



## REVIEW ARTICLE

# CRIMINAL-LEGAL ENCOURAGEMENT OF ACCOMPLICES' POSITIVE BEHAVIOUR AS A TREND OF LIBERALIZATION OF CRIMINAL LEGISLATION

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### ABSTRACT

In article are analyzed aspects of clearing from the criminal liability of the accomplices of a crime in connection with rendering by them of assistance in revealing and disclosing of the organized group or criminal formation and their members.

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## INTRODUCTION

The social essence of any crime is determined by its dangerousness for the society and how far it has caused negative consequences. In fact the crime is formed in close connection with human factor and emerges in it so the human being inherently has the feature of changing and adjusting himself to a certain environment. Therein on the strength of his mode of life he adapts to natural and social life and his certain activities give impetus to the changes in nature and society. Such changes may have both positive and negative features. So long as the man's negative behavior in the majority of cases is expressed in the shape of criminal conduct and its negative consequences emerge as a result of his adjustment to life by means of criminal activities. Therefore when the man's actions relating to criminal conduct are realized individually by him or such kind of conduct is allied with other people's criminal behavior, dangerousness of the person or the act for the society grows. From this viewpoint the influence of the person participating in crime on the criminal group's dangerousness for the society is a question of great importance. Just therefore among the criterions for establishing the person's dangerousness for the society there should be mentioned first of all the crime itself, then the accomplice's features expressing

his criminal conduct and a set of deleterious consequences emerging as a result of commission of a crime. In addition to that social danger of crimes being committed by accompliceship is also expressed in extension of the accomplice's personal negative opportunities. Thereby, association into a criminal group with the purpose of committing a cumulative crime has the following features: first, all participants' adjustment to the life happens directly through criminal behavior; second, facilitation of adjustment to the criminal mode of life by the use of criminal means; third, further acceleration of negative changes of the person as a result of commission of crime together with others; fourth, improvement of criminal skill following the joining of criminal experiences; fifth, occurrence of the possibility of committing a crime execution of which single-handedly is difficult or impossible and sixth, strengthening of criminal motivation in the members of the group which is considered to be the subjective reason of commission of crime. If to compare the crime committed in complicity with the crime committed only by one person in relation to the above mentioned features, it will be clearly seen that the social danger of the accomplices of the first one is higher. It is natural that the state in order to prevent the crimes committed by organized groups, on the one hand, enhances the group members' responsibility and on the other hand, taking into consideration the variability of their dangerousness for the society provides for the possibilities of encouragement of such persons' positive behavior by means of

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the norms of criminal legislation. Since nowadays detection and prevention of crime by means of reaching agreement with the people who committed crime is one of the important trends of our national statehood in the policy of fighting against criminality. It should be emphasized that the national legislation currently in force is directed at ensuring the mechanism of protection of the rights of persons who committed crime, detection of crimes through encouraging the criminals' positive behavior from the criminal-and-legal point of view and rehabilitation of victims' legal status existed before the crime. Therefore it is of great importance to seek for suitable decisions, to take, together with compulsory measures regarding those who has broken the requirements of the law and got into jural relationship, concrete measures aimed at encouraging their positive behavior in order to fully or partially rehabilitate these persons' legal status existed before they committed the crime and to protect social relations more effective, to defend the rights and legitimate interests of citizens, society and state as well [1, 17]. Incidentally, the practice of prevention and detection of crimes by concluding of an agreement with persons who committed a crime in accordance with the procedure provided in the law has already passed the test. At the same time conclusion of an agreement means seeking by the organs of state authority (organs of justice and law-enforcement bodies) of interim agreement with the person or group of persons who committed crime for the purpose of detection or prevention of crimes. Therefore it seems to us that legal regulation of the institution of criminal complicity without the agreement institution will be unsuccessful. It is the agreement institution that serves to detect and prevent crimes for account of encouraging any accomplice's positive behavior. Besides, development of a mechanism of encouragement of members of a criminal gang or organized group will give an opportunity to ensure the lawful rights and interests of the members of criminal groups got into the circle of notions listed in the criminal legislation, to liberalize the policy of fighting against such type of crime and to get the members of criminal groups involved in this process as well.

In fact, in criminal law the institute of agreement is expressed as the norms of encouragement proving for exemption from responsibility or punishment at the expense of positive behavior of the persons committed a penal action. It should be mentioned that nowadays in the Criminal Code of Uzbekistan currently in force as encouragement of positive behavior of persons who have committed crime there have been introduced several norms providing for exemption from responsibility or punishment and they are effectively being used. Particularly, in the Special Part of the Criminal Code the norms providing for responsibility for 8 types of crime (Article 155, part 4, Article 155<sup>2</sup>, part 2, Article 157, part 2, Article 160, part 2, Article 211, part 4, Article 212, part 4, Article 244<sup>2</sup>, part 3, Article 248, part 3) foresee the possibility of exemption from criminal responsibility as encouragement of positive behavior of persons who have committed crime. If analysing these norms according to the shown crime classification they are included into the category of serious or specially serious crimes and majority of them can be applied to the crimes against peace, humanity and public order. As it is seen the law-maker provides for the decreasing the socially dangerous negative consequences of these types of crime and widening the possibility of solving them. Therefore it is not without reason that lately the number of such norms of encouragement in the Criminal Code of Uzbekistan is increasing. But if to study foreign practice on this

occasion, it will be seen that there are a great number of tasks to be done in this sphere. At the same time the norms providing for exemption from criminal responsibility as encouragement of the person's positive behavior can be applied in Russian Federation to 35, in the Republics of Belarus and Kirgizstan to 25, in the Republic of Kazakhstan to 21, in the Republic of Tajikistan to 20, in the Republics of Moldova and Ukraine to 13 and in the republic of Azerbaijan to 12 types of crime. In the legislation of the mentioned countries the norms providing for the responsibility for organization of criminal communities, establishment of criminal groups or directing them and for participation in them include the being analyzed regulations as a rule of encouragement. Unfortunately application of this rule to the members of an organized criminal group or criminal community has not been reflected in the national legislation currently in force.

Moreover in Article 20 of the Criminal Code of the Republic of Belarus (Discharge of criminal organization or gang members from criminal liability) a member of a criminal organization or gang (except heads or leaders) shall be excused from criminal liability for participation in the activities of a criminal organization or gang and for crimes committed in complicity with other members of the criminal group except the serious or especially serious crimes such as attempts upon the life of a person if he voluntarily informs about the existence of a criminal organization or gang and assists in detection of its members [2, 96-97]. In addition as it is stated in the Criminal Code of Germany the court may in its discretion mitigate the sentence or order a discharge if the offender voluntarily and earnestly makes efforts to prevent the continued existence of the organisation or the commission of an offence consistent with its aims or voluntarily discloses his knowledge to a government authority in time so that offences the planning of which he is aware of may be prevented. Besides according to this norm if the offender succeeds in preventing the continued existence of the organisation or if this is achieved without his efforts he shall not incur criminal liability [3. 296]. Hence we may come to the conclusion that taking into account that in present further deepening of the policy of liberalization being carried out in Uzbekistan, foreign practice on this direction and call of the times demand creation of new mechanisms of fighting and detection of crime and introduction of them into the legislation it is reasonable to supplement the Criminal Code of Uzbekistan with the third part containing the following:

“If a member of an organized criminal group or a criminal community voluntarily informs a government authority about the existence of a such group or community in time, actively assists to disclose and detect the crimes committed by a such group or community or their heads and other members on conditions that he, in person, has not participated in commission of a serious or especially serious crime attempting on life or health, may be discharged from criminal liability for participating in the activities of the criminal group or criminal community and crimes committed in complicity”.

The suggested rule will serve for establishment and detection of crimes committed by organized criminal groups or criminal communities and heads for, as well as its members. Introduction of this rule will afford an opportunity to apply it to every person who has participated in an organized criminal group or criminal community provided for by appropriate norms of the Special Part of the Criminal Code of Uzbekistan but has displayed positive conduct and actively assisted in

establishing the crimes committed by the group or community and its members.

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