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Research Article

CHARACTERISTICS OF CRIMINAL RESPONSIBILITY FOR COMPLICITY AND PROSPECTS FOR IMPROVEMENT

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Otajonov Abrorjon Anvarovich
Professor Of Criminal Law, Criminology And Anti-Corruption Department Of Tashkent State University Of Law, Uzbekistan

ABSTRACT

The article analyzes the principles of criminal responsibility and sentencing and the specific features of their application to crimes committed in complicity. In particular, according to the general rule, the commission of an act that has all the symptoms of the criminal structure provided for in the Criminal Code is the basis for prosecution. In crimes committed in participation, these signs are manifested only in the actions of the perpetrator. On the other hand, the organizer, agent and assistants do not directly participate in the crime committed by the executor, that is, they do not commit the actions of the objective side of the crime, which constitute the structure of this crime.

The article states that it is not difficult to determine responsibility for crimes committed by one person or co-perpetrators, but there are certain difficulties in determining their responsibility when the crime is committed with the participation of several people or by an organized group or criminal association. Also, the views and opinions of scientists on the issue under analysis were studied, and the problems in this area were identified, as well as proposals and recommendations were developed for determining the scope of responsibility for participation in the crime, imposing punishment based on the level of social danger of each participant, and improving the legislation.

KEYWORDS

Criminal complicity, types of accomplices, committer, head for crime, instigator, helpmate, organized crime group, criminal community, criminal responsibility, infliction of penalty.

INTRODUCTION

As a result of the conflict of geopolitical interests in the world, differences in the processes of integration and differentiation, "color revolutions", increasing criminogenic factors related to the activities of

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transnational criminal organizations, the amount of participation crime is increasing. Although organized groups, which are a dangerous form of participation, cause material damage in the amount of 2.1 trillion US dollars per year, and pose a serious threat to peace and human security, the activities of international organizations established to fight against it do not meet the requirements of the times . This situation has made it an objective necessity to study the legislation and practice of determining responsibility for crimes committed in participation.

The analysis shows that the dynamics of crimes committed by groups in individual years of the last 10 years (2012-2022) had a variable character. According to statistics, in 2012-2017, crimes committed in groups decreased by 1% compared to 2017-2022, but during the last 5 years (2017-2022), the number of people who committed crimes in groups decreased by 2.7% on average compared to previous years. increased . In addition, it is worrying that more than 15 percent of the crimes committed in participation are committed with the participation of minors. From this point of view, in the country's criminal policy, the issue of combating crimes committed in participation occupies an important place.

Studying the situation and structure of committed crimes shows that serious or extremely serious crimes are often committed as a result of a group of individuals joining together. In particular, an average of 1.3–1.5 percent of all recorded crimes are registered as crimes committed by organized groups. In addition, as a result of the crimes committed within the groups, a large amount of material damage is caused to legal entities and individuals, as well as to the state. In practice, only 50-60 percent of these damages are recovered. Also, according to the conducted studies, most of the errors of judicial practice occur in relation to the type and forms of participation of the participants in the crime, as well as determining responsibility for them.

From this point of view, the time demands a new approach to the study of the institution of participation in crime. Consequently, in recent years, the qualitative indicators of organized crime have formed with new levels of their own, their interference in state functions, becoming corrupt, the pursuit of power by criminals, attempts to monopolize market relations, incitement to commit crimes, terrorism, extremism. It is manifested in the promotion of ideas and others.

At the same time, the actions of the participants in the crime and its signs and the legal assessment of the situations of excessive participation, the correct understanding of the legal nature of evidence of the crime, the involvement in the crime and its forms, the participants in the organized group and the criminal association and the members of this group legal assessment of the state of non-citizen's involvement in the interests of this group, the characteristics of participation in corruption crimes, the subject of participation, the determination of the scope of responsibility of the participants in the crime and their punishment, and the existence of other problems, the improvement of the institution of participation in crime, and the scientific and practical perspective of this problem needs to study and develop appropriate proposals and recommendations.

METHODOLOGY

The article widely used logical, inductive, deductive, systematic, logical-legal, comparative-legal research methods.

DISCUSSION

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In the theory of criminal law, different opinions have been put forward regarding the definition of the bases of criminal liability. In particular, D.R.Kurbanov, "implementation of criminal responsibility requires voluntary execution of personal obligations arising from the contents of criminal, criminal-procedural and criminal-executive law. Criminal responsibility arises due to a person's violation of the prohibitions established by the criminal law. Until the crime is committed, the norm of the criminal law imposes responsibility on a person and encourages him to behave positively" [2, P. 8]. Also, M.A.Nazarov evaluates criminal liability as a set of legal relations and mentions the need to consider it in the order of the origin of the basis for criminal liability, the beginning of criminal liability, the implementation of criminal liability and the legal consequences of criminal liability [4, P. 13-14]. In fact, in order to hold a person accountable, it is necessary to first establish that the commission of a certain act causes criminal liability in criminal law and that this act was committed by a specific person, that is, to hold a person criminally responsible, it is first necessary to determine that he committed an act defined as a crime in the Special Part of the Criminal Code.

Therefore, in the second part of Article 16 of the Criminal Code, it is determined that committing an act that has all the symptoms of the crime specified in this Code is the basis for prosecution. As M.Kh.Rustambaev admitted, "This rule applies equally to crimes committed by one person and to crimes committed in participation. Therefore, participation does not create additional grounds for criminal responsibility" [10, P. 189]. However, the stated provision of the criminal law appears at first sight to refer only to the commission of the completed crime by the perpetrator. Because the act that has all the symptoms of the crime is committed by the perpetrator of the crime, and the other participants do not directly participate in the crime committed by the perpetrator, but they organize the commission of the crime or lead its commission (head for crime) or create the crime by inciting a specific person to commit the crime (instigator) or otherwise mentally and physically assist in the commission of a crime (helpmate) [9, P. 62]. Therefore, it is not difficult to determine responsibility for a crime committed by one person or co-perpetrators, but if the crime is committed by several persons or by an organized group or criminal association, with the distribution of roles, this situation may cause certain difficulties in determining their responsibility.

In fact, the basis of criminal responsibility of persons who committed a crime in participation will undoubtedly be similar to the responsibility of a person who committed a crime individually. Because in the second part of Article 16 of the Criminal Code, the legislator has defined the mandatory and universal basis for establishing criminal responsibility for any person. Based on this, it is necessary to apply the general mandatory basis of criminal responsibility to the persons who committed the crime in participation and to determine the contribution of each participant to the jointly committed crime and the scope of their guilt. After all, when a crime is committed in participation, its consequences result from the joint actions of all participants. Therefore, the criminal consequence resulting from the joint action of the participants is common to all participants. Regardless of the role of the participants in the commission of the crime (head for crime, instigator, helpmate), all participants are jointly responsible for the crime committed. In determining the responsibility of the participants in the crime, in addition to the signs of the crime committed by them in cooperation, the General part of the Criminal Code requires the identification of separate signs that record the functional roles of the

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participants in the crime. That is, in order to prosecute the head for crime, instigator, helpmate, firstly, as a result of their mutual cooperation, the specific crime provided for in the Special Part of the Criminal Code has been committed, and the presence of a minimum set of objective and subjective signs that make up the composition of the crime in their act (mandatory for all), secondly, it is necessary to determine the specific signs (additional for participants) provided for in the relevant norms of the General part of the Criminal Code describing the activities of the persons who committed the crime in participation (paragraphs 27-30 of the Criminal Code) [11, P. 289].

It should be noted that in the first part of Article 30 of the Criminal Code of the Republic of Uzbekistan, it is said that "the head for crime, instigator, helpmate are also held accountable under the article of the special part of this Code on holding the executor accountable". Meanwhile, this rule is also traditionally supported in legal literature [14, P. 89; 6, P. 20, 13, P. 114]. However, in some literature, it is emphasized that the rule provided for in this norm of the criminal law is inappropriately defined. In particular, according to E.Kh.Narbutaev, from the point of view of differentiation of responsibility, the point of view of the law, which records the prosecution of organizers, agents and assistants according to the specified article of the Special Part of the Criminal Code on the prosecution of the executor, is considered inappropriate, and it is manifested in the following:

firstly, their (head for crime, instigator, helpmate) action does not constitute an objective aspect of the crime provided for in the Special Part of the Criminal Code;

secondly, the direction chosen by the executor in connection with the commission of the crime is not covered by the intention of the head for crime, instigator, helpmate;

thirdly, details of their actions will not be known to the helpmate of the organizer, to the assistant helpmate or to the head for crime;

fourthly, the instigator, having reached the age of sane and responsible, can answer for his act and its consequences. In this regard, it is considered controversial that a person with equal opportunity is encouraged to commit a crime by another person who has such an opportunity, prepares or directs him to commit a crime, or influences him by helping him to commit a crime;

fifthly, a person who is of sound mind and has reached the age of criminal responsibility, if the intention to commit a crime appears, he is able to plan the commission of a crime by himself without the help of other persons, to hide the weapons, traces and means of committing a crime, as well as objects obtained by criminal means;

sixth, even if the act of the head for crime, instigator, helpmate is considered criminally punishable, the executor contacts them before committing the crime, and as a result, a relationship arises between them. Then the instigator encourages the doer to commit the crime, and he himself remains on the sidelines, and later he is not interested in the results of the crime he witnessed. In such a situation, it is about proving the guilt of the witness. However, in this situation, if the executor did not commit the crime motivated by the instigator, then it is unreasonable to assign responsibility to him, that is, there is no crime, so there will be no responsibility. In this case, it would be absurd to prosecute the agent for a crime not committed by the committer. [5, P. 33-34]. Taking into account the

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mentioned situations, the author recommends that the head for crime, instigator, helpmate should be defined in a general way, not as the type of participants in the crime, but as persons assisting in the commission of the crime [5, P. 37]. However, in court practice, the crimes committed in participation are not always as the author states. There are such crimes that an individual cannot commit such crimes without the help of other participants, or there are such persons who do not have the intention to commit a crime on their own, they are definitely encouraged by someone to commit a crime, etc.

In addition, what positive result will be achieved by changing the status of their participation in the crime without changing the mechanism of holding the participants accountable? And finally, when it comes to the differentiation of responsibility, at what point should the characteristics of the social danger of each of the participants in the crime be taken into account? E.X.Narbutaev suggests that "In the criminal law, an independent rule should be developed that determines the punishment of one or two-thirds of the maximum punishment imposed on the committer, equalizing the responsibility of the head for crime, instigator, helpmate" [5, P. 8]. But what can be said about the differentiation of responsibility in this situation? Because the types of crime participants differ from each other in terms of the level of social danger. For example, the social risk of the organizer is more dangerous than that of the instigator, helpmate, the organizer unites the forces of all participants and coordinates their actions based on a well-thought-out plan to carry out the crime. This increases the social risk of him and the crime being committed. It is for this reason that punishments for different types of criminals should be different. Also, in the course of research, do you support experts to extract the types of participants in crime from the criminal law and to generalize and call them "persons assisting in the commission of crime?" 87 percent of the respondents answered no. Therefore, for judicial practice, it is better to define the types of crime participants in the criminal law.

The first part of Article 30 of the Criminal Code stipulates that "the organizer, agent and assistants are also held accountable according to the article of the special part of this Code on holding the executor accountable". In fact, the actions of the participants of the crime should be qualified by the norm that determines the responsibility for the crime committed by the perpetrator. Because there is an interaction and connection between them aimed at the implementation of a common criminal intent and the achievement of the intended goal. At the same time, the provision provided for in the first part of this article does not provide for the subjective involvement of the participants in the commission of the crime. Therefore, the requirement of this rule does not deny that the crime committed by the executor should be based on the crime committed by the executor, regardless of whether the crime committed by the executor was within the scope of the common intention of the other participants or not. This, in any case, connects the responsibility of the organizer, agent or assistant with the crime committed by the executor. However, in our opinion, if the crime committed by the executor is related to the common intention of the head for crime, instigator, helpmate, they should be responsible for the crime committed by the committer. Therefore, in order to prevent possible problems in this regard, it is appropriate to define the first part of Article 30 of the Criminal Code as follows:

"A crime committed by two or more persons, if it is covered by their common intent, the head for crime, instigator, helpmates are also held accountable under

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the article of the Special Part of this Code on holding the committer accountable".

RESULTS

When the rule is established in this manner, the independent responsibility of the participants of the crime may be assumed. The content of the provision in this procedure is directly consistent with the provisions provided for in Article 28 of the Criminal Code, which clearly distinguishes the roles of the participants in the crime. If it follows from this, the person who organizes or directs the crime committed by the executor shall be held responsible for the organization of the crime; the person who encouraged the executor to commit a crime - shall be held responsible for testifying to the crime; a person who assisted in the commission of a crime shall be held liable for aiding and abetting the crime. Therefore, it is necessary to refer to the relevant part of Article 28 of the Criminal Code when qualifying the actions of the head for crime, instigator, helpmate.

It is for this reason that the fourth part of Article 58 of the current criminal law stipulates the rule that "when imposing a punishment for a crime committed with participation, the court shall take into account the nature and degree of participation of each guilty party in the crime" [1, P. 73]. Indeed, each participant in the crime must be responsible for the act covered by his guilt. Therefore, the responsibility of the participants in the crime is determined by the degree and nature of their actual participation in the crime. In this case, the nature of participation in the crime is determined based on the role played by the participant in the crime (committer, head for crime, instigator, helpmate). The degree of participation in the crime is determined by the contribution of the participant to the criminal outcome, the size of the criminal activity and the activity in committing the crime [14, P. 94, 12, P. 22]. However, as required by law, the court must follow this rule when sentencing the participants.

However, the types of crime participants, as we noted above, differ from each other in terms of social danger. In particular, it is noted in the research that among them, the most dangerous in terms of social danger are the organizer, the executor, then the agent and assistants [3, P. 47, 14, P. 79].

However, unfortunately, the norms of the current criminal law do not provide for a special rule that determines the nature and degree of participation of the participants in the crime. For example, the nature and level of participation in the crime are considered concepts to be assessed, and the court follows general rules when determining them and, based on this, determines their dangerousness based on its inner feeling, established evidence, etc. As long as any person has a different understanding and interpretation of a concept that is not explained in the law. At the same time, the courts are no exception. That is why the content of the provisions considered important and necessary must be defined in legal documents.

The peculiarity of the principle of individual responsibility is that it does not deny that the responsibility of the participants may arise from different articles of the Special Part of the Criminal Code or different parts of the same article [7, P. 42]. (for example, when the committer has special characteristics affecting the qualification of the crime, these characteristics are applied only to the committer).

However, the analysis of judicial practice materials shows that this situation is not always taken into account and errors are made in the qualification of

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crimes committed in participation. In particular, when examining the materials of the criminal case on crimes committed by an organized group, in 62 percent of them, regardless of the characteristics of the subject of the crime, the actions of each member of the organized group were classified as the same type of crime. It does not take into account or rigorously study the individual characteristics of each person who is a member of the group.

The main reason for the mistakes made in this regard is, of course, that the solution to this issue has not been resolved within the framework of the legislation. In turn, solving its solution within the framework of legislation requires a special approach. Because this situation is considered in connection with the fact that certain circumstances affecting the qualification of the crime have been included by the legislator in the necessary signs of the crime structure and that these signs are understood by the participants of the crime. Such problems arise in terms of including or not including the guilt of other participants in the objective and subjective features of the crime, which aggravate or alleviate the responsibility of the committer. Therefore, in our opinion, the following circumstances should be taken into account in this regard.

First, the objective circumstances affecting the qualification of the crime committed by the committer (signs describing the objective aspect of the crime) are provided. In these cases, if the organizer, agent or assistants were not informed or aware of these cases in advance, they should not be responsible for such actions.

Secondly, subjective signs (motive and purpose of the crime) that affect the qualification of the crime committed by the committer are taken into account. In order for these signs to be blamed on the head for crime, instigator, helpmates, they must first know about the motive or purpose of the crime and be informed about it [8, P. 4, 15, P. 214].

Thirdly, there are signs that aggravate the responsibility, but only describe the identity of the participants of the crime. At the same time, such signs characterizing the subject of the crime provide that the participants of the crime are applied only to the person who has such a sign. In this case, the fact that the other participants knew about it or did not know about it, or whether they understood it or not, does not affect the determination of the responsibility of the participants (for example, the crime is committed by a high-risk recidivist, that is, any participant who has such a designation, this designation is applied only to this participant).

CONCLUSION

In short, it is possible to prevent and eliminate errors similar to the above-mentioned cases in court practice only by making appropriate changes or additions to the criminal legislation. Therefore, we believe that Article 30 of the Criminal Code should be supplemented with the following provision:

The characters describing the subject of the crime, which belong to the person of the participant, are applied only in relation to the guilt of this participant. Other circumstances that aggravate the responsibility provided by the article or part of the Special Part of this Code as a necessary sign of the crime or committed by the perpetrator, that is, affect the qualification of the crime, can be attributed only to the guilt of the participants who were aware of this in advance.

Meanwhile, Ukraine (Article 29, paragraph 3 of the Criminal Code), Poland (Article 21, § 1-2 of the Criminal Code), Lithuania (Article 26, paragraph 3 of the

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Criminal Code), Georgia (Article 25, 4-5 of the Criminal Code -part.), Latvia (Parts 6-7 of Article 20 of the Criminal Code), Switzerland (Article 26 of the Criminal Code), Bulgaria (Parts 3-4 of Article 21 of the Criminal Code), Japan (Article 65 of the Criminal Code.) these cases are resolved at the legislative level in the criminal legislation of the states.

For example, in the first paragraph of Article 21 of the Criminal Code of the Republic of Poland, it is stated that "personal circumstances that eliminate or reduce or aggravate responsibility are taken into account only when determining the responsibility of the person to whom they belong".

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