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The limits of accomplices' liability in the criminal law of foreign states

Introduction

Commission of crime by a group of individuals is considered to be an aggravated circumstance by the most of statements in the Criminal code of Russian Federation. Generally recognized it is the most serious form of crime commission.

Russian criminal law creates the fact of criminal complicity in the Criminal code's chapter of the same heading and determines it as an "intentional joint participation of two or more persons in the commission of a deliberate crime".

However, the centuries-old experience of the European states resulted in a development of their own methods and approaches in matters of criminal complicity conception, forms of criminal complicity, qualification of accomplices' actions and limits of their liability.

The purpose of this article is expressed in consideration of these peculiar treatments; conducting a comparative analysis of the Russian statements of law and legal regulations of the foreign states; attempting to develop the own opinion about some questions on the base of analysis produced.

The tasks during the work are: carrying out the test of theoretic materials, doctrinal and legal regulatory sources, studying and comparing of different points of view and attitudes concerning problems discussed, evaluation of arguments and others.

Legal condition of three foreign states, that concerns criminal complicity, will be examined during this work; Great Britain, Germany and France. German and French legal systems belong to the family of Roman-Germanic Law, and English legal system is considered to be the ancestor of the Common Law family.

Germany

The fact, that statements of German criminal law do not provide such a form of criminal complicity as an organizing, is the important feature of legal prescriptions relating to the participation in a crime. It is the significant particularity in comparison with the rules of Russian law. Definitely, the cases of organizing a commission of a crime and directing its commission are common in daily practice. According to the criminal legislation these actions are usually qualified as one of the forms of participation in a crime, which are provided by the German criminal law: co-execution or aiding (assisting).

By a general rule of accomplices' independent (self) penalty, which was established by §29 of German Criminal Code, each accomplice is punished according to his guilt regardless of fault of other individuals. Interpreting this provision philologically they can hardly conclude that it corresponds the wording of point 1, paragraph 34 of Russian Criminal Code. According to the doctrine, guilty actions belong to sane individual, whose fault is not excluded either by virtue of circumstances specified in the rules of the law or by the reason of a legal mistake. At the same time in German criminal doctrine "fault" is understood as blameworthiness of the conduct corresponding with structure of the action. As well as in Russian criminal law, German legislation subdivides the fault on the intention and the carelessness.

Thus, the German Criminal Code in its prescriptions applies to the basic terms of criminal law, in contradistinction to the Russian Criminal Code, where the terms "character" and "degree of the actual participation" are used. These expressions have no transcript in the Code itself, so they need some clarifications in the comments.

In event of creation (organizing) of a group or criminal community (criminal organization) by the individual, he bears responsibility in accordance to the separate statement – §129 or §129a. In turn, the Russian legislation determines such a person as a head for crime.

Another feature of the German criminal legislation is a fact that it covers the liability for the attempted criminal complicity, expressed in the form of instigation, aiding or co-perpetrating, as well as provides a release from criminal liability in case of voluntary withdrawal from complicity. These statements, missing from the Russian criminal legislation, emphasize social danger of the criminal organizations' and criminal groups' actions by previous concert.

France

The Criminal Code of France does not contain a definition of criminal complicity, as well as a separate chapter dedicated to this fact. The statements about a participation in a crime are included in chapter I "General provisions" of section II "Of criminal liability".

The law entitles individuals as perpetrators in case they have directly done a particular act incriminated, and as accomplices – if they have actually functioned as accessory or instigator in the Russian understanding of these definitions. Actions directed on the organizing the commission of a crime or on the directing of its commission does not stand apart in French legislation too.

According to the article 121-6, "an accomplice of a crime in determining of the article 121-7, bears the liability as a perpetrator". However, the doctrinal interpretation of this statement is rather complicated.

In obedience to the French doctrine a crime is a sole action. The perpetrators share the participation in the commission of this action, while the accomplices – accessory and instigator – have a supporting role, facilitating its commission or abetting other persons in committing a crime. By the doctrine they are determined as individuals, who join accessory to the criminal conduct pertaining to the perpetrator. Thereby, the accomplices' actions are some kind of addition to the actions or omission of main perpetrators, which constitute the objective side of the crime. The French doctrine expresses this joining by the term "borrowing" that respectively means the accomplice borrows the criminal act from its perpetrator.

On the base of the borrowing theory it can be concluded that:

1. The accomplices' actions have to be qualified in the same way as perpetrator's (co-perpetrators') actions. In case a crime is considered as a sole action, requiring an execution of several acts, every single individual performing a certain act actually works for the general result which is one for all. Each of these actions should be respectively qualified as an element, a part of the whole action with an indivisible result.
2. In case the perpetrator's act cannot be qualified as a criminal one, the individual who helped its commission cannot be considered an accomplice. The fact of borrowing a criminal element of an action implies some kind of primacy that "lender", perpetrator takes and a dependent status of an accomplice. So when the act perpetrator committed cannot be qualified as a criminal offence, than the hypothesis about criminal alliance of perpetrator and accomplices cannot be confirmed.

No mitigating or aggravating circumstances for accomplices only in view of their role are provided by the legislation.

In fact, it matches the provisions submitted in p. 2 and 3 of article 34 of the Russian Criminal Code, that specify that "co-perpetrators shall be answerable under the Article of the Special Part of this Code for a crime committed by them jointly, without reference to Article 33 of this Code" and "the criminal responsibility of an organizer, instigator, and accessory shall ensue under the Article that provides for punishment for the crime committed, with reference to Article 33 of this Code, except for in cases when they simultaneously were co-perpetrators of the crime".

The French doctrine has its own point of view on the problem of the perpetrator's excessive act. French lawyers distinguish three kinds of excessive act:

1. The perpetrator performs a completely different act in contradistinction to the one devised by him and accomplices. According to the law such

situation is a base for the lenient and forgiven attitude to the accomplices. So they can be discharged from the liability in light of their focus on a completely different result.

2. The perpetrator performs the action assumed, but new qualifying circumstances arise. That is a quantitative or qualitative excessive act as it is understood by the Russian criminal law which means commission of actions that were not embraced by the intent of other accomplices. The judicial practice assumed that in this case the accomplices had to foresee the opportunity of complication.
3. Accomplices has no particular plan concerning to the crime and are ready to participate in any actions the perpetrator is planning. There are no doubts that this case is an indisputable ground for the full liability of accomplices along with the perpetrator.

The distinction of the excess on three categories helps to understand in which case the accomplice's contribution to the commission of a crime actually takes place – intellectual, material, psychological – and when he really deserves the punishment. Unlikely to the Russian legislation, the French judicial practice bases on the conviction that offender must consider any emergency situation while planning a crime, at least, the abstract opportunity of their arising. So he also has to bear liability for any aftermaths directly or indirectly caused by his actions. It may be that the approach of Russian law is a bit too formal and the principle of collective responsibility is more practical.

The Criminal Code of France does not contain any statements that would establish any liability for attempted criminal complicity. Thus, the criminal act has to be finished by the perpetrator, and then their actions can be qualified as a criminal complicity. N.I. Krylova, PhD in Law, docent, remarked, that complicity does not entail any liability in three cases:

1. participation in the implementation of preparatory actions;

2. complicity in phase of execution that was discontinued at will of main perpetrator in case the beginning of commission did not entailed any aftermaths;
3. attempted criminal complicity.

However, method presented in isolation of assisting in a commission of a crime as its separated component in some cases actually permits to punish the offenders for the attempted criminal complicity.

At the same time it is important to distinguish between the fact of attempted criminal complicity and the fact of complicity in the attempted crime. The second case is about a criminal action discontinued not at the will of main perpetrator, but for reasons beyond his control. Thus, this action, complicity in the attempted crime, is a criminal offence and entails criminal liability.

By general rule, two main conditions, concerning to the action in respect of which the fact of complicity was revealed, have to be fulfilled to cause the ability of punishment for accomplices: this action must have criminal nature and entail criminal responsibility. There are some exceptions. Incitement to some non-criminal acts is at times considered as a criminal offence. Like this, article 223-13 of French Penal code imposes sanction for “inciting another person to commit suicide” and article 223-14 – for “propaganda or advertising, in whatever manner, in favor of products, articles or methods recommended as means to procure one's death” (this can be also regarded as an inciting). Before the year 2002 there was another article (223-12) which included liability for “providing a woman with materials for self-abortion”.

The next condition of criminal liability for accomplice (action entails criminal responsibility) follows from the fact that he is actually connected directly with the commission of a crime, not with the personality of its perpetrator. So it is needed to note here, the possible fact that

implementer cannot be prosecuted in practice, does not except the prosecution of his accomplice. In case when main implementer has escaped from jail or is legally

incapable by virtue of his age or mental disorder, an accomplice of a crime he has committed still shall be punished.

At the same time if a perpetrator has some kind of immunity provided by law, an accomplice does not bear any liability too. For example, according to the point 1, article 311-12, Penal code, "no prosecution may be initiated where a theft is committed by a person to the prejudice of his or her ascendant or his or her descendant". Thus, in case when an adult son, persuaded by his friend, stole expensive watch, belonged to his father, neither son, nor his friend will be punished by the law.

So, due to the connection between an accomplice and a crime, the last one has to be objectively possibly punishable. The punishment is excluded in cases of expired limitation period, amnesty and acquittal in force of the law.

England

Nowadays in England the Accessories and Abettors Act, year 1861, as amended in year 1977, proceeds. The article 8 of this Act concerns the criminal complicity, and it states: "Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender".

Nevertheless, during infliction of punishment, court takes into consideration a contribution to the commission of a crime made by each accomplice. The Criminal code of Russian Federation also obligates judges to take this fact into account: "The responsibility of accomplices in a crime shall be determined by the character and the degree of the actual participation of each of them in the commission of the crime".

Determining the form and terms of punishment the court should consider the perpetrator and all accomplices as identical participators of a crime. But (as well as by French law) according to the modern English law accomplices

may be convicted regardless of the fact whether a main perpetrator can be actually prosecuted. Moreover, there is no matter for the justice if an accomplice would have no legal grounds for liability as a perpetrator for the same offence (immunity).

The English doctrine does not divide an excessive act on categories, but the conclusions of years of practice are nearly the same as in French law. If the main perpetrator deliberately committed an action drastically different from acts planned, and that accomplices had no opportunity to foresee, then the perpetrator bare the liability single-handedly. In case the implementer performs additional actions accidentally, accomplices also are responsible for them. As PhD in Law, professor Kozochkin I.D. remarks, "an accomplices is considered to be guilty in case he can foresee all conditions that determine criminal liability".

By the general point of view, formed in doctrine, the voluntary withdrawal from complicity may be the reason for the exemption from criminal liability. But this institute is not set in law, so there is no a single opinion of the actions that a necessary to regard them as the voluntary withdrawal. The unanimous view is that it must be active, but each judge determines the limits of this activity by himself.

The legislation does not provide such a form of criminal complicity as assisting after the commission of crime. But the Criminal Law Act year 1967 establishes: "Where a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence or of some other arrestable offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence". So any help to the offender is considered to be an independent crime.

Conclusion

The legal and doctrinal basis or three foreign states was studied in this article, criminal sources were analyzed and different points of view and various opinions were considered.

On the base of this experience legal approaches may be distinguished on two types. The first one is a theory of separated criminal liability of accomplices, like in Germany. The second one is a theory of accessory nature of accomplices' liability, which is reflected in French legislation. Most of layers refer Great Britain to the second group too.

Every theory has a number of advantages and disadvantages. Doctor of Laws Arutyunov A.A. in his paper "Criminal complicity according to the criminal law of Russian Federation" remarks, that neither theory of separated criminal liability of accomplices, nor theory of accessory nature of accomplices' liability cannot (each by itself) solve all problems of qualifying criminal complicity and answer the questions of accomplices' liability, so legislator should follow the path of their mixing.