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## Research Article

# SOME ISSUES OF QUALIFICATION OF THE ACTS OF A PERSON INSTIGATING A CRIME

Submission Date: December 20, 2023, Accepted Date: December 25, 2023,

Published Date: December 30, 2023 |

Crossref doi: <https://doi.org/10.37547/tajpslc/Volume05Issue12-09>

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## ABSTRACT

The article examines expert viewpoints as well as views and ideas presented in the scientific literature regarding the qualification of the instigator's action in crimes committed in complicity. It has been discovered through the practice of judicial investigations that there are various approaches to establishing the liability for the instigator's actions in crimes committed with complicity, and proposals aimed at eliminating them have been developed. Additionally, expert opinions on the legal character of the initiator were examined and proposals and recommendations for the definition of the scope of liability were developed.

## KEYWORDS

Complicity in a crime, instigator, signs of an instigator, liability.

## INTRODUCTION

An instigator is a person who possesses particular characteristics and tasks in the commission of crimes in complicity. Its social danger is manifested in as a negative impact on other individuals inciting them to commit a crime. The instigator usually makes direct contact with the perpetrator of the crime and influences his will and mind in order to arouse in him the desire to commit the crime.

It should be highlighted that the correct legal evaluation of the instigator's act depends on the full disclosure of its legal nature and content from the point of view of criminal law. The Article 28 (part 4) of the current Criminal Code state sthat "Instigator shall be a person who tempted somebody to commission of a crime". As we can see, the legislator does not categorize the instigator (in contrast to the head/organizer) into types and does not specify the

methods by which it is implemented. In this regard, A. Atajonov rightly noted that “Definition of instigation in the current criminal law of Uzbekistan does not reveal the methods of instigating the crime and the signs that serve to distinguish it from other types of complicity”. [62] For this reason, the current version of instigating the crime does not fully express its legal essence. In addition, the legislator does not explain the legal meaning of the phrase “incitement to commit a crime” used in the definition of the instigator of the current criminal law. This leads to some misunderstandings in the interpretation of this norm. If the phrase “incitement to commit a crime” is interpreted directly, it means to arouse interest in another person to commit a crime. However, if this phrase is analyzed logically and scientifically, it can be seen that there are other cases that are not covered by this meaning. Because instigating a crime is not only inciting an interest in committing a crime but also it can also occur in cases of forcing another person to commit a crime.

It should also be noted that in the description of the instigator the Russian and Uzbek texts of Article 28 (part 4) of the current Criminal Code differ from each other. In particular, the norms of the Russian Criminal in respect of an instigator use the phrase “sklonivshiesya” (склонившее). It is translated as “undash” (encourage) in Uzbek-Russian dictionaries. The fact that the legislator used different expressions to formalize the content of one social relation also has a negative effect on the uniform understanding and application of the norms of the criminal law on instigation.

In addition, the current criminal law does not clarify to whom exactly the the instigating of the crime is committed. According to the content of the law “a person who incites the commission of a crime is an instigator”, then “Who exactly should the instigator

incite to commit a crime?” Because, if it is derived from the expressed content of the legal norm and if it is interpreted directly, it is not limited to the fact that it is carried out with respect to the circle of unknown persons. However, if the incitement to commit a crime is carried out against a group of unidentified individuals, such actions do not constitute instigation.

The person who who encourages someone else to commit a crime must always be another person. It is critical to ascertain this person’s identity and role in the crime. This individual may be a natural person who has reached the legal age for sane liability. That is why incitement to commit a crime cannot be manifested in propaganda or campaigning methods aimed at the circle of unidentified individuals. Such a situation may lead to criminal liability in accordance with the procedure established by criminal legislation, i.e. by other articles of the Criminal Code (CC Articles 159, 2161).

Therefore, public calls for the commission of a crime are not qualified as instigating to commit a crime. However, the person instigating to commit a crime does not have to be one person, they can be several persons. Only the main thing is that the instigator should have the goal of inciting the decision to commit a crime in each of these persons. The main thing here is that the instigator must have the goal of inciting the desire to commit a crime in each of these persons.

At this point, it should be highlighted that instigating to commit a crime in judicial and investigation practice is carried out in different ways. In particular, it manifests itself in extortion, intimidation, deception, begging, confusion, coercion, incitement, etc. From a legal perspective, it is theoretically challenging to include all of them in a single standard. To have a more comprehensive grasp of the act of instigating to commit a crime and to correctly understand its legal

essence, it is necessary to clarify these terms. Ultimately, this circumstance makes it possible to increase the effectiveness of the fight against instigating activities and helps to differentiate them from other forms of culpability (participation). Therefore, the objective side of instigating to commit a crime is expressed in actions aimed at inciting to commit a crime. Thus, the instigator arouses in another individual the urge to commit a crime. That is why the actions of the person who instigates a crime are always obvious and focused on achieving a particular objective.

The objective side's indicators suggest that the person who initiates the crime is more like an organizer. Therefore, in distinguishing the instigator from the organizer, we should take into account that usually the organizer also coordinates and controls the future behavior of the person who instigated to commit the crime. The main goal of the instigator is expressed in the desire to incite to a firm decision to commit a crime in the minds of other accomplices of the crime. So, it can be concluded that the instigator only encourages another person to commit a crime and does not control his further activities in committing a crime. The instigator differs from the organizer under the cited sign. Moreover, distinguishing between the signs of the instigator and the mental assistant appears as one of the complex issues. The difference between them is expressed in the fact that the instigator encourages another person to commit a crime (induces the feeling of committing a crime in another person), and a mental assistant helps by providing guidance to facilitate the commission of a crime by another person with his advice. Logically, the act of the instigator aimed at inciting another person to commit a crime is stopped until the person incited to commit the crime begins to commit the crime. The act of a mental assistant continues even after the criminal act has been

committed by the committer. For this reason, the instigator affects the committer committer before the desire to commit a crime appears in him, and the mental assistant affects him after the intention to commit a crime appears in him [p. 138]. Therefore, after a person starts committing a crime, there is no place for him to instigate the crime.

To put it briefly, the instgator's act is qualified based on three cases: 1) inducement/incitement (encouragement); 2) another individual; and 3) committing a crime. They are equally necessary for the legal nature of the instigation, or the instigation's content reflects them without exception.

Indcement means persuading another person to decide to commit a crime. That is why the giving of instructions that merely point to the possibility of committing a crime does not constitute instigation. Therefore, in this regard, we agree with Kozlov A.P. "Incitement means persuading or forcing a person to commit a certain criminal act". [127]

There are currently efforts underway to define the incitement to commit a crime in theory. For instance, scholars propose that this statement could be interpreted as encouraging someone else to take the initiative to commit a crime in another person [76] and promoting the initiative to commit a crime [234].

However, in relation to a person who has the intention to commit a crime in advance and has decided to commit a crime such actions do not constitute instigation. At the same time, V.I. Ivanov emphasizes that instigating a decision to commit a crime should be directed only against "a person who does not intend to commit a socially dangerous act" [428].

According to judicial practice, an instigator is commmonly a person who, by his actions, seeks not to

incite to commit any illegal acts in another person, but to arouse in another person the intention to commit a specific crime covered by the criminal intent of the instigator, or to strengthen such a decision.

It should be said that acts of incitement to commit a crime mean only an offer, a desire, a criminal plan to commit a specific crime. This does not mean that a crime has been committed at that moment. In this case, the person who instigates to commit a crime may hesitate whether to decide to implement this proposal or criminal plan. Therefore, in this case, the fact that the person who is motivated to commit the crime has made a firm decision to commit the crime plays an important role in the qualification of the instigation act.

When someone is determined to commit a crime, it indicates that they are ready to make and carry out the decision to commit the crime. For this reason, arousing to commit a crime should be understood as inciting the decision to commit a crime in another person. This incitement/arousing must necessarily be aimed at causing damage to the objects protected by the criminal law. At this point, another question arises, that is, if the instigator, due to circumstances beyond his control, cannot encourage another person to commit a crime, how should his action be qualified? The circumstances that do not depend on the instigator are as follows: the death of a person instigated to commit a crime, a person's (instigated to commit a crime) falling seriously ill and losing the physical ability to commit a crime, mental disorder, refusal to commit a crime, non-commitment of a crime due to insurmountable force. However, unfortunately, this issue is not given a clear legal solution in the current criminal law. After all, the instigation is considered completed when the committer fully fulfills the objective aspect of the instigated crime. [p. 134.]

What is more, if the person instigated to commit a crime is unable to finish the crime he was instigated to, due to circumstances connected with him, this is also found as instigation.

However, the issue of determining the liability of the instigator in case the crime was not committed is reflected differently in the legal literature. For example, some authors emphasize that the liability of the instigator should be considered depending on the liability of the committer when the act of the instigator in the commission of the crime was not carried out due to circumstances beyond his control [94]. At the same time, other authors state that if complicity does not take place, the question of the instigator's liability is considered "attempt to instigate to commit a crime" [182]. According to other authors, complicity does not take place, each guilty person should be held liable for the crime covered by his guilt, therefore, if the committer does not commit the planned crime or does not complete it due to circumstances beyond his control, the other accomplices will be held liable for the preparation for the crime or attempt to instigate to commit a crime. According to Yakubov A.S., in cases where complicity does not take place, the behavior of the organizer, instigator or assistant should be qualified as preparation for the crime or attempt to instigate to commit a crime and it is necessary to qualify it according to the first or second part of Article 25 of the Criminal Code, and in accordance with the article of the Criminal Code, which stipulates liability for the uncommitted act. We also support this opinion, and it is appropriate to supplement Article 30 of the Criminal Code with the following norm:

If the crime committed in complicity is not completed due to circumstances beyond the control of the committer (perpetrator), the remaining accomplices shall be liable for preparing or attempting to commit

the crime intended to be committed in complicity, depending on the stage at which the intentional crime of the perpetrator stopped.

If the act of the organizer, instigator or assistant is not carried out due to circumstances beyond their control, they will be held liable for the preparation of the crime intended to be committed in complicity.

It is significant to consider another issue closely connected to our topic. Part 3 of Article 127 of the Criminal Code establishes liability for inducing a juvenile in antisocial conduct. According to Atajonov A.A., ‘inducing’ means any intentional actions by an adult aimed at encouraging a minor to commit a crime or antisocial behavior. Inducing minors to commit crimes can be done by means of deception, intimidation, and the use of force. Regarding such cases, the paragraph 7 of the Resolution No. 21 of the Plenum of the Supreme Court of the Republic of Uzbekistan (September 15, 2000) “On judicial practice in cases of juvenile crimes” explains: “Only persons who have reached the age of 18 and committed the crime intentionally can be prosecuted for inducing a minor in antisocial behavior. It is also necessary to determine whether an adult knowingly induces a minor to anti-social behavior by his actions or allows such an opinion. If an adult engages a person in antisocial behavior and does not know or cannot know that he is a minor, in this case it is not possible to bring him to criminal liability under Article 127 of the Criminal Code. That is, the fact of inducing a minor in a crime is qualified as an independent crime only by Article 127 of the Criminal Code. However, in our opinion, inducement (involvement), that is, inducement of a minor in a crime, is a form of instigation to commit a crime. If a juvenile has reached the age of responsibility for the crime he was induced in, the actions of the person involved the juvenile in the crime [together with

Article 127, part 3 of the Criminal Code] shall be qualified under the relevant part of the indicted crime for which liability for complicity is established, with reference to part 4 of Article 28 of the Criminal Code.

### CONCLUSION

In conclusion, in order to eliminate the needs of investigation and judicial practice and existing gaps and shortcomings in the legislation, it is appropriate to amend the fourth part of Article 28 of the Criminal Code in the following wording: “an instigator shall be a person who induces other participants (accomplices) of the crime to commit the crime by extortion, threat with the use of force, coercion, deception, agreement or other methods”.

### REFERENCE

1. Otajonov A. A. Legal analysis of signs complicity in the crime //Pravoijizn. – 2019. – №. 1. – p. 62.
2. Otajonov A.A. Legal characteristics of incitement under the criminal legislation of the Republic of Uzbekistan // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. – 2015. – No. 10. – p. 138.
3. Kozlov A.P. Complicity in a crime: traditions and reality. St. Petersburg: Publishing house “Legal Center Press”, 2001. – p. 127.
4. Zatsepin A. M. Additional qualification of crime: general and special issues: monograph. – M.: Prospekt, 2016. – p. 251.
5. Pavlukhsin A. N., Ryzhov R. S., Eriashvili N. D. Types and liability for accomplices in crimes: Monograph. Under red. A. N. Pavluskina. – M.: UNI-TI-DANA; Law and Law, 2007. – p. 76.
6. Encyclopedia of criminal law: Complicity in a crime. T. 6 / Avetisyan S.S., Galaktionov E.A., Galiakbarov R.R., Ermakova L.D., and dr. – St.

- Petersburg: Professor Malinin Publishing house, 2007. – p. 234.
7. Ivanov V.I. Instigaion to crime: terminological and qualification aspects // Issues of Russian and international law. – 2022. – Volume 12. – No. 9A. – p. 428.
  8. Sablina M.A. Instigation: terminological and qualification aspects // Law. Journal of the Higher School of Economics. – 2016. – No. 4. – p. 134.
  9. Bezborodov D. A. Principles of criminal liability for commission of crimes in complicity. Criminologist. – 2013. – No. 2 (13). – p. 94.
  10. Begimbetov A.P. Problems of qualifying the actions of an instigator // Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan. – 2007. – No. 1 (5). – p. 182
  11. Berdiyev Sh. The ssues of improvement of exemption from criminal liability in the process of liberalization of criminal laws: Jurid. science. Dr. Dis. ... - Tashkent, 2011. – p.246.
  12. Criminal law. General part / Yakubov A.S., Kabulov R. and others. - Tashkent. Academy of Ministry of Internal Affairs of the Republic of Uzbekistan, 2005. - pp. 243-245.
  13. Otajonov A.A. Liability for crimes against the person: Guide. - T.: Tashkent State University of Law, 2023. - p. 232.