess.⁴ Similarly, Article 25 of the Criminal Code of Georgia states that accomplices are not liable for any transgressive acts committed during the excess of the crime.

¹ See Тельное П.Ф., Ответственность за соучастие в преступлении, М.: Юрид. лит., 1974, page 208.

² See Шаргородский М.Д., Некоторые вопросы общего учения о соучастии, Правоведение, № 1, 2010, page 84-97.

³ See Гаухман Л.Д. Соучастие в преступлении по российскому уголовному законодательству (опыт сравнительного правоведения), М.: Академия права и управления МВД, 2010, page 56:

⁴ See https://legislationonline.org/sites/default/files/documents/a6/RF_CC_1996_am03.2012_en.pdf (access 01.12.2023).

Traditionally, criminal law adheres to the fundamental principle of accomplice liability, which states that other accomplices are not held responsible for the perpetrator's excess. The actions of each accomplice are assessed based on the severity of the crime committed by the perpetrator.

In national criminal law, only the individual who committed the excess can be held liable for those crimes. The question of the criminal responsibility of other accomplices is addressed as follows: in cases of qualitative excess, the qualification of the accomplices' actions depends on the circumstances surrounding the crime included in their intent. If the crime intended by the accomplices was not committed, they will be liable for the preparation of that planned crime. Conversely, if the intended crime was carried out, they will be held responsible for their complicity in that crime.

The accessory theory of criminal liability for accomplices is clearly reflected in the rules outlined above, as the accomplice's role is centered around the perpetrator, whose criminal activity determines the liability of the other accomplices. Article 49 of the Criminal Code distinguishes between cases of quantitative and qualitative excess, establishing specific rules for each.

Part 5 of Article 49 of the Criminal Code of the Republic of Armenia outlines the rules of criminal liability in cases of qualitative excess. Specifically, it states that if the perpetrator damages a different object than what was agreed upon, the other accomplices will be held liable for the preparation of the crime they intended. If the perpetrator's actions cause harm to another object instead of the agreed-upon target, the other accomplices will be liable for complicity in the crime they intended, provided that the perpetrator's act constitutes a more serious crime that encompasses the crime intended by the accomplices.

Essentially, the Criminal Code addresses all instances of excess as described in the aforementioned article, with the exception of qualitative excess where the perpetrator commits an additional crime beyond the planned offense. In such cases, the other accomplices are held criminally liable for their complicity in the crime included in their intent.

However, we contend that the omission of this specific case of qualitative excess in the Criminal Code of the Republic of Armenia is not justified. We propose that the Code should explicitly state that if the perpetrator commits an additional crime alongside the agreed-upon offense, then the other accomplices should be held responsible for their complicity in the crime included in their intent.

ՀԱՆՑԱԿԻՑՆԵՐԻ ՈՐԱԿԱԿԱՆ ՍԱՀՄԱՆԱՁԱՆՑՄԱՆ ՀԻՄԱՍՆԴԻՐՆԵՐԸ ԸՆՏՀԱՅԱՏԱԿԱՆ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ՔՐԵԱԿԱՆ ՕՐԵՆՍԳՐԹԻ

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Համառոտագիր: Քրեական իրավունքի տեսության մեջ առանձնացված է սահմանագանցման երկու տեսակ՝ քանակական և որակական: Որակական սահմանագանցման դեպքում կատարողը իրականացնում է պայմանավորված հանցագործությունից իր բնույթով բոլորովին տարբեր հանցանք կամ կատարում է պայմանավորվածից բացի այլ հանցանք ևս: ՀՀ քրեական օրենսգրքով տարբերակվել են քանակական և որակական սահմանագանցման դեպքերը՝ յուրաքանչյուրով սահմանելով քրեական պատասխանատվության կանոնները: Այնուամենայնիվ, կարծում ենք, որ քրեական օրենսգրքով հստակ պետք է անրագրել, որ եթե հանցանք կատարողը, պայմանավորվածից բացի, կատարում է նաև այլ հանցանք, ապա մյուս հանցակիցները ենթակա են պատասխանատվության իրենց դիտավորության մեջ ընդգրկված հանցագործությանը հանցակցելու համար:

Կարծում ենք, որ այն դեպքում, երբ կատարողը պայմանավորվածի փոխարեն ավելի ցածր վտանգավորություն ունեցող հանցանք է կատարում՝ վճաս պատճառելով պայմանավորված օբյեկտին, կամ երբ կատարողը պայմանավորվածի փոխարեն ավելի ցածր վտանգավորություն ունեցող հանցանք է կատարում՝ պայմանավորված օբյեկտի փոխարեն այլ օբյեկտի վճաս պատճառելով, ապա այդ դեպքերը չեն ներառվում հանցակի սահմանագանցման մեջ և չեն համարվում հանցակի սահմանագանցման նոր տեսակներ, այլ ներառվում են «չհաջողված հանցակցության» ինստիտուտի մեջ, իսկ ՀՀ քրեական օրենսգրքը նշված արարթներին քրեական գնահատական տալու մասով արդեն իսկ ունի համապատասխան կարգավորումներ:

Ուստի կարծում ենք, որ ՀՀ քրեական օրենսգրքի 49-րդ հոդվածի 4-րդ մասը ավելորդ ծանրաբեռնում է ՀՀ քրեական օրենսգրքը, քանի որ բովանակային առումով չհաջողված հանցակցության համար քրեական պատասխանատվություն նախատեսող նորմերն արդեն իսկ բավարար են նման դեպքերին քրեական գնահատական տալու համար:

Բանալի բառեր – սահմանագանցում; քանակական; որակական; հանցակից; քրեական պատասխանատվություն; դիտավորություն; ծանր հանցանք; չհաջողված հանցակցություն:

ВОПРОСЫ КАЧЕСТВЕННОГО ЭКСПЕССА СОУЧАСТНИКОВ ПО УГОЛОВНОМУ КОДЕКСУ РЕСПУБЛИКИ АРМЕНИЯ

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Однако мы считаем, что в Уголовном кодексе должно быть четко указано, что если лицо, совершившее преступление, выполняет другое преступление помимо оговоренного, то другие соучастники подлежат ответственности за соучастие в преступлении, предусмотренном их намерением.

Также мы полагаем, что в случаях, когда исполнитель совершает преступление с меньшей опасностью, причиняя ущерб обусловленному объекту, или когда он причиняет ущерб другому объекту вместо запланированного, такие ситуации не должны рассматриваться как превышение и не являются новыми видами правонарушения соучастника. Они должны относиться к институту неудавшегося соучастия, который уже имеет соответствующие нормы в Уголовном кодексе РА для оценки подобных действий.

Таким образом, мы считаем, что часть 4 статьи 49 Уголовного кодекса РА излишне нагружает Кодекс, поскольку действующих норм, регулирующих уголовную ответственность за несостоявшееся соучастие, достаточно для адекватной оценки таких случаев.

Ключевые слова - превышение границ; количественное; качественное; соучастие; уголовная ответственность; намерение; тяжкое преступление; неудавшееся соучастие.