

Ruslan Orlovskiy,

Yaroslav Mudryi National Law University,

Associate Professor, Candidate of Law Sciences,

Department of Criminal Law

An institute of participation in an International criminal law and Criminal law of Ukraine

Abstract: In the article the general questions of institute of participation in an International and national Criminal law on the example of Criminal Code of Ukraine 2001 (further CC of Ukraine) are examined and the most meaningful international criminal and legal acts; genesis of institute of participation taking into account the variety of sources of international criminal law is presented.

Keywords: international criminal law, crime, participation, performer, competitor, organizer, instigator, accomplice, group of persons, organized group of persons, criminal organization, criminal society, criminal responsibility.

Intent attention to the questions of participation presently not by chance, as an amount and variety of the crimes, accomplished by two and more than persons beforehand arranging about it, increase steadily, or in general by groups with the different variants of organization of activity, with the high degree of danger as the transnational organized crime. An institute of participation, thus, is the legal instrument of fight against the organized crime, both in national and in international criminal law.

To the questions of criminal responsibility for criminal participation the Division VI of General part is devoted in CC of Ukraine that is named "Criminal Participation" and consists of 6 reasons of regulating the questions of criminal responsibility for joint criminal activity. It should be noted that separate norms, touching the institute of participation, are contained and in other divisions General and Special parts of CC of Ukraine.

CC of Ukraine contains common determination of concept of participation. By criminal participation in accordance with Article 26 CC of Ukraine is intentional joint participating of a few subjects of crime in the commission of intentional crime. The presence of legislative determination of concept of participation provides possibility of

unambiguous decision of row of questions. In particular, participation maybe only at presence of two or more than subjects of crime. Participation is tits intentional joint participating in the commission of crime. An only intentional crime can be accomplished in participation.

The analysis of legislative determination of participation allows distinguishing its objective and subjective signs. So, from an objective side participation is characterized quantitative and quality signs. At participation a few subjects (physical persons) (two or more) accept direct participation in the commission of crime, attaining age of criminal responsibility and were responsible in the moment of commission of crime. It is a quantitative sign of participation. The quality sign of participation is community of actions of accessories, consisting in the following: firstly, activity of each of accessories is associated and sent to the achievement of single criminal result. Secondly, publicly-dangerous consequences (in crimes with material composition) are single and indivisible for all accessories, that, regardless of role that each of them executed, must be responsible for committed crime on the whole. Thirdly, presence of objective stipulating connection between the actions of accessories and crime that was accomplished by a performer, as conscious activity of performer, depends on previous activity of other accessories, assisting the achievement of general criminal result.

The subjective signs of participation consist in the intentional joint participating in the commission of intentional crime. Intention of accessories includes: 1) mutual awareness of accessories about criminal activity each or one of them; 2) realization each of accessories that it by the actions together with actions other are accomplished by a crime or assists its commission; 3) desire or conscious assumption of offensive of single criminal result. Thus intention of accessories must be general and fastened in an achievement between them conspiracy. Such agreement can be verbal (oral), verbal or writing, outspoken by means of the use of technical equipment (telephone, Internet) and other. The method of achievement of conspiracy does not matter, a leading role is played by intention. By general rule, intention at participation of line. However at participation indirect intention is possible, in particular at criminal activity of organizer and accomplice at the commission of crime with material composition. Reason and aim of activity of accessories cannot coincide, that for the decision of question about a presence or absence of criminal participation value does not have, although can influence on qualification.

CC of Ukraine contains the separate article of criminal law, in that the types of accessories are clearly enumerated with subsequent legislative determination (Article 27 CC of Ukraine). Founding for such differentiation is a functional role of accessories, character of executable by them actions, and also degree of their participating in the commission of crime. So, a performer (sub-executor) is a person, that in participation with other subjects of crime directly or by the use of other persons that under the law is not subject to criminal responsibility for committed, committed crime, ponderable tits Code (P. 2 Article 27 CC of Ukraine). Legislative determination of performer of crime is plugged in itself by three varieties:

- a performer is a person, directly committing crime;
- sub-executor is a person directly participating in the commission of crime together with other persons (sub-executors);
- a mediocre performer is a person, committing crime by the use of other persons, under the law not subject to criminal responsibility.

In Article 28 CC of Ukraine is foreseen the forms of participation, distinguished depending on stability of subjective connections between sub-executors, namely: 1) group of persons; 2) group of persons on a previous agreement; 3) the organized group; 4) criminal organization.

In the theory of criminal law of Ukraine also distinguish the special questions of responsibility for participation, to that belong participation in crimes with the special subject, provocation of crime, excess of sub-executor, failed participation, voluntary abandonment of accessories.

Institute of criminal participation well known to the international criminal law too. The concept of participation in an international crime follows from the general concept of the participation, folded in a criminal and legal doctrine, legislation and practice of many countries. Traditionally under participation intentional joint participation is understood two or more than persons in the commission of crime. Unity of two signs is fixed in basis of understanding of participation, namely help (mutual help) of accessories that shows up in an assistance, that each of them renders or can render to other at the commission of crime and intentional guilt of accessories, that includes realization circumstance that a subject operates not alone, and together with other persons, renders assistance to them and (or) can expect for help from their side.

International and legal acts usually do not distinguish the separate types of accessories – specified more often in them, that any person, that "takes part as an

accomplice of any person that accomplishes or tries to commit" crime (d. "b" P. 2 Article 1 International convention about a fight against an capture of hostages, 1979), is subject responsibility; or simply "is sub-executor of person", accomplishing an act or encroaching upon an act (d. "b" Article 1 Convention about a fight against the illegal capture of air ships, 1970).

Article 6 Charter of the Nuremberg tribunal says directly about existence of such types of accessories, as a leader, organizer, instigator and accomplice.

Participation on an international criminal law has also certain kinds and forms that not always are straight specified in sources. For the beginning of consideration of this question it is necessary to appeal to one of major documents - to Charter of the International military commission for a court and punishment of chief war criminals of the European countries of axis from August, 8 1945 [1]. So, in Article 6 this charter the next types of accessories are certain: leaders, organizers, instigators and accomplices, participating in drafting or in realization of general plan or plot, directed to the commission of any of the crimes indicated in this charter. They bear responsibility for all actions accomplished by any persons for realization of such plan.

Charter of the International tribunal on Rwanda from November, 8 1994 in P. 1 Article 6 defined the personal criminal responsibility of person, that planned, instigated to, ordered or by another character assisted or won to planning, preparation or committing crime, indicated in this charter [2].

Roman statute of the International criminal court accepted in 1998 [3] in P. 3 Article 25 attaches criminal responsibility and punishment of physical person for a commission to them crime falling under jurisdiction of the indicated court, in next cases:

- if committed crime individually, together with other person or through other person, regardless of whether this person of criminal responsibility is subject or no;
- if a person orders, instigates to or induces to accomplish such crime, if this crime is accomplished or encroach upon its commission;
- if a person pander for the facilitation of commission of crime, instigates to or by another character assists to its commission or encroaching upon it, including giving facilities for its commission;
- if person, any by another character assists to the commission of crime or encroaching upon its commission by the group of persons operating with a general aim, thus some assistance must appear or intentionally, or for support of criminal ac-

tivity or criminal purpose, when it is related to committing crime, falling under jurisdiction of the International criminal court, or with realization of intention of group to commit crime;

- in regard to the crime of genocide or at direct and public instigation other to the commission of genocide.

Thus, for the institute of participation concordantly, to the Roman statute of the International criminal court next signs are inherent participation: person together with other person commits crime or encroaching upon a crime; at the commission of crime by the group of persons, its participants operate with a general aim; a person realizes a common design "intention of group" on the commission of crime.

In accordance with Article 25 the Roman statute a person that is subject to criminal responsibility: commits crime individually or with other persons; orders, instigates to or induces to commit crime; on purpose to facilitate the commission of such crime pander or by another character assists to its commission or encroaching upon it, including the grant of facilities for its commission.

The said allows drawing conclusion, that such types of accessories, as performer, organizer, accomplice, instigator, are foreseen in an international criminal law.

Forms of participation also can be different, that it contingently character and types of committed crime, features of subjective side. These can be the forms of participation, presented by the criminal statute of Ukraine: group of persons, group of persons on a previous agreement, organized group, criminal organization. Thus criminal responsibility of person can come both individually and as a member. So, for example, normative determination of two possible forms of participation is given to in Convention United Nations (THE UNO) against the transnational organized crime (Palermo, December, 13 2000): the structurally executed group is a group that did not by chance form for the immediate commission of crime and in that the roles of its members are formally certain not necessarily, continuous character of membership is specified or the developed structure is created; the organized criminal group is the structurally executed group in composition three or more persons, existing in the flow of certain period of time and operating concertedly with the purpose of commission of one or a few serious crimes or crimes, confessed by such in accordance with Convention of the UNO against the transnational organized crime from December, 12 2000, with that to get, straight or by implication, financial or another material benefit.

The "group of persons" is mentioned in the sources of international criminal law, but pointing is here absent on that, whether there is a previous agreement in such group or no.

In the Roman statute in Article 28 [3] the features of responsibility especially make a reservation in regard to commanders, persons, effectively operating as a military commander, and other chiefs, when criminal responsibility falls for the crimes included in jurisdiction of the International criminal court, if they are accomplished by forces or inferiors, that are under an effective command, power or control, as a result of unrealized control above such forces or inferiors in situations, when:

«... – such military commander or such person either knew or, in the circumstances folded on at that moment, must know that these forces accomplished or intended to accomplish such crimes;

- it is such military commander or such person did not accept all necessary and reasonable measures within the framework of its plenary powers for prevention or suppression of their commission or for the transmission of this question in competent organs for investigation and criminal proceeding;

- it is a chief either knew or consciously ignored information, that obviously specified on that inferiors accomplished or intended to accomplish such crimes;

- crimes affected activity falling under effective responsibility and control of chief;

- a chief did not accept all necessary and reasonable measures within the framework of its plenary powers for prevention or suppression of their commission or for the transmission of this question in competent organs for investigation and criminal proceeding".

Scientists distinguish the special form of participation - plot [4]. In this case subjects can be on territories of the different states, but their activity however will be strictly co-ordinated. For plot duration of preparation, plugging in the number of its participants of public agents, secrecy of activity, trenching, is characteristic upon the most essential international relations, up to the capture of power in a nation-state. Histories are also known examples of plot of the states at the commission of international crimes, for example in the period of Second world war, when the association of Germany, Italy and Japan in the conditions of the armed conflict happened.

The national criminal statute of the different states differently behaves to the problem of participation that it contingently, including, by determination of circle of subjects, to the number of that both physical and legal persons can be taken, as provided, for example, in the Criminal code of France. It is thus marked that "responsibility of legal entities does not eliminate such for physical persons - performers or accessories of the same acts", and term "sub-executor" is determined as a person that is conscious the help or assistance facilitated its preparation or completion, and a person, that by means of gifts, promises, threats, requirements, is equal, miscommissions or by plenary powers were provoked by a criminal act or gave pointing on its commission".

Thus, at committing crime, according to international, and also to the national criminal law of the different states, there can be simple forms of participation (for example, at the commission of piracy, contraband goods and etc.) and difficult forms with distribution of roles (for example, at terrorism, soldiery crimes and other acts), that allows to mark the wide aspects of study of institute of participation in an international law at the commission of international or conventional crimes, their reflection in the norms of national criminal law, and also their realization in practical activity.

References:

1. Устав Международного Военного Трибунала для суда и наказания главных военных преступников европейских стран оси (Лондон, 8 августа 1945 г.) [Электронный ресурс] // Гарант: информ.-прав. портал. URL: <http://base.garant.ru/2540388>.
2. Международное уголовное право в документах: учеб. пособие. В 2 т. Т. 2 / Сост. Р. М. Валеев, И. А. Тарханов, А. Р. Каюмова. – Изд. 2, перераб. и доп. – М.: Статут, 2010. – С. 219-232.
3. Международное уголовное право в документах: учеб. пособие. В 2 т. Т. 2 / Сост. Р. М. Валеев, И. А. Тарханов, А. Р. Каюмова. – Изд. 2, перераб. и доп. – М.: Статут, 2010. – С. 256-551.
4. Панов В. П. Международное уголовное право: учеб пособие / В. П. Панов. – М., 1997. – С. 36-37.