



IMPOSING PUNISHMENT FOR COMPLICITY IN CRIMES AGAINST MILITARY SERVICE

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ABSTRACT

This article analyzes the problem of punishment for crimes committed in complicity. The features of the qualification of instigator, performer, participator and accomplice are considered.

KEYWORDS: *punishment, sentencing, complicity, crime of complicity.*

The sentencing of a crime committed with complicity involves the application of special rules, according to which the court must take into account the nature and degree of participation of each of the perpetrators. Mitigating and aggravating circumstances related to the personality of an individual accomplice are taken into account by the court only when sentencing this accomplice (Article 58 of the Criminal Code).

Complicity, in accordance with Article 27 of the Criminal Code, recognizes the joint participation of two or more persons in the commission of an intentional crime.

The criminal law differentiates the joint participation of two or more persons in the commission of a crime according to the form of complicity and the role of the defendant in the commission of a crime in complicity.

At the same time, in terms of the form of complicity, the criminal law provides for simple complicity, complex complicity, an organized group and a criminal community (Article 29 of the Criminal Code).

To establish the role of the defendant, it is necessary to determine the nature and degree of participation in the crime of each accomplice.

Based on the nature of participation, organizers, instigators and accomplices are recognized as accomplices to the crime along with the perpetrators (Article 28 of the Criminal Code).

The degree of participation in the crime of each accomplice is determined by the intensity of the actions and the volume of his contribution to the crime being committed.

The limits of liability for complicity in a crime are determined by Article 30 of the Criminal Code, according to which organizers, instigators and accomplices are liable under the same article of the Special Part of the Criminal Code as the perpetrators. The law provides for the responsibility of the organizer, as well as members of a criminal group, organized group and criminal community for all crimes in the preparation or commission of which they took part. Persons who created an organized group or criminal community or led them are responsible for all crimes committed by criminal groups if they were covered by their intent, since an act that was not covered by the intent of other accomplices is recognized as an excess of the perpetrator, for which the person who committed it bears responsibility.

At the same time, criminal law excludes the responsibility of the organizer, instigator or accomplice in the event of their voluntary refusal to commit a crime and take timely measures to prevent the occurrence of a criminal result.

Taking into account the above, the courts are ordered to discuss the issue of differentiation of punishment, taking into account the specific circumstances of the case, data on the identity and degree of participation of each accomplice in the crime, as well as the appointment, within the limits of the law, of a less severe punishment for the person who committed the crime for the first time [6].

In the literature, there are different opinions on the justification for tightening criminal liability for complicity in a crime. According to some authors, the mere fact of committing a crime by several persons does not provide an unconditional basis for increasing criminal liability [5].

We cannot agree with such an opinion, because only an increase in the number of persons consciously participating in the joint commission of a deliberate crime increases the coefficient of criminogenic prevalence (criminogenicity) of the population [2] and thereby negatively affects the crime rate. Moreover, a premeditated and carefully planned intentional crime of complicity with an equal nature carries a greater public danger than a situational crime of one person.

In this regard, complicity in crimes against the order of military service is especially dangerous, since it poses a threat to the security of the country through a negative impact on the established order and rules for maintaining high combat readiness and combat readiness of formations and units, accounting, storage, operation of weapons and military equipment, military property,



healthy moral and psychological climate and discipline.

The imposition of criminal punishment for complicity in a crime against the procedure for performing military service has its own characteristics, due to the specifics of their commission by special subjects (military personnel and those called up for military training) through criminal influence on military relations, which are a special object of criminal legal protection.

The rules for qualifying and imposing punishment for committing crimes in complicity with a special subject are explained in the decisions of the Plenum of the Supreme Court, scientific and educational literature [8, 9, 10, 11, 12].

An analysis of the norms of the Criminal Code and clarifications of the Plenum of the Supreme Court indicate that the criminal legal qualifications, as well as the subsequent imposition of punishment for a criminal offense in the complicity of persons with legal personality, at least one of whom is a special subject, are determined by the objectives of the criminal code and are aimed primarily in total, to protect objects of criminal law protection.

In particular, the resolution of the Plenum "On some issues of application of the law on the liberalization of penalties for crimes in the economic sphere" explains that "if official forgery is committed in complicity with other persons who are not subjects of official crimes, the actions of the latter are subject to qualification under Articles 28, 209 of the Criminal Code, and not under Article 228 of the Criminal Code, if they were not accomplices in the theft."

The legal basis for imposing punishment on a general subject for committing a crime in complicity, which provides for the responsibility of a special subject, is Part 2 of Article 28 of the Criminal Code, according to which the perpetrator of a crime can be not only the person who, in whole or in part, directly committed the crime, but also the person who used other persons to achieve a criminal result.

In practice, if in crimes with a special subject there is complicity and individual participants do not possess the characteristics of a special subject, this person, regardless of the act committed by him, is not qualified as a perpetrator. In such cases, the legal assessment of other participants (organizer, instigator, accomplice), who have the characteristics of a special subject, is given as the direct perpetrator of the crime, and when qualifying them, it is necessary to apply the relevant part of Art. 28 of the Criminal Code [1].

The imposition of punishment for crimes against the order of military service in the complicity of subjects of military relations also has its own characteristics due to the content and scope of the rights, duties and responsibilities of each military serviceman in the performance of military service duties (clause 7 of the Military Service), and the relationships of subordination (clause 31 of the Military Service) and seniority (clause 34 of the UVS) [13].

In this regard, the resolution of the Plenum of September 15. 2000 No. 23 "On judicial practice in cases of crimes against the order of military service" explains that: "If a person who is subordinate to both the perpetrator and the the victim, the actions of the superior should be qualified under Article 285 of the Criminal Code, and the actions of the subordinate - as an accomplice in this crime, under Articles 28, 285 of the Criminal Code." The same resolution states that "only commanders and officials can be perpetrators of military malfeasance, and other persons can also be accomplices."

Thus, when assigning punishment for a crime committed in complicity, it seems reasonable to proceed from the criminal result that occurs as a result of joint intentional influence on the object of criminal legal protection. At the same time, if accomplices commit a socially dangerous act that requires the presence of a special subject, the latter, regardless of the role played in the commission of a crime in complicity, must be recognized as a perpetrator. A different understanding, in our opinion, does not correspond to the legal nature of crimes with a special subject.

In this regard, when assigning punishment for crimes against the order of military service committed in complicity by subjects of military crimes and civilians, it is necessary to qualify the actions of all accomplices under the article of the Special Part of the Criminal Code, which provides for liability for military crimes, using the relevant part of Article 28 of the Criminal Code.

The commission of a crime in complicity by prior conspiracy by a group of persons is an important factor in determining punishment.

The scope of the concept of complicity in a crime covers all cases of deliberate joint activity of persons participating in a crime [4].

The degree of public danger of crimes committed by a criminal community seems higher than by an organized group, the latter, at the same time, is a more dangerous form than complex complicity, and the least dangerous form of complicity is simple complicity, although it also seems more dangerous than a situational crime.

The joint commission of crimes, especially against the order of military service, certainly poses a significant threat to society and the state, primarily due to awareness, voluntariness, purposefulness and coordination of the attack.

The special danger of criminal complicity is reflected as an aggravating circumstance (clause "m", part 1, article 56 of the Criminal Code), as well as in the form of qualifying signs of disobedience (clause "a", part 2, article 279 of the Criminal Code), resistance to the boss or forcing him to violate official duties (clause "a" part 2, article 281 of the Criminal Code), causing bodily harm to subordinates to the boss (clause "a" part 2, article 283 of the Criminal Code) and violation of statutory rules relationships between military personnel in the absence of subordination relations between them (clause "a", part 2, article 285 of the Criminal Code).

By its legal nature, complicity in crimes against the procedure for performing military service is due to the factor of joint influence on a special object of criminal legal protection from both special subjects (military personnel and conscripts called up



for military training) and general subjects (other persons with legal personality).

The basis for the criminal liability of accomplices is always the presence in their act of elements of a crime. In crimes committed by special subjects, such an act is a special *corpus delicti* [3].

The science of criminal law, when committing a crime in complicity, distinguishes objective and subjective characteristics. Objective signs of complicity include:

- 1) participation of two or more persons in the commission of a crime;
- 2) joint participation in an action (joint contribution to the commission of a single crime) [1].

The following are recognized as subjective signs of complicity:

- 1) the presence of complicity only in intentionally committed crimes;
- 2) mutual awareness of two or more persons participating in the crime about the commission of the crime [1].

The peculiarity of the objective signs of complicity in a crime with a special subject is that the criminal encroachment of the accomplices must be directed at the object of criminal law protection, *de jure* providing for the responsibility of the special subject of the crime, while each of the accomplices must have the signs of a common subject of the crime and, at least one accomplice, signs of a special subject of the crime.

Subjective signs of complicity in a crime with a special subject are distinguished by the awareness of the general subject about the commission of a crime in complicity with a special subject, voluntariness and awareness of the acts, and in this regard, “the signs of guilt, motive and purpose in crimes with a special composition reflect the specifics of the special object, the special nature of the act and special consequences that have occurred” [3].

The appointment of a fair punishment for complicity in military crimes is determined by the characteristics of the functional roles of all accomplices. In this regard, complicity, along with determining the form of complicity, the role in criminal complicity, including the nature and degree of participation, as mandatory factors in imposing a fair punishment, provides for the need to establish the intensity of actions and the volume of contribution of each accomplice to the jointly committed crime [7].

At the same time, the intensity of actions and the volume of contribution of each individual accomplice are legislatively predetermined by the nature of his participation in the crime as a perpetrator, organizer, accomplice and instigator (Article 28 of the Criminal Code), which, in our opinion, should be a direct criterion for differentiating responsibility when individualizing punishment for each accomplice separately.

According to some authors, the design of military crimes is such that the objective side of the act can only be carried out by military personnel and those called up for military training, i.e. special subjects. The argument for this is the possibility of a voluntary refusal by the perpetrator to commit a crime, in which complicity disintegrates, and accomplices, even if they wish, cannot complete the crime [3]. Thus, the central figure of criminal complicity with a special subject is undoubtedly the performer.

However, a completely natural question arises about determining the type of complicity of a person in a crime with a special composition, who is not a special subject, but at the same time directly, fully or partially, fulfilled the objective side of a military crime. Whereas the military man did not directly participate in the execution of the objective side of the crime, but persuaded civilians to commit a crime, supervised their preparation and commission of the crime, assisted with advice, instructions, provided means and subsequently hid the criminals, tools, traces or means of committing the crime.

It is clear that under such circumstances, the actions of a civilian, by their nature, are in no way compatible and incomparable with the actions of an organizer, instigator or accomplice, and a military personnel cannot be called a direct perpetrator.

Under these circumstances, the difficulty of assigning a fair punishment arises, due to the problem of establishing a correspondence between the severity of the crime, the degree of guilt and the social danger of each individual accomplice and the intensity of the actions and the volume of his contribution to the joint crime.

At the same time, very reasonable from a practical point of view are the statements of some authors that when complicit in a crime with a special subject, a person who is not one can perform organizational, co-executive, instigating or complicit actions [5].

In our opinion, if the acts of accomplices, when at least one of whom is a military serviceman, and the others are common subjects, encroach on the object of criminal legal protection of military relations, the participation of persons who are not special subjects, but who fully or partially directly carried out the objective side of the crime, must be recognized as co-executor.

In this regard, in order to ensure differentiation of criminal liability, individualization and improvement of the rules for imposing punishment for crimes involving a special subject, it seems advisable to introduce the following additions to Article 28 of the Criminal Code:

in part one of Article 28 of the Criminal Code, after the words “Accomplices in a crime along with the perpetrators are recognized,” add the word “co-perpetrators” and further in the text.

Article 28 of the Criminal Code should be supplemented with part three in the following wording: “A co-perpetrator is a person who, in whole or in part, directly participated in the commission of a crime, as well as a person who, in whole or in part, directly committed a crime together with the perpetrator, for which, by virtue of this Code, is not subject to liability.”

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