

Criminal Liability for Implication in a Crime

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Abstract: In criminal law, highly latent acts constituting an implication in a crime. It reduce the level of detection of crimes at the stages of preparation and attempt, increase the percentage of unsolved crimes in the total number of registered ones. The problems of qualification of acts that form implication in a crime are associated with the expansion of the institution of implication by failure to report a crime and with the institution of complicity in a crime. Implication is possible for a socially dangerous act committed by a person who is not the subject of the crime due to his insanity, as well as for a crime committed in complicity. Misprision is aimed at hiding the criminal event, traces, items obtained by criminal means, or the person who committed the predicate crime. Along with the physical, it can be accomplished through intellectual actions. The purpose of this article is to research the features of criminal liability for implication in a crime. To achieve this goal, the following tasks were solved: an analysis of scientific publications on the research topic, as well as materials of criminal cases on non-reporting of a crime and misprision of a crime was carried out; the models of qualification of the implication acts widespread in the investigative and judicial practice are classified. The methodological basis was formed by sociological research methods. In the article, a proposal to use the identified psychological, moral, criminological and criminal-law characteristics of the personality of the concealer person and those who do not report the crime is made. There is a significant increase in the share of Russians who are not ready to show civic activity in law enforcement actions and appeal to legal measures to protect their values. The results of the study may be important for the further development of theoretical ideas about the criminal legal institution of complicity in a crime.


1 INTRODUCTION


Implication in crime is a poorly studied institution of criminal law. It is often viewed in the context of complicity. Presumably, from this in judicial practice, mistakes are made when distinguishing between implication in a crime and complicity. The novelty is the consideration of connivance as a form of implication that requires consolidation in the criminal law, and its recognition as a criminal legal means of protecting the population from crime. The tasks of the work were: identification of models of qualification


of touching acts, with errors made; analysis of signs of corpus delicti provided for in Articles 316 and 2056 of the Criminal Code of the Russian Federation.

2 MANUSCRIPT PREPARATION

A content analysis of the works of Russian and foreign authors on implication in crime, analysis of judicial practice in order to identify typical mistakes made when distinguishing between implication in a crime and complicity has been carried out. The

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conclusions are supported by the opinion of the interviewed citizens, the results of statistical observation. 189 citizens were interviewed in 2017-2018 in the following regions of Russia: in the republics of Dagestan and Karelia, Pskov and Tver regions and the city of St. Petersburg. In addition, the article uses the generalized conclusions of the study of materials from criminal cases.

3 RESULTS AND DISCUSSION

In the theory of criminal law, the implication of a crime is understood as an act of a person arising in connection with another crime, but not being in a causal relationship with it and not causing its commission. The connection of implication in a crime is expressed in its "proximity" to the crime committed by other persons (Maltsev, 2017). In this regard, it is generally accepted to refer to its forms as misprision of crimes, failure to report them and connivance at them (Wittenberg, 1976). The first two, according to the current Criminal Code of the Russian Federation, form independent *corpus delicti*.

The public danger of touching acts is that, as a result of their commission, "the established procedure for the activities of law enforcement agencies to identify and solve crimes, to expose the perpetrators, disrupts the normal functioning of the bodies administering justice" (Dvorzhitskaya, 2019). Implication in the crime contributes to the misprision of the guilty person who committed the main crime. Of the materials of the studied criminal cases initiated under Articles 2056 and 316 of the Criminal Code of the Russian Federation, in 60.5% and 73.6% of cases, respectively, such persons were brought to criminal responsibility after a long time from the moment of its commission (Dvorzhitskaya, 2019). Often, the touched persons are the only eyewitnesses of the criminal act, that is, only the persons who committed the main crime and the touched one were present at the place of its commission.

In judicial practice, mistakes are made when distinguishing between implication in a crime and complicity. Among the models for qualifying touchy acts, the following are common: 1) re-qualification of especially grave crimes committed with complicity, on Art. 316 of the Criminal Code of the Russian Federation; 2) re-qualification of terrorist crimes committed in complicity, in Art.2056 of the Criminal Code of the Russian Federation. This is evidenced by the generalized data of the studied criminal cases. So, in 47.6% of cases, the initial qualification was changed from complicity in the main crime under

Article 316 of the Criminal Code of the Russian Federation, in 16.3% - under Article 2056 of the Criminal Code of the Russian Federation. This is due to the fact that when investigating crimes, difficulties often arise in distinguishing between concealers, non-carriers and connivors and accomplices, therefore, at the initial qualification, the acts of the touched are often qualified as complicity. Their distinctive features are that the touched person himself does not participate in the commission of the main criminal act, the touched offense is not in a causal relationship with the latter, etc.

As we see it, "implication is possible not only to a crime, but also to a socially dangerous act committed by a person who does not possess the sign of the subject of a crime, for example, due to his insanity" (Dvorzhitskaya, 2019). Among the studied criminal cases, 5.7% of such cases were identified. Thus, citizen K. hid the traces of a crime under Part 4 of Art. 111 of the Criminal Code of the Russian Federation, committed by a person in respect of whom the materials of the criminal case were sent for the application of compulsory measures of a medical nature. K. was convicted under Art. 316 of the Criminal Code of the Russian Federation.

Meanwhile, "the criminal legislation recognizes misprision as a crime only when it is aimed at concealing especially grave crimes. It seems that the misprision of serious criminal acts is also socially dangerous, since the behavior of the misprision is equally independent of the category of the concealed act. It is necessary to differentiate criminal responsibility for concealing grave and especially grave crimes" (Dvorzhitskaya, 2018). Such a proposal was cited in the draft Model Criminal Code of the CIS member states.

It should be noted that misprision of crimes is carried out in the form of actions. So, S., having become an eyewitness to the murder of F., committed by K., together they carried the body out of the house and buried it, that is, they took active steps to conceal it. Meanwhile, the courts make mistakes when the verdicts indicate that the objective side of the act consists of: 1) misprision and non-reporting (31.3%); 2) only non-reporting (8.5%). Thus, B., having moved F.'s corpse, took active steps to conceal the traces of D.'s murder of F. However, failure to report a crime cannot be qualified as misprision, the latter can also be committed by giving advice or developing a plan to conceal a criminal act (intellectual actions) ... This is confirmed in judicial practice. Thus, A. was convicted of giving advice on how to conceal the traces of a crime. The objective side of concealing a crime may consist of concealing: the events of the

main crime, traces, items obtained by criminal means, or the person who committed the main crime. So, in criminal cases initiated under Art. 316 of the Criminal Code of the Russian Federation, hiding (in%): the event of the main crime - 23.2; traces - 62.2; items obtained by criminal means - 5.7; the person who committed the main crime - 8.9.

The increase in the number of crimes of a terrorist nature led to the introduction in the Criminal Code of the Russian Federation of responsibility for failure to report a crime, which was supposed to increase the effectiveness of countering terrorist crimes (Nekrasov, 2018). Foreign researchers also emphasize the need to continue efforts to stimulate new research and assess the effectiveness of measures taken in the fight against terrorism (Lum, 2006), "develop preventive and potential measures to counter terrorism, including measures of a criminal law nature" (Mott, 2018, Figueroa, 2018). We believe that "there is no need to expand the list of crimes, failure to report which is a criminal offense" (Dvorzhitskaya, 2019). "A philosophy of necessity is unlikely to promote a worldview that overestimates the power of punishment, safety and justice" (Goshe, 2019). Criminalization of implication in a crime is seen as effective only if it is appropriate. In addition, "reporting a crime is costly, from initial contact with the police, to engaging in lengthy, sometimes stressful interviews about the circumstances surrounding the crime, to possibly providing evidence in court" (Sidebottom, 2015).

Meanwhile, in order to eliminate qualification problems, a theoretical understanding (Sabatov, 2018) of the content of the constituent elements in criminal cases of failure to report a crime is necessary. So, the objective side of the investigated act consists in inaction, in failure to fulfill the legal obligation to report a crime, that is, in failure to provide the necessary information to the appropriate authority about the person who prepares, commits or has committed a crime. In investigative and judicial practice, persons are held accountable for failure to report an impending crime in 25.6% of cases; in progress - 34.9%; perfect - 39.5%.

A person prosecuted under Article 2056 of the Criminal Code of the Russian Federation must: 1) be aware of the crime - reliably know about the fact of an impending, committed or committed crime; 2) fail to provide information to law enforcement agencies in the shortest possible time, without harm to oneself after receiving information about an impending or committed crime. In 98.4% of the criminal cases studied by us, a person had such an opportunity without harm to himself.

It seems that "responsibility for failure to report a crime is advisable from the age of 16" (Dvorzhitskaya, 2019), since it is from this age that it begins for a number of basic unlawful actions specified in the disposition of Article 2056 of the Criminal Code of the Russian Federation.

A fairly widespread form of implication in a crime is the connivance of a crime, the responsibility for which is provided for in cases specially stipulated by law. It is only possible to condone an impending or ongoing crime. It should be borne in mind that connivance, in the narrow sense, should be considered as an independent crime, however, there is no norm about it in the Criminal Code of the Russian Federation. In a broad sense, it can be included in the objective aspects of offenses with a special subject, when a person has a special duty to counteract crime. For example, Articles 285, 290 and 293 of the Criminal Code of the Russian Federation.

As a rule, "touchy ones" are connected with any kind of relationship with criminals, for example, in criminal cases initiated under Articles 316 and 2056 of the Criminal Code of the Russian Federation, they were (in%): friends - 32.1 and 41.9, respectively; neighbors - 2.8 and 18.6; acquaintances - 26 and 16.3; cohabitants - 6.1 and 2.3; relatives - 11 and 7; having children in common - 13.8 and 4.6.

The realization of moral requirements in human behavior is manifested in their observance or non-observance in life, "with the help of conscience and shame" (Heller, 1988). At the same time, the circle of persons who are not prosecuted under 2056 of the Criminal Code of the Russian Federation includes a spouse and close relatives. However, touching acts are also committed by other persons with whom close relationships develop. For example, M. hid the murder of R. committed by his partner K. In the criminal cases studied, psychological and psychiatric examinations were carried out in 16.3% (Art. 2056 of the Criminal Code of the Russian Federation) and 15.4% (Art. 316 of the Criminal Code of the Russian Federation).

So, A.V. Shesler pointed out that family or kinship feelings more strongly influence "the behavior of a person than fear of criminal punishment" (Shesler, 2009). Conducted by co-author M.A. Dvořitskaya, a survey of citizens showed that they would agree to conceal a crime if it was committed by an acquaintance (friend, neighbor, colleague), 13.8% of the respondents; close relative (mother, father, brother, son, daughter, grandfather, grandmother) - 41, 8. Therefore, "a society's understanding of the processes taking place in it, the dominant moods and problems will allow a better

understanding of the factors influencing the commission of crimes” (Raymen, 2016).

Meanwhile, the sense of justice of the touched is characterized by a compromise between legal norms and norms based on selfish interest, as well as between the norms of law and the rules of morality. In the materials of criminal cases initiated under Articles 316 and 2056 of the Criminal Code of the Russian Federation, the motives or other motives of the criminals were revealed (in%): fear of unjustified prosecution - 22.3 and 18.6, respectively; unwillingness to communicate with law enforcement agencies - 19.4 and 28.3; indifference - 17 and 15; misunderstood sense of camaraderie - 14.6 and 2; related feelings - 7.7 and 3.2. “The proportion of those who are not ready to be civic in law enforcement, interact with law enforcement agencies and provide assistance to police officers has significantly increased” (Bondaletov, 2014). Avoidance of communication with her, reluctance to report committed offenses is facilitated by the negative attitude of the country's residents towards the institutions of power (Nivette, 2013).

To solve the problems of bringing to criminal responsibility persons who have committed acts that form an implication for a crime, to reduce the latency of such acts, it is proposed to use the features of the personality of the harboring and non-reporting, which we have identified. Their behavior is more focused on their own egocentric qualities to the detriment of socially approved ones. Meanwhile, the personality of those who do not report a crime is characterized by a positive social orientation.

In particular, from the materials of criminal cases initiated under Articles 316 and 2056 of the Criminal Code of the Russian Federation, in which they were (in%): with secondary specialized education - 68.3 and 83.7; not married - 62, 6 and 60, 5; having children - 39.9 and 51.2; previously convicted - 65.4 and 11.6; employed - 43.9 and 58.1; those who are friendly to the team - 5.7 and 34.9; as well as having such individual psychological qualities revealed during psychological and psychiatric examination, such as: orientation on one's own egocentric criteria in behavior to the detriment of socially approved ones - 47.4 and 57.1; disdain for social norms - 18.4 and 0; the tendency to avoid responsibility - 7.9 and 28.6.

4 CONCLUSIONS

1. Implication is possible for a crime committed in complicity.

2. Misprision of crimes is the commission of actions to conceal an event, traces, items obtained by criminal means, or the person who committed the main crime; along with physical, it can be accomplished through intellectual actions.

3. The inclusion in the Criminal Code of the Russian Federation of the norm on non-reporting of a crime is associated with the objectively developed situation in the country, characterized by an increase in the terrorist threat. Responsibility for it is advisable from the age of 16.

4. The personality of the non-communicator in comparison with the personality of the harboring person is characterized by a positive social orientation.

5. It is only possible to condone an impending or ongoing crime. It should be borne in mind that connivance, in the narrow sense, should be considered as an independent crime, however, there is no norm about it in the Criminal Code of the Russian Federation.

REFERENCES

- Maltsev, V.V., 2017. *The course of Russian criminal law. A common part. T III. The crime. Book 1. Category "crime" in criminal law.* Yurlitinform. p. 520.
- Wittenberg, G.B., Panchenko, P.N., 1976. *Implication in a crime under Soviet criminal law.* Irkutsk Publishing House: Irkutsk State University. p. 52.
- Dvorzhitskaya, M.A., 2019. Theoretical and practical aspects of implication in crime. *In the Humanities, Socio-Economic and Social Sciences.* 10(12). p. 148-150.
- Dvorzhitskaya, M.A., 2018. Forms of implication in a crime and their legislative regulation. *In the Proceedings of the Academy of the Ministry of Internal Affairs of the Republic of Tajikistan.* 3(39). p. 116-122.
- Nekrasov, D.E., Badalyants, E.Yu., Kopnin, I.S., 2018. Problematic issues of the objective side of failure to report a terrorist crime. *In the Bulletin of the Public Research Laboratory "interaction of the penal system with civil society institutions: historical and legal and theoretical and methodological aspects."* 11. p. 145-154.
- Lum, C., Kennedy, L. W., Sherley, A., 2006. Are counter-terrorism strategies effective? The results of the Campbell systematic review on counter-terrorism evaluation research. *In Journal of Experimental Criminology.* 2(4), pp. 489-516.
- Mott, G., 2018. *A Critical Reflection on the Construction of the Cyber-terrorist Threat in the United Kingdom of Great Britain and Northern Ireland.* Diss. Nottingham Trent University. p. 207.

- Figueroa, A., 2018. *Terrorists and Cyberspace: The Digital Battleground*. Diss. Monterey Naval Postgraduate School. p. 114.
- Goshe, S., 2019. The Lurking Punitive Threat: The Philosophy of Necessity and Challenges for Reform. *In Theoretical Criminology*. 23(1). pp. 25-42.
- Sidebottom, A., 2015. On the Correlates of Reporting Assault to the Police in Malawi. *In British Journal of Criminology*. 55(2). pp. 381-398.
- Sabatov, S.A., 2018. Criminal law characteristics of failure to report a crime (article 205.6 of the Criminal Code of the Russian Federation). *In the Bulletin of the Siberian Law Institute of the Ministry of Internal Affairs of Russia*. 1(30). pp. 89-93.
- Heller, A., 1988. *General Ethics*. Oxford: Oxford Univ. press. p. 400.
- Shesler, A.V., 2009. *Complicity in a crime*. Publishing house Moscow: TsOKR of the Ministry of Internal Affairs of Russia. p. 72.
- Raymen, T., 2016. Designing-in Crime by Designing-out the Social? Situational Crime Prevention and the Intensification of Harmful Subjectivities. *In The British Journal of Criminology*. 56(3). pp. 497-514.
- Bondaletov, V.V., 2014. Local Politics, Business, People: Issues and Cooperation Strategies. *In Journal of Advanced Research in Law and Economics*. 5-2(10), pp. 63-73.
- Nivette, A., 2014. Legitimacy and crime: Theorizing the role of the state in cross-national criminological theory. *In Theoretical Criminology*. 18. pp. 93-111.

