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Qualification of crimes committed in participation according Criminal Code of Ukraine

Abstract: The article is devoted to the criminal and legal problems of qualification of crimes committed in participation. Both general and special rules of qualification of crimes committed accessories offer on the basis of positions to Criminal Code, taking into account their kinds, forms of participation, degree of completeness of crime (preparation to the crime, encroaching upon a crime) and taking into account influence of separate signs of syllables of crimes on qualification of acts of accomplices.

Keywords: qualification of crimes, accessories in a crime, form of participation, corpus delict.

A crime can be committed as one, so simultaneously and by a few persons. Most articles of Special part of the Criminal code of Ukraine (farther is CC) foresee criminal responsibility for crimes committed individually. For this reason at the commission of crime by joint efforts a few persons (in participation) legal opinion of committed up to a point is complicated, as requires qualification of act each of accessories in such crime.

In accordance with Article 26 CC criminal participation are intentional common participating of a few subjects of crime in the commission of intentional crime. According to Part 1 Article 27 CC accessories in a crime, next to a performer, are an organizer, instigator and accessory.

1. In accordance with Parts 1 and 2 Article 29 CC a performer (accessory) is subject to criminal responsibility after the article of Special part of CC, that foresees a committed by him crime; an organizer, instigator and accessory, is subject to criminal responsibility after corresponding part of Article 27 and by the that article (by part of the article) of Special part of CC, that foresees a crime committed a performer. Thus the act of performer of crime (i.e. person that in participation with other subjects of crime directly or by the use of other persons, that under the law not subject to criminal

responsibility for committed, committed crime, foreseen CC) is characterized only after the article (by part of the article) of Special part of CC. The acts of other accessories (organizer, instigator and accessory) are characterized after corresponding parts of Article 27 CC that regulate the act of such accessories, and by the article (by part of the article) of Special part of CC, that foresees a together committed crime.

It should be noted that cases take place in inquisitional-judicial practice, when one accessory carries out a few roles in the general commission of crime (for example, role of instigator and accessory; instigator and performer). First, that it is necessary to find out the act of such accessory during qualification – to set it which one roles he carried out, i.e. to find out the type of participation (Article 27 CC), and secondly, to recreate it in the formula of qualification (to carry out reference to digital denotation (the number) of the article (of part (of point) of the article) of Special part of CC, and sometimes and General part of CC that foresee committed a person act, on such *rules*:

a) if the partner of general commission of crime carried out a few roles and including role of performer (accessory) – qualification of its act must come true only after the article (by part of the article) of Special part of CC. At the same time, all roles accomplished by such partner of general commission of crime register in an explain part of corresponding judicial documents and taken into account at awarding punishment to it;

b) if accessory at the commission of crime carried out a few roles that behave to so-called «other types of accessories» (for example, role of instigator and accessory), then in the formula of qualification each is recreated of these roles. Qualification of acts of such accessory comes true after corresponding parts of Article 27 CC that regulate the roles of certain types of accessories, and by the article (by part of the article) of Special part of CC that foresees responsibility for a together committed crime [1].

2. At the commission of crime in participation it is necessary also to find out the form of participation (i.e. method of cooperation of accessories, that shows, how intentional acts two or more subjects unite in one crime), as it, in most cases, has a fundamental value for qualification of such act [2]. In accordance with Article 28 CC a crime in participation can be committed: a) by the group of persons (without a previous plot); by the b) group of persons on a previous concert; c) by the organized group; d) by criminal organization.

A crime confesses such that is committed *the group of persons*, if in it a few (two or anymore) performers participated without a previous plan between them (P. 1 Article 28 CC). At the commission of crime characterized the group of persons (simple participation) of act of every accessories after the corresponding article (by part of the article) of Special part of CC. Thus, if the indicated form of participation is foreseen as a characterizing sign of certain corpus delict, then the acts of accessories are characterized after corresponding part of the article of Special part of CC that foresees such characterizing sign. It should be noted that if the indicated form of participation is not neither basic nor characterizing sign of certain corpus delict, then in accordance with P. 2 Part 1 Article 67 CC of commission of crime without a previous plan *is not taken into account* the group of persons, as a circumstance that burdens punishment.

A crime confesses committed *on a previous agreement the group of persons*, if it was together accomplished by a few persons (two or anymore) that in good time, i.e. to beginning of crime, arranged about is general commission (P. 2 Article 28 CC). A crime admits committed *the organized group*, if a few persons (three and anymore), that preliminary co-organize in a proof association for this commission and other (additional) the crimes, incorporated by an only plan with distribution of functions of the participants of group, sent to the achievement of this plan well-known to all participants of group (P. 3 Article 28 CC), participated in its preparation or commission. At the commission of crime by the group of persons on a previous concert or qualifications are subject the organized group of act of accessories after the article (by part of the article) of Special part of CC, that foresees responsibility for a crime committed in the corresponding form of participation, in case if it is foreseen as an obligatory or characterizing sign of such corpus delict. Thus during qualification of act of certain accessory it is necessary to take a that role that he executed in a general crime into account, and, in case of necessity, also to refer to corresponding part of Article 27 CC, that foresees the act of such accessory.

If the indicated forms of participation are not neither basic nor characterizing signs of certain corpus delict, then in accordance with P. 2 Part 1 Article 67 CC of commission of crime by the group of persons on a previous agreement or admits the organized group by a circumstance that burdens punishment [3].

A crime admits committed criminal organization, if it is accomplished by the proof hierarchical association of a few persons (five and anymore), members of that or structural parts of that on a previous agreement co-organized for joint activity with the

aim of direct commission of serious or especially heavy crimes by the participants of this organization, or guidance or co-ordination of criminal activity of other persons, or providing of functioning of both criminal organization and other criminal groups (P. 4 Article 28 CC). During qualification of acts of organizer and participants of criminal organization it is necessary to follow such *rules*:

a) creation of criminal organization and participating in it form the independent corpus delict foreseen to the Article 255 CC. In addition, in the articles of Special part of CC the special types of criminal organizations are regulated for creation or participating criminal responsibility (for example, band (Article 257), terrorist group or organization (Article 258-3) and others like that) is foreseen in that. Thus, the acts of organizer and participants of criminal organization are subject to qualification after the article of Special part of CC that foresees responsibility for creation or participating in the certain type of criminal organization;

b) organizer of criminal organization is subject to criminal responsibility for all crimes committed such organization, if they were embraced by his intention. The participants of criminal organization are subject to criminal responsibility for crimes, in preparation or commission of that they participated. In this connection, the acts of organizer and participants of the organized group are also subject to qualification and after the articles (by parts of the articles) of Special part of CC, that foresee responsibility for crimes that was accomplished by such organization. Thus, in the formula of qualification, in case of necessity, it is necessary to mark corresponding part of Article 27 CC that foresees the act of certain accessory – organizer, instigator or accessory.

It should be noted that in accordance with P. 2 Part 1 Article 67 CC of commission of crime *does not admit* criminal organization by a circumstance that burdens punishment, as at that rate, if corresponding criminal organization accomplished one or a few crimes, awarded punishment on the special rules – after totality of crimes.

3. By general rule of limit of responsibility of accessories determined by the limits of act of performer, for this reason at the commission of to them unfinished crime (preparation is to the crime or encroaching upon a crime) other accessories is subject to criminal responsibility for participation in an unfinished crime. At that rate the acts of accessories are characterized after corresponding part of Article 27, that foresees description of act of certain accessory, P. 1 Article 14 or P. 2 or 3 Article 15 CC, that foresee the type of unfinished crime (preparation to the crime, complete or unfinished

encroaching upon a crime) and by the corresponding article (by part of the article) of Special part of CC, that foresees responsibility for a complete crime.

4. According to p. 3 Article 29 CC of sign, that characterize the person of separate accessory in a crime, belong in guilt *only* to this accessory. The brought statutory provision over testifies that signs that characterize the person of certain accessory and influence on qualification of crime are subject to the relation in guilt only this accessory, regardless of that or other accessories knew about the presence of such signs. For example, if a performer committed crime repeatedly, and other accessory (organizer, instigator or accessory) commit crime first, then the sign of repeated of commission of crime is taken into account during qualification only of act of performer.

5. Identical reasons (internal motives that is followed by a subject at the commission of crime) and whole (conceivable result a subject aspires to that, committing crime) acts of accessories, if they are marked in disposition of the corresponding article as to the duty or characterizing signs of certain corpus delict, are the necessary condition of qualification of their acts after the same article (by part of the article) of Special part of CC.

At the same time there are possible cases in inquisitional-judicial practice, when accessories at the commission of general crime follow different reasons and (or) pursue different aims. Consider that at that rate during qualification it follows to go out from that depending on the legislative fixing of signs of subjective side of certain corpus delict reason and aim can carry out a different role, namely to come forward as signs: a) to the duty (basic), b) characterizing, c) privileged, d) such that soften or burden punishment.

If reason or aim are the obligatory signs of corpus delict, then their absence in the act of accessory eliminates criminal responsibility for committed in connection with disparity of signs of actual publicly dangerous act to the signs of corpus delict foreseen by the corresponding article (by part of the article) of Special part of CC. If reason or aim are the characterizing signs of certain corpus delict, then their absence in the act of accessory does not eliminate criminal responsibility, and only pulls qualification committed after other article (by part of the article) of Special part of CC. In case if reason or aim is foreseen neither mainly, nor in the privileged nor in skilled compositions of crimes, then reason and aim are taken into account at awarding punishment as circumstances that soften or burden punishment, or such that characterize a person guilty.

The resulted grounds to set the *rules* of taking into account of reasons and aims of act each of accessories during qualification of committed crime:

1) reasons that was followed by a performer, and aims that he pursued influence on qualification of acts of other accessories only subject to condition, if : a) they are the obligatory or characterizing signs of *corpus delict*; b) accessories followed them or pursued them; c) accessories did not follow them though, but realized their presence. The marked approach answers P. 3 Article 29 CC, according to that circumstances, that burden responsibility and foreseen in the articles of Special part of CC as signs of crime, that influence on qualification of actions of *performer*, belong in guilt only to accessory that realized these circumstances. Thus, even, if accessory participated in a general crime, following other reasons (pursuing other aim) that does not influence on qualification, then at realization to them of the above-mentioned signs, his action it is necessary to characterize after the that article (by part of the article) of Special part of CC, that foresees a crime committed a *performer*;

2) reasons and aim, that is followed by so-called «other accessory» (organizer, instigator, accessory), carrying out the criminal role, belong in guilt and taken into account during qualification of his act or at awarding punishment. Thus they can have a double value:

a) if they are the obligatory or characterizing signs of *corpus delict* committed in participation, it determines qualification of acts of such accessories after the corresponding article (by part of the article) of Special part of CC;

b) if aims and reasons that is followed by so-called «other accessories» are not neither obligatory nor characterizing signs of *corpus delict*, i.e. does not influence on qualification committed a performer, then they are taken into account at awarding punishment only to that accessory, that follows them, or pursues, as circumstances that soften or burden punishment, or as given, that characterize the person of such accessory.

6. The debatable is remained by a question about qualification of acts of accessories, if at a plot on the common commission of crime the obligatory or characterizing signs of his composition were not specified. For example, how to characterize the act of instigator that predisposed a performer to murder, not specifying the method of his commission, and a performer accomplished murder with the special cruelty or method dangerous for life of many persons?

In our view, the decision of this question depends on the specification of signs of corpus delict a plot took place on the commission of that accessories. So, if between accessories an agreement took place about the commission of certain crime (for example, murders, thefts, shakedowns), and a performer accomplished this crime at presence of characterizing (aggravating) signs (for example, special cruelty; violence dangerous for life and health of person), then to characterize the act of accessories taking into account this sign, it is possible only subject to condition, if they: a) beforehand knew about the presence of such sign (in particular, realized beforehand, that negotiate about murder of woman that is in the state of pregnancy) a plot took place exactly on the commission of this crime, or b) on the circumstances of business realized possibility of presence of such sign and assumed the commission of such crime (for example, predisposing a performer to murder, an instigator assumed possibility of the use of different methods of murder a performer, including dangerous for life of many persons). The brought suggestions over of qualification answer the binding overs of P. 3 Article 29 CC, in accordance with what circumstance, that burden responsibility and foreseen in the articles of Special part of CC as signs of crime, that influence on qualification of act of performer, belong in guilt only to accessory that realized their presence.

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