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**DEVELOPMENT OF THE DOCTRIN ABOUT GROUP CRIMES
IN THE USA AND ENGLAND**

Annotation

This article examines the questions of formation and criminal - legal regulation of the doctrine about group crimes in the countries of Anglo-Saxon legal system. The original sources are analyzed in detail. The work describes the features of Anglo-American legal family, which is most brightly shown during the research of American legislative tradition.

Key words and expressions: participation, organizer, leader of the organized group, criminal association's, act in collusion, organized crime.

The criminal law of the USA began to develop from the declaration of independence from England. Initially American right was based on English though some states borrowed the French legal system. Since 1805 the English right became the basic legislative source. At the same time, the criminal law, distinct from England, was formed in the USA - the American law system formed: from the beginning of XIX century the criminal codes were accepted in the states; the federal criminal code was accepted in 1909.

At the studying of Russian legal literature devoted to the problems of complicity in foreign countries, it is possible to note the certain features

of all Anglo-American legal family but the most brightly shown at the research of the American legislative traditions, namely - complicity and preliminary criminal activity (instigation, collusion) form two independent criminal - legal institutes that in contrast to the Russian legislative tradition, which establish subjective borders of complicity during the limits of collusion and according to the determining the responsibility at complicity only during the limits of collusion (agreement), shows an essential difference in the approach of legislative definition and regulation of the responsibility for complicity in Anglo-American and Russian criminal - legal systems.

According to the criminal code of the USA, the responsibility for instigation or collusion does not depend on whether accused person or the person whom he incited or whom he was in collusion with could make the basic crime, that such person is not responsible for the basic crime or cannot be prosecuted or be condemned. When the Supreme Court of California was examining the case of Bert in 1955, expressed the understanding of penal instigation: «This crime, in contrast to the collusion, does not demand the fulfillment of obvious action; it is finished in the moment when instigation is carried out and has no value that the purpose of instigation has not been achieved or there were no actions for its achievement». If the basic crime is committed, instigation is considered as complicity or as collusion if the basic crime is not committed but there was «an obvious action» or attempt on collusion [1, with. 150-151, 154].

Studying of legislative regulation of preliminary criminal activity is especially important with a view of experience in solving the problems of bringing to the responsibility the organizers, leaders of organized groups, criminal communities (criminal organizations), which do not participate directly in the fulfillment of a concrete crime. Thereby, the institute of complicity is not always sufficient for their bringing to the responsibility that frequently causes significant difficulties in domestic legal practice.

In view of the stated it is necessary to note that according to the criminal legislation of some states instigation is examined as independent criminal act [2, with. 153] (as finished crime), and

various approaches to its regulation are marked: instigation to all the crimes is punishable in many states, some states punish only felonies, some kinds of felonies or concrete encroachments. The responsibility for instigation is usual on one step lower than for the basic crime but in some states the identical punishment can be appointed.

Examining such kind of the preliminary criminal activity which did not cause real harm, namely - collusion, it is possible to note that the American criminal law also refers quite often to the old English precedents at the characteristic of this institute. In particular, to the John's case of 1832: «collusion is an agreement on making illegal action or making lawful action by illegal means» [3, with. 155].

In connection with this there are various definitions of collusion in the legal literature, in particular in the works of American authors: «collusion of two and more persons to commit a crime» [4, with. 53]; «association with illegal purpose» [5, with. 614]; «when two or more persons arrange to commit a crime, illegal action to reach the illegal purpose or lawful purpose with illegal means» [6, with. 147]; «agreement between two or more persons to make criminal or illegal action or to carry out in the illegal way an action, which is not criminal » [7, with. 215]. Article 5.03 (part 1) of the CC of the USA defines “collusion” like this: «Person is guilty of collusion with other person or other persons, if with the purpose to promote a crime or to facilitate it he: a) agrees with such person or persons that actions of these persons or one of them, or more than one of them will make such crime or attempt on it, or instigation to its fulfillment; or b) agrees

to help such person or persons in development or fulfillment of such crime, or attempt on it, or instigation to its fulfillment » [8, with. 156].

Such concept of collusion is characterized by the following feature of subjective connection: the responsibility for collusion doesn't require identifying all the participants. But at the same time the person cannot be condemned (except for collusion about felony of 1 and 2 degrees) if «an obvious action», which was committed by him or by another person whom he was in collusion with, is not proved. This limits the frameworks of responsibility for collusion but does not exclude the responsibility for the collusion by absence of any actions.

The responsibility of collusion participants comes for all the actions of other participants (and all together) irrespective of participation in these actions or presence during the fulfillment of the crime. So, the person joined to the existing collusion is returned guilty not only for all subsequent actions but also for the agreement. And the conscious help of the purpose of collusion, without intention to be in the structure of its participants, is considered as full complicity [9, with. 157].

The approach of the legislator of the state Ohio is more consecutive. So, by the definition of punishable collusion the concrete crimes are listed: especially grievous murder, grievous murder, abduction of the person, compulsion to prostitution, assistance in prostitution, dangerous arson, arson, grievous robbery, robbery, grievous burglary, burglary; or encroachments when they are felonies: non-authorized use of vehicle, involving in narcomania, trade at aggravating

circumstances, drug traffic, marihuana trade, theft of drugs or illegal manufacturing of documents on drugs [10, with. 161].

Punishment for collusion (at preservation of the differentiated approach in the legislation of various states) is basically limited by the limits of the punishment foreseen for the corresponding finished crime or limits of the punishment, which are directly fixed in law [11, with. 161].

Examining the influence of voluntary refusal of collusion on impunity, we shall note that the legislation of some states releases from responsibility for refusal to finish the criminal plan on the certain conditions, for example the CC of New York in parts 4 and 5 § 40.10. foresees that: «In any prosecution for penal instigation according to the art. 100 or for collusion according to the art. 105, in which the crime, the fulfillment of which is foreseen by the collusion, is not actually committed, the approving protection is that at the circumstances, which show clearly voluntary and full refusal of the penal intention, the accused prevented the fulfillment of such crime.

Part 5 Refusal is not «voluntary and full» as it is understood in this paragraph, if it is motivated fully or partly by: a) belief that there are circumstances, which strengthen the probability of detection or catching of accused or other participant of the given penal enterprise or which complicate realization of penal intention; b) the decision to postpone the realization of penal behaviour for some time or to transfer the application of penal efforts on another victim or on the achievement of another similar purpose» [12, with. 94]. Thus, the legislator demands for

the recognition of voluntary refusal by the basis of «approving protection» the prevention of opportunity to commit a crime included in the purposes of collusion, and the participant of the collusion should «voluntary and full» refuse of the further attempts to finish the crime. Critical remarks are expressed concerning such approach in the literature, in particular it is marked that it is a narrow construction of voluntary refusal because it can be in the passive form too [13, with. 104-105]. Besides, there are no precise distinctions of voluntary refusal of accomplices depending on the character of actions made by them: execution, instigation or complicity.

Examining the institute of complicity in American criminal law, it is necessary to emphasize that complicity is possible only in the finished crime and «accomplice before the crime...» can be punished for instigation as for the independent crime (he is also responsible for «the excess of executor», except of the cases when his actions are not in the frameworks of initial intention) [14, with. 165].

Besides, as it is marked by the number of experts, during the reform of criminal law in the USA the traditional division of accomplices into the executor of the first degree (the one who directly committed the crime), executor of the second degree (the one who assists the guilty person on the scene and during the fulfillment of the crime), accomplice before the crime has also lost its significance. Therefore, the legislation accepted in most of states does not use the listed categories, which created considerable difficulties in practical activity of courts [15, with. 167].

Also the absence of legal fixation of the concept

“complicity” is typical for American criminal legislation. However it is revealed by enumeration of concrete actions that make up the complicity in the law. So, item «a», § 2, part 18 of the Law Book of the USA of 1948 fixed that: « The one who makes an encroachment on the USA or helps its fulfillment, incites, gives advice, controls, induces or provides its fulfillment, is a subject for punishment as the executor of the given encroachment». § 20.00 of the CC of the state New York contains the similar instruction: «If one person behaves the way it can be considered as encroachment, the other person bears the criminal responsibility for such behaviour, if operating with the mental guilt required for its fulfillment, he asks, demands, orders, solicits or assists intentionally such person to behave like that». In turn, the CC of the state Ohio foresees “the Complicity” in part 29 of the reviewed law book § 2923.03. like this:

«(A) Nobody, who acts with the guilt required for the fulfillment of encroachment, mustn't commit anything from the below-mentioned: 1) to solicit or to achieve the fulfillment of encroachment by another person; 2) to render the complicity or to incite another person to the fulfillment of encroachment; 3) to concert with another person about the fulfillment of encroachment in violation of § 2923.01 RLB (foresees the responsibility for complicity); 4) to induce or to force the innocent or irresponsible person to the fulfillment of encroachment.

(B) It is not the protection from the accusation shown on the basis of the given paragraph that the person, who was the accomplice of the accused person, wasn't condemned as the executor.

(C) Nobody can be condemned for complicity on the basis of the given paragraph, if the encroachment isn't actually committed but the person can be condemned for complicity in attempt on the fulfillment of encroachment in violation of § 2923.02 RLB (which foresees the responsibility for attempt).

(D) Nobody can be condemned for complicity on the basis of the given paragraph only after the statement of the accomplice, which was not supported by other proofs.

(E) Approving protection of the accusation presented on the basis of the given paragraph is the fact that before the fulfillment or attempt of fulfillment of encroachment the person stopped his complicity at the circumstances showing the full voluntary refusal of the criminal intention.

(F) Everyone, who violates the given paragraph, is guilty of complicity in encroaching fulfillment; he must be prosecuted and punished as if he was the executor of encroachment. The accusation of complicity can be formulated by the language of the given paragraph or by the language of the basic encroachment» [16, with. 109].

The analysis of this paragraph, which regulates conditions and order of the responsibility for complicity, shows that it is necessary to establish a subjective attribute - guilt of the fulfillment of encroachment. That is, complicity is not only in intentional but also in a careless crime (which is typical for all Anglo-American right) is conceded. The person can be condemned on the basis of the given paragraph if his participation in the criminal act (encroachment) and completeness of the last is proved. Bringing

to responsibility for complicity in attempt on the fulfillment of encroachment is possible on the basis of the paragraph, which regulates responsibility for attempt on encroachment.

The influence of the continental right is shown in the researched example in the fact that there is a division of accomplices into instigators and accomplices (it is typical for the continental right), and the figures of accomplices and instigators are not still allocated in some states [17, with. 164-165]. Regardless of the role of accomplice, the person must be prosecuted and punished as the executor.

Also the refusal of the accessory nature of complicity is well defined - «It is not the protection from the accusation shown on the basis of the given paragraph that the person, who was the accomplice of the accused person, wasn't condemned as the executor». But at the same time, the authors mark that refusal of the accessory principle in the regulation of complicity is fixed in the CC of the most states but in different volume [18, with. 109]. For example, § 20.05 of the state New York fixes the principle of independent responsibility of accomplices in the following form: «... in any prosecution for encroachment, in which the criminal responsibility of the accused person ... is based on the behaviour of another person, the protection is not in the fact that: 1) such another person is not guilty of a corresponding encroachment owing to the criminal irresponsibility or another legal inability or withdrawal, or through ignorance of the criminal character of corresponding behaviour or the criminal purpose of the accused person, or by virtue of other facts excluding

mental condition required for the fulfillment of corresponding encroachment; or 2) another such person was not prosecuted or condemned for any encroachment based on the corresponding behaviour or was justified for him earlier, or has a legal immunity from the prosecution for him; or 3) the corresponding encroachment, as it is determined, can be committed only by the certain category or categories of persons and accused person, who is not from such category or categories, for this reason is legally not capable to make an encroachment in own quality».

At the same time, on the regulation of the norm about «the excess of the executor» produced by the common law - the accomplice bears responsibility for that result of executor's action, which was expected or is probable in an initial plan, it didn't affect, that is, it is not possible to overcome completely the traditions of the common law, which predetermine the dependence of the responsibility of accomplices on the behaviour of the executor at the legislative level (the originality of accessory conception of complicity is shown in this case).

In this example of the regulation of complicity alongside with the criminal - legal elements of this institute, the criminal – procedural features of prosecution for complicity in fulfillment of encroachment that is typical for all the American criminal legislation are determined.

Besides the regulation of the collusion institutes (as a kind of preliminary joint criminal activity) and complicity (as forbidden by the legislator kinds of activity directed on the creation of conditions and fulfillment of crimes

together with another subject), American criminal legislation solving a problem of struggle against the organized forms of joint criminal activity goes also the way of independent fixation of the responsibility for participation in the organized crime. So, the § 2923.04 of the CC of the state Ohio - «Participation in the organized crime» fixes the following:

«(A) Nobody, who has an intention to create or to support criminal group or to promote its any activity must not do something from underwritten:

1) to organize or to participate in the organization of criminal group or its any activity;

2) to provide the criminal group or its any activity with material aid irrespective of is this help in the monetary form, in the form of granting of property or in the form of the credit;

3) to carry out management or control concerning any activity of the criminal group at any level of responsibility;

4) to give legal, accounting or other administrative services to the criminal group;

5) to commit, to collude or try to make or operate as the accomplice in fulfillment of any encroachment when the criminal group is involved in it for a long time;

6) to make, to collude or try to make or operate as the accomplice in fulfillment of any violent encroachment;

7) to make, to collude or try to make or operate as the accomplice in fulfillment of bribery in violation of § 2921.02 RLB.

(B) Everyone, who violates the regulations of the given paragraph, is guilty of participation

in the organized crime, which is considered to be a felony of the first degree.

(C) The term «criminal group» used in the given paragraph is five or more persons cooperating for a long time with the purpose of assistance or realization of something from underwritten:

1) extortion or compulsion in violation of § 2905.11 or § 2905.12 RLB;

2) compulsions to prostitution or assistance of prostitution or procurement in violation of §§ 2907.21, 2907.22 or 2907.23 RLB;

3) any encroachment of theft as it is determined in § 2913.01 RLB;

4) any encroachment connected with gambling fixed in § 2915.01 RLB;

5) illegal trade by the abused narcotic substances, intoxicating either alcoholic drinks or lethal weapon or dangerous instrument as they are determined in § 2923.11 RLB;

6) issuance of the loan at usurious interest and compulsion to repayment of the debt by illegal means;

7) any encroachment with intention to benefit [19, with. 171].

(D) the criminal group saves the character even if one or more of its members do not know one or more members of the group and even if the structure of the members of the group varies from time to time» [20, with. 151-152].

Thus, the American legislator, solving a problem of struggle against the organized criminal formations, besides the regulation of the institute of complicity, regulates independently «the participation in the organized crime», where

regulations of the institute of complicity are used only partly as a kind of fulfillment of the certain encroachments committed by the group. Besides, separately from complicity, the concept of the most criminal group is determined by the indication of the purposes, for which five or more persons cooperate during the long time, and term of «duration» is not fixed. At the solving of the given question the judges are guided by the rules produced by the common law and also by the circumstances of the concrete criminal case.

At the same time, it is necessary to note that such approach to fixing of collusion, complicity and participation in the organized crime, as it is in the CC of the state Ohio, is used not in all states. The common law, which, as it was already mentioned, is extremely conservative and casual, that complicates the solving of the modern legal applicative problems, continues to operate in many states. Such position with the legal base of struggle against the organized criminal formations at the level of states activated the legislative activity at the federal level.

So, the break in the creation of normative base for the struggle against organized criminal formations in the USA the American lawyers consider the acceptance of the Law on the control over organized crime in 1979 [21, with. 165-166]. It foresaw the creation of big jury (jurymen) for the cases connected with mafia. Witnesses had immunity from the possible prosecution. The responsibility for the organization of gambling was established at the federal level.

The part about corrupt organizations and organizations under the influence of racket, the so-called RICO law, which noted 32 kinds of

crimes covered with the concept «racketeering activity», is now actual for the Russian public authorities. The commitment of even 2 of them during 10 years is the basis for the court to consider that the accused rackets. Thus, there was an established order of prosecution of the organized criminal formations for all illegal actions irrespective of whether they have been interconnected, whether they were the result of one secret collusion or not. Also, according to the law, the purchase of enterprises on the means received by racket or management with the help of extortion and threats, collusion for fulfillment of any of these acts is considered criminal.

Besides, the Law on the control over the organized crime of 1970 foresees the increase of imprisonment terms for illegal activity of organizational character in legal economic sphere, and also confiscation of any means received as a result of similar illegal actions till 20 years. According to the law, private persons can also show the civil action and use the proofs given by the representatives of public authorities with the requirement of compensation for damages in the triple size. The possibility of the state to bring a civil action in court on behalf of the victim is foreseen.

Besides the generalized legislative acts in the USA, there are also laws directed on the struggle against some kinds of crimes, which are committed very often by the organized criminal formations, by virtue of the big benefit received as a result of their commitment. For example, the Law of 1986 on the struggle against drugs abusing increased the term of punishment for manufacturing, transportation and distribution

of drugs, established obligatory minimal terms of imprisonment for distribution of drugs (from 5 till 20 years depending on the amount of the realized drugs), forbade to pass the sentence and to apply the early release to the persons condemned for drugs distribution. The given law contains the article, which foresees the punishment for money laundering received by the organized groups according to which «... any actions are considered criminal, which had a purpose to influence somehow on any financial institutions of the USA, so that they did not inform about financial operations to the control bodies or deformed intentionally the reporting about these operations».

These regulations received the further development in the norms of the Law of 1988 about the struggle against drugs [22], where it is foreseen that any financial institute cannot make an exchange of the sum over 3000 dollars cash on checks if the bearer of money cannot confirm documentary the legality of their reception.

In the network of legislation perfection in the sphere of struggle against the organized criminal formations, a significant place is occupied by the development of the norms regulating the questions of the control of incomes and financial operations of institutions and citizens as the most reliable side of the organized crime is its financial basis, and the control of incomes by the state is a reliable and effective way of struggle against the organized crime. So, the Law on privacy of bank operations, in particular, with a view of assistance public authorities in getting the necessary proofs about financial transactions was passed in 1970 with the purpose of reduction of white-collar

crimes. It fixes the order of the using of certain bank documents, in particular, it is offered to the banks to keep microfilms or copies of the checks. According to this law the bank should require from the client the number of his card of social insurance or number of tax payer at the opening of the new account. If these data are not given during 45 days his name, address and number of the account are brought in the special list directed to the Ministry of Finance of the USA for the check. Besides, it is offered to the banks to report about the currency transactions of 10000 US dollars cash and higher. There are 4 basic documents, with the help of which it is possible to determine the movement of the capital received as a result of secret illegal operations: 1) the documents, which fixes the movement of the capital (copy of checks and bills), should be kept by the financial institutions during 5 years; 2) the report on the currency transactions made by the banks, other financial institutions together with the service of internal incomes, if the sum of the transaction is higher than 10000 US dollars; 3) the currency account filled together with Customs service in case if the sum higher than 10000 US dollars is forwarded abroad; 4) the documents of foreign banks represented by the persons, who fell under jurisdiction in the USA and who have deposits in these banks over 10000 US dollars.

It is necessary to note that studying of experience of the foreign states shows gradual transition from isolated measures on the struggle against the organized crime to the complex programs. First of all it is typical for the states, in which the organized crime received the greatest spreading, in particular for the USA during the last decades.

For example, the American legislator in some cases includes the some norms directed on the struggle against organized crime, in statutory acts of wider plan. So, the General Law on the control over the criminality of 1984 foresees strict measures of punishment (up to the lifelong imprisonment) for the crimes committed «under the order».

In 1983 the USA created the presidential commission on struggle against the organized crime, which structure included experts with big practical experience in courts, bodies of public prosecutor's office, police, financial - auditing services and others. The tasks of this commission included studying the position of organized crime in the country, definition of the basic sources of its incomes and preparation of recommendations to the president and minister of justice about «appropriate administrative and legislative measures for improvement of work of justice system». Alongside with creation of the given commission the national program of struggle against organized crime, which, in particular, foresees the formation of specialized regional groups, which should investigate the activity of drug dealers organizations and bring the case before the court; revision and completion of federal criminal legislation for giving the necessary legislative grounds for counteraction the criminal activity to the public authorities; activation of activity of the Ministry of Justice of the USA on prosecution of the organized criminal formations; perfection of interaction of public authorities; introduction of new programs of employees preparation in view of changes in tactics of the organized crime; building of new prisons [23].

The feature of public authorities' activity on struggle against organized crime in the USA became wide used by their employees in operative - search work, the so-called «deep covers» (small firms, restaurants, shops and so on), in connection with which, the fixation in the American legislation of such circumstance, excluding criminal liability as provocation (the modeling CC of the USA of 1962), has big importance. «Provocation» is one of the kinds of «protection» - circumstances, at which: 1) the criminal liability is excluded, 2) the guilt is excluded, or 3) the punishment is excluded. According to the CC of the state New York, which uses the concept «decoying», the provocation refers to the protection connected with the absence of guilt - § 40.05. fixes the essence of «decoying» like that: if the accused behaved illegal by virtue of the fact that he was incited to this behaviour by public employee or the person, who acted with public employee, who wanted to get the proofs directed against him with the purpose of criminal prosecution, if the ways of proofs were such that they created a great risk of this encroachment would be committed by the person, who cannot commit it. And inducement or instigation to the commitment of encroachment means the active inducement or instigation. Also it is stipulated that the behaviour, which gives the opportunity to commit the encroachment does not make «decoying» [24].

On the one hand, the above-stated norm gives the guarantees of law-abiding by the citizens, limiting the opportunity of arbitrariness of public servants, on the other hand it contains certain restrictions of application of such protection, in

particular, by the requirement of the necessity of active actions from public servants or persons, who work with them, directed on inducement or instigation of the subject to the crime.

To secure the witnesses against intimidation and revenge of the members of criminal organizations and also to make the arrested criminals repenting and giving the statement with confession of guilt, the USA take measures on protection the witnesses - the federal program of witnesses protection is developed.

Thus, the system of criminal law of the USA, besides the mentioned paragraphs of criminal codes of federation, states and also laws included partly in the CC, contains some laws directed on the struggle against organized crime. Among them we can note: the Federal law of 1961 on interstate moving and transportation of the goods carried out with a view of assistance the illegal business; the Federal law of 1968 on protection of the consumer credit; the Federal law of 1970 on the control over the organized crime, which now is included in the federal CC of the USA.

The carried out analysis of the legislation of England and the USA, and also of the practice of law application in these states allows to note the following tendencies: the struggle against organized crime in England and in the USA, which criminal legislation is based on the system of common law, comes gradually to the generalized legislative acts (statutes), the codification of the effective criminal legislations (USA) becomes more active, there is a the tendency of fixation of the complex questions directed on the struggle against organized crime, in particular, (except for criminal – legal) criminal - procedural, operative - search and other live issues are regulated.

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