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Research Article

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Collaboration in the commission of a criminal offense

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Abstract

This paper presents a theoretical, comprehensive topic of the criminal offense committed in collaboration, the forms and types of collaboration, as well as the criminal liability for this offense according to the relevant provisions and laws. The basis of criminal liability is the presence of a criminal offense, while its precondition or prerequisite is the determination of the specific criminal offense, which is provided for in the specific provision of the special part of the Criminal Code or special criminal laws. Criminal offense is the product of the joint activity of the accomplices, of the contribution that each and all together have given in its fulfillment with active actions or inactions, while the subjective side, a special characteristic and a necessary element of cooperation in the criminal offense is the agreement of the accomplices to commit it. In this sense this paper also addresses the forms of cooperation, where simple cooperation and special cooperation are distinguished.

Keywords: Cooperation, criminal organization, collaborator.

1. Introduction

The institution of collaboration in the commission of a criminal offense is found as early as the criminal law of ancient slave-owning states, but it received scientific elaboration in bourgeois criminal law. The basic principles and rules of its implementation were reflected in the French Criminal Code of 1810 and then, in part or in whole, in the criminal legislation of other countries, initially in Europe and then beyond. As for Albania, in addition to the provision in the Ottoman criminal law, the institution of collaboration was also recognized and implemented by customary law, according to which „a prior agreement between the collaborators was required to exist." But it found complete legal regulation for the first time in the Albanian

Criminal Code of 1928, which distinguished between the types of collaborators in the commission of a criminal offense and determined the role and criminal liability of each of them. It was further elaborated in subsequent criminal codes, to the new forms of its manifestation, formulated in the amendments made to the Criminal Code in the years 2004-2007, in the framework of the approximation of the content and implementation of this important institute of criminal law with that of contemporary legislations of European countries (Mengjesi, 2016).

In European and international criminal law, collaboration means the participation of two or more persons in the commission of a criminal offense (concursus plurium in delictum), where the persons who participate in its commission are called accomplices. In Albania's legislation, the meaning of collaboration is given in Article 25 of the Criminal Code, according to which collaboration is the commission of a criminal offense by two or more persons with an agreement between them.

This definition highlights two fundamental and specific characteristics of collaboration, the objective element, which is expressed in the presence or participation of two or more persons who, by their actions or inactions, bring about a criminal consequence, and the subjective element, which is expressed in the existence of an agreement between them to commit the criminal offense. The commission of a criminal offense by two or more persons with an agreement between them presents a greater risk than the commission of the same offense by a single person, when the circumstances are the same or similar. The numerical change in the number of persons participating in the commission of an offense in collaboration, the increase in this number, increases the degree of social danger of the offense, compared to that committed by a single person, because the criminal activity takes on a more organized character. The greater the number of participants and the more organized the criminal activity, the greater the damage caused to society and the higher the dangerousness of the offense and its perpetrators (Elezi et al, 2001).

2. Necessary conditions for participation in a criminal offense

Regarding the objective view, the criminal offense is the product of the joint activity of the accomplices, of the contribution that each and all together have given to its fulfillment by active actions or inactions. In order to accept the collaboration of several persons in a criminal activity, it is necessary that not only the actions of the executor, but also the actions or inactions of every other participant are closely related to the criminal consequence, the existence of a causal connection between these actions, as a whole, and separately, with the socially dangerous result achieved or desired (Muçi, 2012).

The connection of the actions of each accomplice with the criminal consequence, as a necessary factor of its occurrence, forms the unity of the objective side and, consequently, the unity of criminal liability. Regarding the objective analysis, the Albanian Criminal Panel of the Supreme Court reasons that "it is true that the behavior of the accomplice in the commission of the criminal offense can be expressed by active

actions or by inaction, but in any case, in order to charge the accomplice with criminal liability, there must be cooperation as an objective element in the criminal offense, which consists in the fact that the actions of each are a necessary condition for the commission of the actions by the other accomplice, so that the criminal consequence is the common and sole result of all accomplices."[1]

From a subjective point of view, a special characteristic and an indispensable element of cooperation in a criminal offense is the agreement of the accomplices to commit it. There is no cooperation without agreement. Cooperation stems from the agreement, which is made with the free will of the participants in the criminal offense. The agreement, on the other hand, implies the direct will of each of the accomplices to achieve a common criminal result. The agreement, therefore, represents the unity of the subjective side of the criminal offense, unites the guilt of each accomplice with the guilt of the other accomplices, therefore builds the organic connection of the guilt of all. But it should be noted that it is not necessary for the accomplices to know each other personally in every case. It is sufficient for each of them to know and accept consciously and voluntarily that other persons, known or unknown to him, who engage in this joint criminal activity in different roles and ways, also participate in the commission of the crime. Regarding guilt, the Supreme Court jurisprudence states that "as in any case, even in the commission of criminal offenses in collaboration, guilt is a necessary element of the criminal offense, while agreement is a necessary element of cooperation and consequently, without guilt there can be no criminal liability, and without agreement there can be no cooperation." The agreement between persons to commit a criminal offense in collaboration can be made at different stages of its commission. It can be reached at the stage of the appearance of criminal thought, during the preparatory phase or during the commission of the offense, when direct actions on its object have begun.[2]

It consists of accepting to participate in the commission of the actions, in giving consent or assistance for the commission of the offense, etc. The agreement can be made as long as the commission of the offense by the person or by other persons has not been completed. Depending on the time of reaching the agreement, criminal law divides cooperation in two types: a) cooperation before the commission of the criminal offense (concursus antecedends) and b) cooperation during the commission of the criminal offense (concursus consomitans).

3. Forms of cooperation

The doctrine of criminal law recognizes several forms of cooperation in the commission of a criminal offense, starting from their distinction and separation by various criteria, such as the time of the agreement, the form of actions, the possibility of realization, the form of organization and structuring, etc. Thus, depending on the commission of the offense by action or inaction, cooperation is divided into active

[1] Decision no. 39/2001 of the Criminal Chamber of Supreme Court of the Republic of Albania.
[2] Decision no. 1/2002 of the United Colleges of the Supreme Court of the Republic of Albania.

cooperation and passive cooperation (concursus negativus). Depending on whether the criminal offense can be committed by a single person, where most of them are involved (murder, theft, etc.) or necessarily by two or more people, such as armed rebellion, criminal organizations, cooperation is divided, as I mentioned above, into optional cooperation and necessary cooperation.

Albanian criminal law has recognized and recognizes, from the point of view of sanctioning in criminal law, two main forms of collaboration in the commission of criminal offenses, such as:

- simple collaboration, and
- special collaboration, accepting as the main criterion of this division the degree of its social dangerousness, which is expressed in the subjective connection between the accomplices and in the number of participants in the commission of the criminal offense.

Simple collaboration is the form with the least social risk, where the collaborators appear, usually in specific roles, as executor, instigator and assistant or in the same role, as co-perpetrators, when together they participate in direct actions to bring about the consequence. Simple collaboration does not constitute a separate criminal offense. In this case, the collaborators are responsible for the offense or offenses they have committed, while the fact of committing it in collaboration, according to Article 50/gj of the Albanian Criminal Code, is taken into account as an aggravating circumstance in determining the punishment against them.

By special cooperation it is meant that type of criminal activity that in international criminal law is called organized crime, which presents a higher degree of danger than simple cooperation. As for cooperation in general, there is still no unique definition for organized crime that would be accepted and adopted by every state. On the contrary, in the criminal legislation of different states, different terms and notions are used, conditioned by the formal-legal or criminal-political treatments that those states give to this criminal activity, such as organizers, party, association, group, gang, network, service, uprising, conspiracy, etc.

Criminal organization is provided for in Article 28 of the Albanian Criminal Code, which states that a criminal organization is the highest form of cooperation, which includes three or more persons and is distinguished by a special degree of organization, structuring, sustainability, duration, as well as by the purpose of committing one or more criminal offenses, in order to achieve material and non-material benefits. From this definition, the following main characteristics of a criminal organization are:

- a criminal organization is the highest form of cooperation;
- a criminal organization consists of three or more persons;
- a criminal organization has a special degree of organization, structuring, sustainability and duration, which is determined by the methods and extent of organization and structuring, by the division of duties of collaborators, by the type and nature of the criminal offense or offenses included in the criminal plan, as well as by the measures taken for sustainability, and the time during which its activity is exercised, etc.;

- the activity of the criminal organization may include the commission of one or more criminal offenses;
- the purpose of the criminal organization is the realization of material and non-material benefits.

A terrorist organization is a special form of cooperation with a very high social risk. Article 28 of the Criminal Code defines a terrorist organization as a special form of criminal organization, consisting of two or more persons, who have a stable union in time, with the aim of committing acts for terrorist purposes. The first difference between a terrorist organization and a criminal organization lies in the number of their participants, a difference that has to do with the formal side. So, while a terrorist organization is formed with two people, a criminal organization requires the participation of at least three people. The second difference between them, which constitutes the essential difference, lies in the form of the criminal activity of each, in the object and purpose of this activity. Objectively, terror is committed only with violent actions, such as murder, injury, serious destruction of public property by means of common danger, transport, infrastructure, the destruction of material objects that cause the interruption of the population's supply of water, electricity, etc. An armed gang is a special form of cooperation with high social danger, which stems from the means it uses to commit crimes and from the great danger of the crimes it commits. According to the definition given in Article 28 of the Criminal Code, an armed gang is a special form of cooperation that, by possessing weapons, combat ammunition and other means of common danger.

The structured criminal group is defined in law as a special form of cooperation, in which three or more persons participate, for the commission of one or more criminal offenses, to realize material and non-material benefits, which is not formed by chance and is not necessary to be distinguished by stable membership, division of duties, organization and developed structuring. The structured criminal group has several features in common with the criminal organization, such as the number of members, which in both these forms cannot be less than three people, the object of activity and the purpose to realize material and non-material benefits. The difference between them lies in the degree of stability, organization and structuring.

4. Types of collaborators

Organizers are all persons who direct the criminal activity of other accomplices in the commission of international crimes. Taking into account the high degree of social danger of international crimes, the role of organizers in directing the activity for the commission of an international crime takes on particular importance. According to Article 27 of the Albanian Criminal Code, the organizer is punished with the limits of the punishment that the criminal law provides for the perpetrator of the criminal offense. This does not necessarily mean that both the organizer and the perpetrator will be punished with the same punishment. Within these punishment limits, the court, taking into account all the circumstances and in particular the degree of

participation and role in the commission of the criminal offense, as cited in Article 27 of the Albanian Criminal Code, determines the specific punishment for the perpetrator and the organizer. The punishment may be less severe for the perpetrator or the organizer, respectively, but as a rule, the organizer must receive a more severe punishment compared to the perpetrator.

Criminal law recognizes two forms of executors, the direct executor on the one hand, and the indirect executor on the other. The direct executor realizes completely or partially and directly the objective side of the criminal offense. In this case, unlike the indirect executor, we do not have the intervention of any other person in the realization of the criminal offense.

Instigators are persons who incite other accomplices to commit a criminal offense. The instigator does not perform direct actions, does not physically participate in its commission. He does not perform physical actions even in the preparatory phase of the activity, but actions of an intellectual nature, by which he creates or reinforces the idea of the executors or other accomplices to commit the criminal offense. Instigating is always done before the commission of the criminal offense and only with actions, with words and not with silence, it is done orally, in writing or with gestures. It is done with advice and reasoning regarding the need and usefulness of committing the offense, with the moral or material benefits of committing it, with direct or indirect calls.

The accessory, referring to paragraph 3/c of Article 23 of the Statute, the concept of an accomplice also extends to any person who assists the perpetrator in its commission. From the point of view of the objective side, the accessory can provide practical or material assistance in the commission of the criminal offense (finding the means, creating the circumstances and conditions for the commission of the criminal offense, removing obstacles, etc.). In the doctrine of international criminal law, all persons who simply provide moral support or encouragement that has a significant effect on the commission of the crime by the perpetrator are also considered as such. In international criminal legislation, the role of accessory also includes the supporter, who with his assistance provides moral support in the commission of the criminal offense. Regarding the objective aspect, it is necessary for each accomplice to be aware that he is supporting the perpetrator in committing the criminal offense (Xhafo, 2010). So, auxiliaries are persons who, by giving advice, instructions, providing means, removing obstacles, or promising to hide accomplices, traces, or objects derived from a criminal offense, assist in its commission. As can be seen from this definition, an auxiliary does not take direct action in the commission of a criminal offense, but rather actions that guide, favor, and facilitate the commission of the offense by the perpetrators. The word auxiliary itself implies that there is someone else who performs the action, to whom assistance is given (Salihu, 2008).

5. Conclusion

This paper analyzed collaboration and the criminal offense committed in collaboration. Co-perpetration exists if two or more people commit a criminal offense, e.g., when

two or more people shoot a person with a weapon. According to Albanian criminal law, each co-perpetrator is criminally liable within the limits of intent or negligence. Incitement can be considered, for example, actions by which the other person is persuaded, giving or promising a gift, pleading, threatening, giving advice, etc. The inciter must know the person whom he incites to commit the criminal offense. Incitement can only be committed intentionally.

Objectively, a criminal offense is the product of the joint activity of the accomplices, of the contribution that each and all of them have made to its fulfillment through active actions or inactions. From a subjective point of view, a special characteristic and a necessary element of cooperation in a criminal offense is the agreement of the accomplices to commit it. There is no cooperation without an agreement. Cooperation stems from the agreement, which is made with the free will of the participants in the criminal offense. The agreement, on the other hand, implies the direct will of each of the accomplices to achieve a common criminal result.

Regarding guilt, the Albanian Supreme Court jurisprudence states that "as in any case, even in the commission of criminal offenses in collaboration, guilt is a necessary element of the criminal offense, while agreement is a necessary element of cooperation and, consequently, without guilt there can be no criminal liability, and without agreement there can be no cooperation". During the process of individualization of punishment, the court must take into account the form of cooperation and the role of each collaborator in the commission of the criminal offense. In contrast to the unified system, in the differentiated system, the legislator undertakes, in addition to guaranteeing the punishability of the entire circle of persons implicated in the commission of the criminal offense, to also provide general rules to determine the limits of punishment for each form of cooperation.

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