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COMPLICITY IN A CRIMINAL OFFENSE

Complicity in the commission of a criminal offense is a form of a joint criminal activity, which mainly has a higher degree of public danger compared with the commission of a similar criminal offense committed alone [1]. The Law on Criminal Liability and the science of criminal law recognize that the commission of a criminal offense, which is made by the combined efforts of a group of persons, indicates an increased social danger not only of the criminal offense itself, but also of its participants. Mentioned factor of increasing of social danger is confirmed by the fact that the combined efforts of several people of committing any act jointly contributes to the success of its goal, as a rule. This characteristic leads to increased attention of scientists to this criminal law institution.

Parts 6, 7 of ar. 27 of the Criminal Code of Ukraine serve as a basis for determining specific forms of complicity that do not belong to conspiracy, although they have similar features.

According to Dudorov O.O., the main demarcation criterion to distinguish complicity in a criminal offense from conspiracy is a causal link. Thus, *complicity in a criminal offense can be defined as a socially dangerous intentional act (action or omission) provided by the Special Part of the Criminal Code of Ukraine, which is related to another person's criminal offense (already committed or prepared for commission), but is not conspiracy in this offense due to the lack of causation (the connection is, but it is not assistance)* [2].

Types of involvement, as well as the definition of this term are not directly provided by the current Criminal Code of Ukraine. However, the following classification can be formed on the basis of the selection of constitutive features of the acts, which are defined by the parts of ar. 27 of the Criminal Code, mentioned above. Acts that fall under the definition of complicity in a criminal offense include four types of actions, which were not *promised in advance:* (1) *indulgences* (such inaction may be regarded as abuse of office); (2) *concealment*, which, depending on the specific circumstances, may be regarded as the acquisition, receipt, storage or sale of property obtained by criminal means (ar. 198 of the Criminal Code of Ukraine), legalization (laundering) of property obtained by criminal means (ar. 209 of the Criminal Code of Ukraine), assistance to members of criminal organizations and

concealment of their criminal activity (ar. 256 of the Criminal Code of Ukraine), concealment of a crime (ar. 396 of the Criminal Code of Ukraine), (3) non-notification (liability for failure to notify a criminal offense of another person may be considered as official crimes or crimes against justice, (4) *assistance* (responsibility for assisting another person in a crime if there are sufficient grounds) can be considered as assistance to members of criminal organizations and concealment of their criminal activity (ar. 256 of the Criminal Code of Ukraine), management of paramilitary or armed formations, their financing, supplying them with weapons, ammunition, explosives or military equipment (p. 3 ar. 260 of the Criminal Code of Ukraine), assisting to terroristic act (ar. 258-4 of the Criminal Code of Ukraine), mercenary (ar. 447 of the Criminal Code of Ukraine).

In our opinion, it is necessary to apply the comparative method and refer to international practice for a more detailed study of the institution of involvement in a criminal offense, determining its place in the criminal justice system.

Thus, it was possible to single out four legislative models for determining complicity in a crime and its separate types on the basis of the conducted research in this sphere:

1) the model of kinship of complicity in the crime and conspiracy, which is characterized by the lack of delimitation of these criminal law phenomena and differentiation of punishment depending on the type of act committed (USA);

2) the model of establishing criminal liability for complicity in a crime only in the cases, which are provided by the Criminal Code (Sweden, Georgia, China, Japan, Germany, Russia);

3) the model of crime promotion (Denmark, Spain). The concepts of "conspiracy" and "complicity in a offense" are not distinguished, in some cases they are not mentioned at all and, to top it all, such acts are collectively called assistance due to the peculiarities of the law in general and criminal law in particular;

4) the model of an independent legal category in criminal law (Jordan, the Republic of Uzbekistan, the Republic of Belarus, the Republic of Ghana, France). This model of determining complicity in the legislation is characterized by enshrining the concept of complicity in a crime in the General Part of the Criminal Code and by the establishment of criminal liability for certain acts that are types of complicity in a crime [3].

Ukraine should be included in the second model, which does not provide for the definition of complicity as an independent legal category. What is more, the current legislation does not define clear grounds for prosecuting the entire range of subjects of complicity in a criminal offense. Instead it is limited to specific cases provided by the Special Part of the Criminal Code of Ukraine. As a result, there are numerous mistakes in law enforcement during the qualification of offenses. In our opinion, the allocation of complicity in an

independent institution in the development of a new draft of the Criminal Code of Ukraine will increase the effectiveness of law enforcement practice in this area.

Literature

1. Voznyuk A.A. Criminal legal signs of organized groups and criminal organizations: monograph. Kyiv, 2015. 192 p.

2. Dudorov O.O., Havronyuk M.I. Criminal Law: A Textbook. Kyiv: Vaite, 2014. 944 p.

3. Abakina-Pilyavska L.M. Institute of complicity in a crime in the criminal law of Ukraine: an abstract, dissertation for the degree of Doctor of Law: 12.00.08. Odessa Law Academy National University. Odessa, 2014. 22 p.

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ОКРЕМІ АСПЕКТИ ПРИТЯГНЕННЯ ОСОБИ ДО КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ЖОРСТОКЕ ПОВОДЖЕННЯ З ТВАРИНАМИ (СТ. 299 КК УКРАЇНИ)

В науковій літературі зазначається, що кримінальне правопорушення, склад якого передбачений у диспозиції ст. 299 «Жорстоке поводження з тваринами» Кримінального кодексу України (далі – КК України) в більшості випадків залишається латентним. Хоча за останні роки збільшилися випадки жорстокого поводження з тваринами, і в таких справах є і потерпілі (господарі тварин), і свідки цього кримінального правопорушення, але статистика свідчить, що зазначені особи не завжди звертаються до поліції. Це ускладнює дослідження практики притягнення кривдників тварин до кримінальної відповідальності, а також можливість підвищити ефективність у цій сфері. В той же час у ст. 32 Закону України «Про захист тварин від жорстокого поводження» зазначається, що у випадках виявлення жорстокого поводження з тваринами громадянам необхідно викликати представників Національної поліції для з'ясування всіх обставин справи та притягнення винної особи до відповідальності та вжиття відповідних заходів у разі порушення законодавства про порядок поводження й утримання домашніх тварин, у тому числі шляхом складання протоколів, але цим правом, загалом, громадяни нехтують.

У санкції ст. 299 КК України передбачені такі види покарання: штраф, арешт, обмеження волі та позбавлення волі. Згідно з даними офіційної статистики Офісу Генерального прокурора України у 2020 році за фактом жорстокого поводження з тваринами було відкрито всього 222