

THE ISSUE OF RESPONSIBILITY OF ORGANIZERS, INSTIGATORS AND ACCOMPLICES IN VOLUNTARY DESISTANCE FROM A ACCOMPLICE TO THE CRIME

Dildora Kamalova

Doctor of Philosophy of Legal sciences (PhD), Associate professor, Dean of the Faculty of Criminal Justice, Tashkent State University of Law, Uzbekistan

Abstract

The article scientifically and theoretically analyzes the responsibility of the accomplices in crime – organizers, instigators and accomplices in voluntary desistance from crime. According to the criminal legislation of the Republic of Uzbekistan, the rules related to the exclusion of responsibility for accomplice to the crime, if the organizers, instigators and accomplices voluntarily desisted from the crime and took all measures related to him in time to prevent from the crime. It is stated that the state of voluntary desistance from crime needs to be differentiated based on the degree of participation of each participant in the crime. According to the functions of the accomplices in the crime, due to the fact that the cases of desistance of the crime are mutually differentiated, each of them is analyzed separately, the specific characteristics of the voluntary desistance of the accomplices, the basis, conditions and legal consequences of non-responsibility are explained. The author justified that the precluding responsibility when the organizer or instigator prevents the perpetrator from committing a crime or completing the crime by reporting to the law enforcement agencies or taking other measures. It is justified that it will not be held criminally liable if the accomplices refuse to assist in the commission of the crime or if the perpetrator has eliminated the assistance he provided before using his assistance. In addition, it was concluded that it is necessary to include the punishment in the category of mitigating circumstances in cases where the behavior of the participant aimed at voluntary desistance from the crime did not lead to the prevention of the completion of the crime by other accomplices.

We can say that the religious authority represented by Sayyed Ali al-Sistani, after the year 2003, called for, in its directives, positions and responses, the building of a civil state in Iraq, a state of constitution, law, freedoms, the supremacy of the popular will, and the strengthening of the spirit of citizenship, and although Sayyed al-Sistani did not use the description of the civil state categorically, But the form he wanted for Iraq was completely similar to the concept of a civil state.

Keywords Voluntary desistance, criminal complicity, instigator, organizer, accomplices, crime prevention, precluding responsibility.

INTRODUCTION

Due to the fact that the accomplices of the crime are differentiated according to the level of mutual social danger, it is appropriate that the situation of voluntary desistance from crime should be differentiated based on the level of participation of each participant in the crime. In criminal complicity, each participant is responsible not only for his own behavior, but also for the criminal activities of other accomplices (except for the perpetrator of the excess). Therefore, the voluntary desistance of the participant deviates from the scope of the criminal acts committed directly by the partners.

According to Article 30 of the Criminal Code of the Republic of Uzbekistan, the fact that the organizer, instigator or accomplices voluntary desistance from the crime and took all measures related to him in time to prevent the crime, precludes responsibility for accomplice to the crime. It should be noted that this rule does not fully cover all cases related to the voluntary desistance of each participant. In particular, it is not specified what actions should be taken by the accomplices what is meant by "crime prevention" and how responsibility should be solved in cases where the consequences occur despite the fact that prevention measures have been taken. It should be noted that the organizer, instigator and accomplices commit the tasks of "accomplices" in the crime, provides assistance to the crime committed by the perpetrator, facilitates its commission. Therefore, it is necessary to refrain from the crime of the organizer, instigator and accomplices aimed at preventing the crime committed by the perpetrator or eliminating the created conditions. According to the functions performed by the accomplices in the crime, it is appropriate to analyze each of them separately due to the fact that the cases of desistance of the crime are mutually differentiated.

1. Voluntary desistance of the instigator from committing a crime

According to Article 28 of the Criminal Code, instigator shall be a person who tempted somebody to commission of a crime. The characteristic of this is to provoke the will and desire to commit a crime in another person. The

instigator realizes the socially dangerous nature of his act and the desire to commit a crime in others under its influence and he wants them to commit a crime. Accordingly, in order for the instigator to be considered a voluntary desistance, actions aimed at preventing the perpetrator from committing a crime must be carried out. Firstly, the acting instigator does not start committing a crime due to the influence (persuasion, request, etc.) on him.

Secondly, the perpetrator has a desire to commit a crime and tries to eliminate the consequences of his act or informs the law enforcement agencies to prevent the crime.

According to some lawyer scholars, "despite the fact that all the actions related to him have been taken to prevent the commission of the crime that the instigator is interested in, if the perpetrator commits the crime, the causal connection, which is a necessary element of participation, does not exist, the perpetrator becomes a sole participant in the crime, the intention of other partners is not covered by his will to exempt the accomplices from responsibility will be the basis".

According to other authors, "in cases where the organizer and instigator renounce the crime, they will not have the opportunity to control the actions of the perpetrator, so the perpetrator shall act according to his will. Therefore, responsibility arises in cases where the commission of a crime is not prevented despite the active behavior of the organizer and instigator. A necessary condition for non-responsibility is the prevention of criminal consequences as a result of the actions taken by the organizer and instigator". The above two points are valid in a certain sense. On the one hand, if the instigator commits a socially dangerous act, despite the fact that the perpetrator encouraged the instigator to desist from the crime, there is no "subjective connection" between the accomplices. On the other hand, the instigator "shall not have the opportunity to control the actions of the perpetrator". Despite the efforts of the instigator, the perpetrator may commit the crime. If we pay attention, the law does not link the voluntary desistance of the accomplices with the absence of consequences, the main condition is that the socially dangerous act is not committed or that,

even if it is committed, the socially dangerous consequences are not caused. Accordingly, we agree with the second author on the issue of voluntary desistance of the instigator.

It should be said that in the doctrine, there is an approach of responsibility arising according to the stages of the criminal activity of the accomplices when the organizer, instigator and accomplices voluntary desistance from the crime. "The criminal activity of the accomplices is conditionally divided into two stages and the terms of responsibility are mutually differentiated.

The first stage lasts from collusion (instigating a crime, developing a plan of action, giving advice, etc.) until the perpetrator begins to implement the terms of the agreement. At this stage, actions agreed by the perpetrator have not been directly performed and there is a possibility of doing them. In order for the instigator and accomplices to be deemed to have voluntary desistance from the crime, all actions performed by them in order to facilitate the commission of the crime must have been prevented (the accomplices took away the criminal weapon from the perpetrator, the instigator persuaded the perpetrator not to commit the crime, etc.). Before the perpetrator starts committing the crime, the authorities must be informed about the crime being prepared. So, at the first stage of the participation activity, the instigators and accomplices are deemed to have voluntary desistance from the crime in the following cases: 1) if the perpetrator did not commit the crime under the influence of an instigator or accomplices; 2) if the perpetrator committed the crime independently and the instigator or accomplices voluntary desistance, their previous actions were not related to the perpetrator.

The second stage is from the time when the perpetrator begins preparatory actions or the direct execution of the crime until the criminal consequences occur". If the second stage of the criminal activity of the accomplices, the actions created by the instigator or accomplices in order to facilitate the crime were fully or partially performed by the perpetrator, in order to consider the instigator or accomplices as a voluntary

desistance, it is necessary to prevent the occurrence of criminal consequences.

According to the A.I.Orlova, this approach did not take into account some cases. For instance, it is difficult to determine the existence of voluntary desistance in cases where the perpetrator committed the crime instigated by the perpetrator, although the instigator voluntary desistance from the crime. It is problematic to determine whether the perpetrator committed the crime under the influence of the accomplices or acted independently".

If we pay attention to the content of the law, the voluntary desistance of the accomplices is not interpreted depending on the stages of the crime, it is indicated in the general sense "commitment of related actions". However, the steps play a key role in determining whether there is a voluntary desistance. Therefore, this situation is correctly described in the above approach. In addition, "the time, place, and nature of the possible crime should be taken into account".

The attempt of the organizer and instigator to desist the crime after being interested in the crime or organizing the commission of the crime means that the danger of the organizer and instigator has decreased, but the actions performed before the voluntary desistance do not lose the character of social danger, therefore these actions form the basis of committing a crime and it develops according to non-existent circumstances. In order to stop the chain of causes, these persons should actively intervene in its development, form conflicting motives in the criminal's mind that can destroy the determination to commit a crime and destroy the results of previous activities, and neutralize the socially dangerous nature of his act.

M. Kh. Rustambaev interpreted the voluntary desistance as depending on the structure of the objective side of the crime. For instance, "the voluntary desistance of the criminal organizer or instigator in the form of persuasion of the perpetrator can be done only on the condition that the criminal result should be prevented in the case of a crime with a material content and the implementation of the entire objective side should be prevented in the case of a crime with a formal

content ”.

It should be said that the doctrine of criminal law states that the organizer and instigator can voluntary desistance only through active actions . In this case, it is necessary for them to prevent the commission of a crime by the perpetrator through their actions. However, some authors believe that the voluntary desistance of the organizer can be expressed in passive actions, usually in the process of finding or preparing for the accomplices of the planned crime .

Voluntary desistance of the organizer and instigator from the crime through active actions is considered reasonable in our opinion and it should be carried out in the following form: a) by intellectually; b) by physically; v) by reporting to law enforcement . We will analyze them below.

In the intellectual method of voluntary desistance, the organizer or instigator persuades the offender to desist from the crime by influencing his mind. In this case, if the instigator refused to finish the crime as a result of mental coercion of the organizer (instigator), the perpetrators refusal to commit the crime does not have a sign of voluntariness. Depending on the stage at which the perpetrator’s act is incomplete, it is considered preparation or assassination and the act of an organizer or instigator who influenced the mind of the perpetrator can be considered a voluntary desistance.

In the physical method of voluntary desistance, the organizer or instigator exert physical influence on the perpetrator to complete the crime (using physical force, restricting the freedom of the perpetrator, creating circumstances that hinder the completion of the crime). In this case, it is appropriate to mention the necessary defense situation. The legislator allows the organizer or instigator to take any measures aimed at preventing the perpetrator from completing his crime. In accordance with this, even if the organizer or instigator committed an act aimed at influencing the perpetrator and deviated from the limits of necessary defense, they are deemed to have desisted voluntarily. In this case, they will not be held responsible for the crime of voluntary desistance, but only for the act committed outside

the bounds of necessary defense .

By informing the law enforcement agencies on the crime being prepared or committed, the offender must be prevented from completing the crime in voluntary desistance and the authorities must be notified in time. It should be said that the term “timely reporting” is an evaluative concept and it is determined by analyzing all the circumstances, including the nature of the crime, the time and place of its commission, the level of preparation, etc.

In order to prevent the commission of a crime, a instigator can also report a crime to law enforcement agencies. This example is given in most foreign literature.

When an Alexandrian serving time in a penal colony is offered a financial incentive to find a hitman to kill K, he finds another person in the penitentiary to find and convince the hitman. Alexandrian acquaintance who received information on the discovery of the perpetrator of the murder gives the perpetrator information on the victim and a monetary reward as an advance. The perpetrators who received information on the victim, together with other accomplices, arrive at the address where K lives

Meantime, the law enforcement agencies are informed on the crime being prepared, they call Iskandaryan and the detectives P and K offer to cooperate in order to tell what they know from him. Iskandaryan tells the identity of the victim, his residential address, license plates of the victim’s car. The information is passed on to the detectives and the perpetrators are caught around the victim’s residential address .

Rapid search officers P. and K during the conversation with Iskandaryan that they were aware that the crime was planned to be committed on June 27, that the crime was being prepared and that they were aware of the perpetrator’s surname and phone number, but did not have information on the identity of the victim, the place of the crime and the residence address of the perpetrators. Iskandaryan’s involvement in the crime, awareness of this crime by law enforcement agencies and the possibility of his arrest as part of the criminal case

did not prevent Iskandaryan from continuing the crime. Despite the fact that the law enforcement agencies knew on his involvement in the crime, he had a real opportunity to finish the crime that had started and also realized that the perpetrators could carry out the murder if he refused to provide the law enforcement agencies with information on the victim and the scene of the incident. Iskandaryan realized that by reporting to the authorities, the perpetrators would be caught and the crime would be prevented. The crime scene and information on the victim was not brought to an end by the fact that the authorities were informed in time.

It should be said that the initiative to report the pending crime to the authorities was not given by the witness himself, but by the law enforcement agencies. The presence of the risk of prosecution for witnessing the murder, the awareness of the possibility of ending the crime, did not affect the voluntariness of desistance.

It should be said that in some cases, the actions of the organizer or instigator may not lead to the prevention of the perpetrator's crime. In such cases, the measures taken by the organizer and accomplices should be taken into account by the court at the time of sentencing. In our opinion, as in the criminal codes of most foreign countries (Kazakhstan, Kyrgyzstan), in our legislation, this case should be specifically provided for in the criminal code and the following paragraph should be included in the category of mitigating circumstances in Article 55 of the Criminal Code:

"y) in cases where the behavior of the participant aimed at voluntary desistance from the crime did not lead to the prevention of the completion of the crime by other accomplices"

Another question arises here. How to resolve the issue of voluntary desistance when the act is committed against a minor. In this case, the witness is held responsible not only as a participant in the crime he is interested in, but also as an perpetrator of witnessing the crime of a minor (Article 127, paragraph 3 of the Civil Code). If the instigator voluntarily desistance from the crime and prevented the commission of a crime by a minor, he shall not be held liable for witnessing and involvement.

Therefore, the responsibility is precluded when the accomplices voluntarily desist from the crime by reporting to the law enforcement agencies or by taking other measures, preventing the perpetrator from committing the crime or completing the crime.

1. Voluntary desistance of the organizer from committing a crime

According to Article 28 of the Criminal Code, a person who leads the preparation of a crime or the commission of a crime is considered a organizer.

Voluntary desistance stems from the accomplices' "contribution" to the commission of the crime. In particular, the organizer is the most dangerous type of participant, he leads the commission of the crime, organizes the crime, and coordinates the actions of all accomplices. Therefore, it is necessary for the organizer to prevent the actions of all accomplices who are subject to his will.

According to the function performed by the organizer, it is appropriate to divide it into three forms: a) organized the commission of a crime; b) directed the commission of a crime; c) a organizer who organized or led an organized group or criminal association.

In order for the organizer to renounce the crime, it is necessary to perform certain actions, in some cases voluntary desistance can be done through inaction. Based on the degree of the organizer's accomplice to the crime, the actions that constitute voluntary desistance are described below.

"In the first and second cases, if the organizer organized or directed the execution of the crime, the voluntary desistance must be manifested in the direct obstruction of the activities of the perpetrator. "The actions of the organizer should cause the perpetrator to desist the crime or create a serious obstacle for the perpetrator in the process of committing the crime and it should not be possible to eliminate the obstacles without the direct participation of the organizer". Voluntary desistance is also possible by contacting the authorities, but is not considered effective in terms of time constraints".

The question arises here. Does the failure of the organizer who directs the commission of the crime

to arrive at the scene at the appointed time mean that the organizer voluntarily desisted? When solving the problem, it is necessary to take into account some cases. If the organizer does not reach the scene of the incident due to objective obstacles (traffic, breakdown of the vehicle, being caught on the road), it is not considered a voluntary desistance, therefore, there is no sign of voluntariness and awareness (willingness) to complete the crime. The failure of the organizer to arrive at the scene may also be due to subjective reasons (awareness of the illegality of the planned crime, fear of being exposed, distrust of the accomplices, etc.). The organizer plays a leading role in the commission of the crime, therefore, failure to arrive at the scene of the crime (inaction) means that the crime was prevented in cases where the organizer actually realized it. For instance, when organizing an invasion attack, only the organizer knows the appearance of the victim, the optimal time when the attack is planned, escape routes, etc., and the perpetrator is not aware of this. According to the agreement, this information is given to the perpetrator at the scene of the crime. In such a case, the perpetrator is qualified as an perpetrator when he commits the invasion himself, against a random passenger.

“In the third case, i.e. voluntary desistance from crime of the organizer who organized or led the organized group or criminal association.

Since the establishment and leadership of a criminal association is a completed offense of separate content, it is necessary to voluntarily desist from these crimes before the establishment of such associations. That is, they should stop the actions aimed at forming relevant criminal groups before they are formed. “In cases where the formation of an organized group is not qualified as a completed crime (for instance, in cases where an organized group was formed for the purpose of committing fraud crimes), voluntary desistance must be in the form of desistance of committing a specific crime. In this case, the organizer must have prevented the perpetrator from committing a crime. It should be said that in such cases, voluntary desistance can be carried out even after the formation of an organized group. If the guilty persons did not commit the crime due to

reasons beyond their control, they will be held liable for the preparation of the crime”.

If the perpetrator of the crime was the organizer and the organizer interested other accomplices in the crime, to encourage them to abandon their criminal activities, it can be expressed as follows: canceling the order to commit a crime, convince other partners to give up crime, use his authority and influence to prohibit or force partners to engage in criminal activities, threaten to use physical force, etc .

Therefore, in cases where the organizer prevents the perpetrator from committing a crime or completing the crime he started, he will not be held criminally liable for voluntary desistance. Actions aimed at preventing crime, but which do not lead to such a result, are not considered voluntary desistance from crime.

1. Voluntary desistance of the accomplice from committing the crime

According to Article 28 of the Criminal Code, a person who assisted in the commission of a crime with his advice, instructions, providing tools or removing obstacles, as well as concealing the criminal, traces and tools of the crime, or things obtained through criminal means, as well as receiving and transferring such things the person who made the prior promise is deemed to be an accomplice.

In accordance with the Criminal Code, the accomplices shall not be held criminally liable if he has made all reasonable efforts to prevent the commission of the crime. In other words, even if the accomplice has committed all the actions related to him, the accomplice is not liable even in cases where the perpetrator has committed the crime. It is in this respect that the voluntary desistance of the accomplices differs from the voluntary desistance of the organizer and instigator. Because the nature of the social danger of the accomplices differs from that of other accomplices and despite the fact that the perpetrator has the opportunity to complete the crime, the accomplices may not allow the completion of the crime by eliminating his contribution to the commission of the crime (for instance, by breaking the causal connection

between the committed act and the criminal consequence). In cases where the accomplices refuses to assist in the commission of a crime or eliminates the results of his assistance in the commission of a crime before the perpetrator uses them, he shall not be held criminally liable.

The form and types of the voluntary desistance of the helper from the crime depend on the physical and intellectual form of the helper.

Yu.M. Malyar stated that if the accomplices provided the criminal instruments or tool for committing the crime, it is enough to take away these items from the perpetrator. If physical assistance is in the form of removing obstacles, it is necessary to restore them in order to prevent crime ”.

In order to be considered to have from the physical form of assistance, such as providing a criminal instruments or tools, eliminating circumstances that hinder the commission of a crime, it is sufficient that the accomplices does not perform these actions, in which the voluntary desistance is manifested in passive behavior. For instance, the accomplices who promised to give the key to the warehouse does not provide the key to the perpetrator, etc. “In this situation, if the perpetrator decides to commit a crime, his actions will not be causally related to the actions of the accomplice”.

Voluntary desistance after the accomplice has committed actions aimed at facilitating the commission of a crime must be expressed in active actions: taking away the instruments or tools given to the perpetrator, restoring the circumstances that hinder the crime, etc.

According to Y. M. Malyar, “it is necessary to notify the criminal, the criminal weapon, tool, traces of the crime or objects obtained as a result of the crime, as well as the auxiliary perpetrator in physical assistance such as receiving or transferring such objects, that the promise has been canceled ”. According to A.A. Atajonov, “the accomplice may voluntary desistance from the crime and may not notify the accomplice of the withdrawal of assistance to the accomplice. Meantime, the voluntary desistance of the helper from the promised action breaks the objective and

subjective connection between him and the perpetrator ”.

According to some authors, it is not always necessary to objectively eliminate the results of the assistance provided to the perpetrator in order to find the accomplices to have voluntary desistance from the crime. In particular, in cases where the accomplices has taken actions to remove from the perpetrator the previously provided crime instruments or tools or to desist the removed obstacles to their previous state for the purpose of committing a crime, and the accomplices has a reasonable belief that the perpetrator will not be able to use his help, regardless of the subsequent actions of the perpetrator, the accomplices is considered to have voluntarily desisted from the crime. The reason for this is that there is no subjective basis for criminalizing the accomplices. For instance, persons named A. and B. come to steal the bank cash register secretly, for this purpose, A. makes a key to open the cash register door and B. gives to them. But later A. renouncing the criminal purpose, B. asks him to give the key he made, but B. he refuses to give the key, saying that he lost it and robs the bank alone.

In this example, A. physically assisted in the commission of the crime by preparing the key to the bank cash register, but later, before the commission of the crime, he renounced the criminal purpose and performed the actions that depended on him to prevent the commission of the crime. Nevertheless, the crime was committed. In this case, A. should be deemed to have voluntarily desisted from the crime and not be held responsible for having performed actions related to him .

“In intellectual assistance, it is difficult to determine the issue of voluntary desistance when the criminal participant helps with his advice and instructions to commit the crime. Because there is no way to undo the actions taken. Therefore, the information provided to the perpetrator is at his full disposal and there will be an opportunity to use it regardless of the position of the accomplices. That is why the only way to voluntary desistance from crime is to prevent it from ending ”.

In fact, it is important whether the advice or

instruction was delivered to the perpetrator or not in the case of voluntary desistance from intellectual assistance by giving advice and instructions to commit the crime. If the information has not yet been provided to the perpetrator, a voluntary desistance can be made in a passive form by not providing such information.

If the information is obtained by the perpetrator or the accomplices gives his advice to the perpetrator, the voluntary desistance must be expressed in active behavior. The accomplices must persuade the perpetrator not to commit a crime, or create circumstances that hinder the crime, or apply to the law enforcement agencies in a timely manner. The main thing is that the commission of a crime should be prevented.

In other words, in order to consider the helmates who provided help with his advice and instructions as voluntary desistance from the crime, he must have the opportunity to objectively prevent his contribution to the commission of the crime, and he must have prevented the consequences of his actions before using the help provided by the perpetrator. Meantime, the determination of the existence of an objective opportunity is determined according to the circumstances of the work (characteristics of the transmitted information, the circle of persons who have the opportunity to get acquainted with the information, etc.).

Therefore, in cases where the perpetrator is given the necessary advice and instructions to commit a crime, voluntary desistance from committing a crime should be carried out in active actions.

It is not enough for the accomplices to know that he has abandoned his promise and that the accomplices will not inevitably commit such acts when voluntary desistance from the intellectual form of assistance, such as concealing a crime or receiving or transferring things obtained by criminal means. Because the act has been committed and criminal consequences have occurred, the accomplices will not have the opportunity to eliminate the crime. In such cases, the act of the accomplice may be considered a mitigating circumstance.

It should be noted that voluntary desistance from

aiding and abetting must be carried out through proactive behavior aimed at preventing crime and until the crime is brought to an end. Therefore, even if the accessory does not directly perform the actions that are part of the objective side of the crime, it creates the necessary conditions for the commission of the crime, and is causally connected with the result.

Accordingly, the voluntary desistance of the accomplice is accomplished by taking steps to prevent the consummation of the crime, including reporting to law enforcement agencies, thereby breaking the causal link between the act and the consequence by preventing the consummation of the crime.

“If the actions of accomplices are unsuccessful, a crime is committed, his actions cannot be qualified as voluntary desistance .

It should be said that “the methods of the accomplices’s desistance of the crime are compatible with the method of voluntary desistance of the organizer and the witness (intellectually, physically, reporting to the state authorities, etc.). However, the law does not distinguish the voluntary desistance of intellectual assistance from other accomplices. Therefore, it is appropriate to make appropriate proposals for the improvement of the legal rule ”.

Therefore, in cases where the accomplices helped the perpetrator with his advice, instructions, giving tools or removing obstacles, the accomplices is not liable if he prevented the completion of the crime by reporting to the law enforcement agencies or using other measures that prevent the commission of the crime.

Based on the above points, it is appropriate to introduce a separate rule on the voluntary desistance of the accomplices from the crime in Article 30 of the Criminal Code and express as follows.

“If an accomplices refuses to assist in the commission of a crime or if the perpetrator has eliminated the assistance he provided before using his assistance, he shall not be held criminally responsibility. If the assistant helped the perpetrator with his advice, instructions, by

providing criminal instruments or tools or by removing obstacles, the organizer, instigator and accomplices prevented the commission of a crime by reporting to the law enforcement agencies or taking other measures, he shall be criminally liable for voluntary desistance from the commission of a crime will not be weighed”.

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