

Types of accomplices

Види співучасників

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criminal participation, classification, types of accessories, objective theory, subjective theory, mixed theory, theory of accessory, performer, co-performer, organizer, instigator, accomplice.

Ключові слова:

співучасть у злочині, класифікація, види співучасників, об'єктивна теорія, суб'єктивна теорія, змішана теорія, теорія акцесорності, виконавець, співвиконавець, організатор, підбурювач, пособник.

In science of criminal law for a long time scientists tried to classify persons, together committing crime. Actuality of this question does not cause a doubt and today. In different periods of development of criminal and legal science to the questions of classification of accessories paid attention differently. Legislators often ignored the necessity of regulation of types of accessories and fixing of these kinds for a criminal statute.

Research of question of classification of accessories on kinds, namely the theoretical side of the examined range of problems acquires the special actuality not only in the context of positions of institute of participation but also institute of awarding punishment. Correct establishment of type of accessory gives an opportunity not only to ground its responsibility but also define character and degree of participation each in the joint commission of crime that is founding for application of certain measure of responsibility.

An institute of participation on the stage of becoming was separate norms, foreseeing responsibility of persons participating to the committing of certain crimes. A criminal statute knew neither the general concept of participation nor determinations of types of accessories, however in its norms foreseeing criminal responsibility for the certain types of crimes, the acts of all now well-known types of accessories were described: performers, accomplices, separately mentioned and about instigators. However such differentiation got substantial value, as by general rule all accessories in an equal degree bore the criminal responsibility for committed crime. At becoming of participation as an independent institute of criminal law admitted accessory any person participating to the commission of crime. Such approach found the reflection in the theory of equivalence of accessories, characteristic now Anglo-Saxon system of law, in obedience to that a performer at the commission of crime stays interest other accessories. Essence of theory consists in that a performer is an agent of other accessories, presenting all their rights, and distributes all their duties. The supporters of this theory grounded equal responsibility of every accessory for a together committed crime. In connection with that the theory of equivalence determined founding of criminal responsibility of accessory the act not personally accomplished by it, and committed together with other companions in a crime, it was exposed to sharp criticism. For criticism the undifferentiating of criminal responsibility of accessories served founding also depending on an executable role.

By the result of searches of decision, question of differentiation of criminal responsibility of accessories there was an origin of theories grounding different classifications of accessories on kinds. All attempts to classify accessories, aims were inferior, to decide on theoretical and legislative levels question, who of accessories is a main performer, and who - by a second-rate participant.

As a result, there were three theories of division of accessories on kinds: objective, subjective and mixed, depending on criteria that were fixed in basis of classification (accordingly: character of executable actions, personal interest in a criminal result, both the criteria in combination).

Chronologically the first were objective theories of division of accessories on kinds. Essence of these theories was taken to that, classifying accessories on kinds, an objective test was used. All objective theories, conditionally divided into two groups: 1) theory of infliction, that separated offender and accomplice depending on causal connection between their actions and criminal result and 2) theories actions that, dividing a main offender and participant, as a classification criterion used legal properties of accessories.

In basis of subjective theories of classification of accessories the criterion of subjective relation of main offender and accomplice was fixed to the committed crime. All subjective theories of classification of accessories were based on positions of accessory theory of participation, in obedience to that an accomplice and instigator participate in a stranger action. Analysing this position through guilt of accessories, scientists drew conclusion that the criterion of dividing of accomplice and instigator from a main offender is their attitude toward a crime as to the stranger action. In opinion of representatives of these theories, character of participation for classification of accessories of value does not have. All subjective theories of classification of accessories were divided by two kinds: 1) theory of interest and 2) theories of intention.

Essence, consists the subjective theory of interest of classification of accessories of that an offender is interested in a crime directly, while in an accomplice interest in the commission of crime is mediated. A main offender that accessory that pursued own interest was considered, and by an accomplice is a person that operated for the sake of stranger interest. Subjective theory of intention in a context subjective studies about a performer consist in an idea that payments of separate accessories that consist in operations, it is impossible to divide by more ponderable and less ponderable, as, for example, the actions of accomplice are too needed for the committing of the united action. Therefore differentiating execution and participation is needed not on meaningfulness of contributions to the committing of the united action, and on the orientation of will of accessories, in other words, whether accessory (together with other) aimed to make decision about the committing of the united action or gathered to give it on the tax farming other. A performer makes decision about the committing of the united action and examines its "as own". A participant submits to will of performer. It abandons a decision about the committing of act after a performer and, accordingly, perceives it "as stranger". This study distinguishes execution and participating not in the aspect of orientation of will of separate accessory, but coming from maintenance of plan that unites contributions to the actions. A performer is a participant, that on a general plan that behaves to the objective side of corpus delict accepts (maybe, not independently) decision about the committing of act.

The mixed theories as a criterion of classification of accessories used an association objective and subjective spheres of activity of criminals.

Presently within the framework of theory of criminal law four types of accessories are distinguished: 1) performer (co-performer) of crime; 2) organizer of crime; 3) instigator to the crime; 4) accomplice to the crime. There is an objective test in basis of such classification, namely: character of executable accessories roles, i. e. type of accessory, is determined taking into account actions that are accomplished by guilty during a criminal trespass.

We suppose that character of participating in a together committed crime is the most capacious criterion of classification of accessories and is the generalized totality of their distinguishers and most full reflects the role of personality in the joint commission of crime.

Under determination is character of participation of should be to understand the phenomenon that characterizes the objective side of activity of accessories. Exactly character of participating in a crime is a basic objective test that should to use for classification accessories on kinds. Usually, under character of participating the role function carried out by a person is understood in the commission of crime. From an objective side this criterion is a certain set of methods of participation of person in together committed crime, i. e. totality of receptions and methods of participating is in the commission of crime that finds the reflection in the real reality.

So, a performer (co-performer) is a person that in participation with other subjects of crime directly or by the use of other persons, under the law not subject to criminal responsibility for committed, commits crime. Outside the institute of participation, the concept of performer is not used. Consequently, a performer exists at presence of other accessories: co-performer, organizer, instigator, accomplice. Concept a "performer" appears by the increase of maintenance of concept "Subject of crime" due to addition its special functional sign of commission of crime. A volume of concept "Performer of crime" is less than as compared to a concept "Subject of crime", simultaneously the performer of crime must be provided with all signs of general subject of crime. Thus, performer of crime is always accessory¹.

Determination of performer of crime foreseen plugs in itself three varieties:

– a performer is a person, directly committing crime;

¹ Орловський Р.С. Виконавець як вид співучасника у злочині / Р.С. Орловський // Наук. вісн. Херсон. держ. ун-ту. Серія «Юрид. науки». – 2014. Вип. 4. Т. 2. – С. 181–185.

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

An organizer is a person, organizing the commission of crime (crimes) or managed its (them) preparation or committing. An organizer also is a person creating the organized group or criminal organization or managing it, or person that provided financing or organized the concealment of criminal activity of the organized group or criminal organization². Coming from mentioned determination, it is possible conditionally to distinguish three forms of actions of organizer is 1) organization: a) commissions of crime, b) formation (creation) of the organized group or criminal organization, c) concealment of criminal activity of the organized group or criminal organization; 2) guidance by: a) preparation or commission of crime or b) by the organized group or criminal organization; 3) financing of criminal activity of the organized group or criminal organization.

An instigator is a person, to persuasions, by subornation, threat, compulsion or by another character predisposed other accessory to the commission of crime³. Activity of instigator can be expressed only in active actions. Therefore reserved approval of resolution to commit crime does not make instigation.

Instigation is always turned to one or a few certain persons the circle of that is strictly certain an instigator. Therefore appeals to the committing the crimes addressed to the indefinite circle of persons are not instigation. An instigator is a type of companion in a crime, i.e. type of subject of the crime accomplished in participation. This position confirms circumstance that the instigator both the signs of subject of crime (physical, responsible person, attaining age from that the offensive of criminal responsibility is possible) and signs characterizing its participating (role) in a joint crime are peculiar to.

An accomplice is a person, that abetted advices, pointing, grant of facilities or instruments or removal of obstacles other accessories, and also person, beforehand promising to hide a criminal, instruments or facilities of commission of crime, tracks the crimes or objects, obtained by a criminal way, to purchase or sell off such objects, or by another character to assist the concealment of crime⁴[4].

It ensues from this determination, that the concept of accomplice behaves to the subject of crime and reflects its specific as a type of accessory. Accomplice one of types of subjects carrying out joint criminal activity, and its general signs of subject of crime are peculiar to, foremost. However, it's the special signs, that is determined by a that role that is executed by an accomplice in the joint commission of crime, are peculiar to. Essence of role of accomplice from an objective side is assistance to the commission of crime by the methods indicated in a criminal law, i. e. specific type of joint criminal activity. Traditionally in science of criminal law it is accepted to distinguish an intellectual accomplice and physical accomplice to the commission of crime.

In opinion of some scientists, aspiring to more thin differentiation of kinds of accessories, justifies a selection yet of other types of accessories, namely: initiator of crime, customer of crime, confidant in the commission of crime, provocateur of crime of and other

Selection in a criminal law on a row with the already existent types of companions in the crime of new accessories appears inadvisable. It is not necessary to overload the institute of participation the superfluous types of accessories that has a tendency on the modern stage, as, existent kinds, on the whole, all possible roles embrace at the joint commission of crime. In addition, it will assist the observance of principle of stability of criminal law. At the same time the necessity of subsequent scientific researches does not cause a doubt sent to perfection of scientific and legislative determinations of performer, organizer, instigator and accomplice.

Conclusions. Thus, investigating the basic theories of classification of crimes and generalizing opinions of the scientists outspoken in scientific literature, it is possible to draw conclusion that:

² Кваша О.О. Організатор злочину. Кримінально-правове та кримінологічне дослідження : [монографія]. – К. : Ін-т держави і права ім. В.М. Корецького, 2003. – С. 53–54.

³ Ус О.В. Кримінальна відповідальність за підбурювання до злочину : [монографія] / О.В. Ус. – Харків : ФО-П Вапнярчук Н.М., 2007. – С. 12–13.

⁴ Орловський Р.С. Посібник як вид співучасника в злочині / Р.С. Орловський // Наук. вісн. міжнар. гуманітар. ун-ту. Сер.: Юриспруденція. – 2014. № 10-1. – Т. 2. – С. 72–77.

- 1) in different periods of development of criminal and legal idea to the question about the types of accessories paid attention anything, and legislators not always considered a necessity regulation of types of accessories and its fixing in a criminal statute;
- 2) establishment of type of accessory gives an opportunity not only to ground its responsibility but also define status, role of partner of together committed crime, the certain measure of responsibility must correspond that;
- 3) character of participating in a together perfect crime is the most capacious criterion of classification of accessories and is the generalized totality of their distinguishers and most full represents the role of person in a joint committing crime;
- 4) legislative dividing of accessories by kinds by the nature participation determines the rules of qualification of acts of performer (co-performer), organizer, instigator and accomplice, and accordingly, is pre-condition of correct decision of question about character and degree of participation of each of partners of together committed crime;
- 5) selection in a criminal law along with the already existent types of companions in the crime of new accessories, appears inadvisable;
- 6) the necessity of subsequent scientific researches does not cause a doubt sent to perfection of scientific and legislative determinations of performer, organizer, instigator and accomplice.

Summary

In the article the question of classification of accessories is examined on kinds. The well-known to science of criminal law of theory of classification of accessories on kinds are analysed. The mine-out is pointed science and the definitions of separate types of accessories used in a criminal statute: performer, organizer, instigator, and accomplice.

Анотація

У статті розглядається питання класифікації співучасників на види. Проаналізовано відомі науці кримінального права теорії класифікації співучасників на види. Наведено вироблені наукою й використані в кримінальному законодавстві дефініції окремих видів співучасників: виконавця, організатора, підбурювача, пособника.

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