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About complicity

Abstract: This article deals with the Institution of complicity in the Criminal Law of Ukraine. The definition of complicity with the next assignment of its objective and subjective signs are analysed. Types of accomplices and peculiarities of their liability and the main theories of complicity, namely accessory theory and the theory of self-responsibility are characterized.

Keywords: complicity of crime, types of accomplices, forms of complicity, criminal liability of accomplices.

An institute of complicity is one of most essential and difficult in the theory of criminal law. Criminal activity, as well as every activity of man, can come true both alone and by the group of persons, and even certain organization of people with the ramified structure component elements of that, provided with different criminal "rights" and "duties", with hierarchical guidance.

From data of the UNO, criminality in the world from the end of 90th on the average increased on 5 % in a year, an increase of population was 1 % in a year. Last years in the world about 500 million crimes register oneself annually [1]. Indisputable is circumstance that parts of crimes in a kind their latentness remained unregistered, therefore these numbers are considerably higher in actual fact.

Punishment always was one of basic institutes of criminal and legal politics of the states. By means of punishment the main task of criminal law is executed - protective.

On the different stages of becoming of the state depending on its socio-economic development, political mode, culture, public sense of justice and another associate factor before punishment different socially-meaningful aims were put: frightening, punishment, retribution, warning of crimes, correction of criminals and even their re-education.

Not requiring an obligatory decline or increase of punishment of certain types of accessories, a criminal law acknowledges that a type of accessory is this important circumstance of individualization of punishment.

Traditionally, most dangerous among accessories figure of organizer, that, by general rule, must bear the most responsibility.

Criminal complicity showing up in one or another variety of criminal group (form of complicity) also has a substantial value for the criminal and legal estimation of accomplished. Compositions of crimes, skilled on the sign of their commission the group of persons, are widely used in Criminal Codes, by the group of persons operating on a previous agreement, by the organized group.

In addition, the forms of complicity are taken into account as a circumstance, aggravating punishment.

Creation of criminal organization (criminal society) is foreseen as an independent crime.

Commission of crime in composition one or another group: group form without a previous agreement; group form on a previous agreement; organized group; by criminal organization (by criminal society), draws not only severer punishment but also influences on possibility of taking committed to the category of crimes of certain weight. For committing crime of different weight not only different punishment is foreseen but also different limitations, terms of conditional and pre-term release are set and etc.

Considerable group of scientists [2] supposes that the crimes accomplished in complicity present the heightened danger for society. Group encroachments create a threat or related to actual infliction of more serious damage to the guarded interests, thus these interests and caused damage to them can be by the nature any, depending on a certain crime.

Science of criminal law is known other points of view. In opinion of M. D. Sharгородskii [3], complicity responsibility does not strengthen and does not weaken, and in general it is not a characterizing or aggravating circumstance.

The third approach can be named compromise. It consists in that complicity promotes the public danger of crime, though not under all circumstances.

It appears that the public danger of group and, as a result, organized criminality cannot be underestimated, therefore we cannot agree with opinion those authors, that suppose that a group crime does not draw strengthening of criminal responsibility. The

estimation of heightened public danger of group criminal activity from the side of legislator must show up in the strict enough measures of punishment, especially at the committing of severe and especially severe crimes. Not only the aims of punishment must be pursued in this approach but also realized principle of prevention.

The Socially-legal value of institute of criminal complicity consists in the necessity of establishment of heightened security of the objects, guarded by a criminal law, from the encroachments carried out in complicity, and also in providing of possibility of differentiation and individualization of responsibility and punishment depending on character and degree of complicity of person in the commission of crime.

Development and perfection of institute of complicity are special it is important for society and state presently, when wide distribution was got by the organized crime in many cases acquiring more transnational character.

It is set numerous researches, that group crimes present an heightened danger for society. In this connection appears reasonable and necessary their selection in a criminal law. It can come true on different directions: pointing as a circumstance, aggravating punishment, establishment of severer responsibility in regard to the most active participants of crime, criminalization of the acts sent to organization of the most dangerous forms of complicity and etc.

Underestimation of danger of the crimes accomplished in complicity obvious. It is expressed from one side in unclear or incomplete regulation of row of questions of complicity and, on the other hand, in establishment of the strict not enough measures of criminal responsibility for crimes, accomplished in complicity. Investigation of it in practice is a presence of incorrect court decisions as evaluated by the role of persons participating in a crime, error, in qualification of acts, impossibility on occasion bringing in to responsibility of organizers of crimes and other negative consequences.

For perfection of criminal statute in area of responsibility of accessories, approach of the systems and harmonization of legislation both in the field of decision of general questions of complicity are needed in crimes and questions of responsibility and punishment of persons, committing crime in composition a group.

However, perfection of criminal statute self on itself will not bring necessary results to counteraction of the organized crime. It is necessary to create the system of prophylaxis of both all criminality on the whole and organized crime in particular.

The intentional joint participating of a few subjects of crime admits criminal complicity in the commission of intentional crime. In this determination, following accepted

in the theories of criminal law to the method of division objective and subjective, the groups of signs are distinguished: a) objective and b) subjective.

It is necessary to mark that dividing of signs of complicity into objective and subjective, as well as at description of another criminal and legal phenomena, does not mean their mechanical tearing away from each other, and unchanging supposes organic intercommunication between them.

The permanent and obligatory sign of objective side of any corpus delict is publicly a dangerous act. For material compositions of crimes obligatory also there are consequences and causal connection between acts and consequences. All another signs of objective side (time, place, and situation, and also method, facilities, instruments of commission of crime) behave to optional and if they were embraced by intention of accessories, then, undoubtedly, must influence on their responsibility.

Objective signs of complicity: participating in a crime two or more than persons and compatibility of participating in a crime. The least number guilty at complicity are two persons, each of that is responsible and attaining the age from that criminal responsibility is possible set by a law. The compatibility means that all of them participate: a) in the commission of the same crime or as accessories, i.e. together executes the objective side of crime; b) as organizers, instigators and accomplices. In this case they, does not participate in execution the act of formative an objective side corpus delict, but either manage the commission of crime (organizer), either excite resolution to accomplish him (instigator) in other accessory or assist to its commission physically or intellectually (accomplice).

The act of every accessory stipulates the offensive of criminal result on the whole, but not to some its part. Therefore a trespass to the object or supplying with it in a danger is general, single result of joint activity of all accessories. The crime accomplished together is single and indivisible.

Complicity, as a rule, from an objective side supposes actions, but in a number of cases they can be accomplished and by inaction. Such cases are possible, if the agreement celled to the commission of crime or in the moment of his feasance was preceded inaction, but always to the offensive of criminal result.

Causal connection is an important condition of responsibility for complicity. Acknowledged such relation between the phenomena, at that one or a few interactive phenomena (reason) generate other phenomenon (investigation), causal connection.

When speech calls about the ground of corpus delict in the act of organizer, instigator or accomplice, that most specialists suppose that with general for all accessories publicly by a hazard effect coming as a result of direct actions of performer, the act of performer is causally constrained only, while acts of other accessories are not reasons, and only by the terms of offensive of this consequence.

Complicity is conceivable either to the moment of commission of crime or as joining activity in the moment of beginning of crime and during its continuation, but always to the offensive of criminal result. This position is outspoken yet on seventh Congress on a criminal law and steadily observed in the legislation of most states.

The subjective side of crime regardless of kind and form of complicity is presented always by intention, the intellectual element of that includes an awareness about the publicly dangerous pattern of not only the own behaviour but also behaviour of performer, embracing here fact of addition of efforts. The same takes place and on the side of performer. Thus the volitional element of intention consists of desire to attain a criminal result by addition of efforts or conscious assumption of result coming from joint efforts.

Intention testifies to the presence of unity of actions of participants, not only outwardly but also inwardly hardpan single will and single aspiring to the crime.

The necessary subjective signs of complicity it is accepted to name a mutual awareness about the commission of crime and co-ordination of actions of accessories. A mutual awareness corresponding to the intellectual moment of intention of accessories is characterized that each of them realizes, firstly, the fact of joint commission of crime, secondly, committed of certain, but not any crime, thirdly, publicly dangerous character of not only the act but also act of other accessories. Without this awareness every participant operates independently and answers in limits by its personally accomplished.

It is necessary at complicity that all accessories knew about the performer of crime in that they participate. Knowledge consists in that they realize those parties of criminal act, that form basic signs and elements of corpus delict. The said does not require a direct acquaintance with a performer is enough consciousness that such is, committed crime them or it will be accomplished.

Co-ordination of actions of accessories, corresponding to the volitional moment of intention, consists of mutual expression of intention and desire to participate in the commission of crime together with other person.

Co-ordination of actions arises up in the moment of conspiracy, maintenance and forms of that can be various. On maintenance it can plug in itself an agreement about the aims of crime, about the method of its commission, about the terms of drawing on criminal results and etc. The material point of conspiracy is expression of intention and desire to accomplish a certain crime or certain circle of crimes, because accessories bear responsibility for only that crime (or that circle of crimes) that was the article of conspiracy. Its form can be writing, verbal, as gestures or contracting bargains, i.e. replacing a verbal agreement. A conspiracy can be preliminary, i. e. taking place to beginning of commission of crime, or carried out in the process of such commission to its completion. At the commission of crime accessories can follow different reason and by aims.

It is necessary to say accessories about two basic theories of responsibility. One of them proves independent character of responsibility of accessories from the actions of performers; it got the name of independent theory. Other, accessory theory, insists on dependence of this responsibility.

Accessoriness expresses belonging of one phenomenon to other. Its basic postulates are expressed in the following - accessory can bear responsibility for the actions only at presence of punishable action of performer (and, consequently, can be instituted criminal proceedings against, if to it's a performer is attracted), punishability of accessory is determined by that article of criminal law, on that the actions of performer are characterized.

The said allows to mark that, at complicity, firstly, responsibility comes for the commission of single joint crime (certain dependence shows up here, accessoriness, other accessories from the actions of performer); and, secondly, the account of degree and character of complicity of each of sidekicks in the carried out encroachment is obligatory (display of individualization and independence of responsibility of accessories).

We will mark that character of activity of person is determined depending on a kind and form of complicity. A here not insignificant value such circumstances as presence or absence of previous agreement will have, commission of crime in simple co-accessoriness or with distribution of roles, level of public danger of one or another form of complicity. At joint activity of effort of participants sent to the achievement of single,

criminal result. However such unity is not necessarily expressed in the identity of compositions. Accessories is responsible only for that each of them accomplished in accordance with the orientation of intention.

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