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CRIMINAL LEGAL ANALYSIS OF CRIME PROVOCATION

One of the issues discussed in the theory of criminal law and of great practical importance is the problem of responsibility for the provocation of a crime. The Criminal Code of Ukraine establishes criminal liability only for the provocation of bribery (Article 370 of the Criminal Code of Ukraine). Note that provocative activities may be covered by two forms of complicity - incitement or organization of a crime, since the crime initiation may belong not only to the instigator but also to the organizer of the crime.

Most scientists, under the provocation of a crime, mean incitement to him in order to expose the person who committed the act in the future. On the basis of the analysis of objective and subjective features, the author's criminal-law definition of the provocation of a crime is suggested, which means the creation of a person who creates the situation causing another's commission of a crime, or complicity in such an offense with a view to exposing it,

blackmail or causing another material or non-pecuniary damage to such person. V.D. Ivanov suggests that provocateurs be prosecuted as instigators or organizers. There are proposals to consider provocation as aiding or abetting it as a separate offense.

O.I.Alyoshina under the provocation of a crime understands the creation of a person by the circumstances, causing another person to commit an offense, or complicity in such an offense with a view to exposing it, blackmail or causing other material or non-material harm to such person [1]. The only legislative definition of provocation is contained in Art. 370 of the Criminal Code of Ukraine. According to Part 1 of Art. 370 of the Criminal Code of Ukraine, the provocation of bribery is a deliberate creation by an official of the circumstances and conditions that result in the offering, promise or provision of unlawful benefits or the acceptance of a proposal, a promise or gain of such benefit, then to expose the person who offered, promised, gave unlawful benefit or accepted offer, promise or benefit. The provocative activity, in turn, is the activity of a person, aimed at the emergence of a person's desire to commit various actions that delay for the last harmful consequences.

The provocation, according to some scholars, is the only or more effective means of detecting criminal intent, preventing more serious crimes, and disclosing criminal offenses committed. O.O. Masterkov convinced that the danger of this activity for relations protected by the criminal law is complex, arguing that the social danger of provocation is determined by the following points: a) it is determined by the social danger of the crime to which the person is provoked; b) as a result of provocation, we have, in fact, two persons who encroach on public relations protected by law - a provocateur and a person provoked; c) The actual provocateur has a high degree of social danger.

Signs of provocative activity: involves the intention of the subject (provocateur) to provide a one-sided expression of the desired model of behavior from the person who provokes, having only external signs of a criminal act; provocative behavior is carried out in the order of one-sided intentional activity by the wine person,

which is not covered by the consciousness of the person who provokes; the purpose of the actions of a provocateur is the onset of adverse consequences for a person who provokes (discredit, blackmail, or the creation of artificial evidence of the charge) [2].

It should be noted that the form of expression of an act when provoking a crime is only a socially dangerous act, that is, the active behavior of the guilty person. The forms of provocation can be diverse: tips, hints, recommendations, wishes, and more. The provocation of a crime may also be oral, detected by gestures, in writing, by demonstration of some images, etc. The instrument can be any means of transmission and the media of such information: telephone or fax communication, the Internet, etc. A provocateur can also act secretly, by creating such conditions and circumstances that cause a person to commit a crime.

According to its objective signs, the provocation of a crime does not coincide with incitement to a crime. That is, the provocation of a crime can be hidden, indirect. The provocative ways are not limited to the tendency to commit a crime, but can also be expressed in hints, even in movements, gestures and other actions, provocative actions must always precede the criminal behavior of the person being provoked. Moreover, the creation of the environment causing the commission of a crime should not only precede the execution of the act by the provoked person, but also precede the occurrence of such an individual intention to commit a crime. The only form of expression of an act when provoking a crime is only a socially dangerous act, that is, the active behavior of the guilty person.

Depending on the socially dangerous nature of the actions, the methods of provocation can be divided into the following: 1) actions aimed at creating an appropriate situation, which in themselves are not criminal; 2) actions aimed at creating an appropriate situation, which form an independent composition of the crime. The initial moment of provocation is an action aimed at creating an environment that intends to commit a crime. The end point is the occurrence of an individual intending to commit a crime or take part in his commission. The subjective aspect of the provocation of a crime is

characterized by the presence of direct intent and the special purpose of exposing a person. A direct intent indicates that the perpetrator is aware of the provocative nature of his actions against another person that he provokes and wants to do such actions [3].

Consequently, it is possible to provoke any intentional crime, therefore, the provocation of a crime can be defined as "deliberate acts of a person directed to the involvement of another person, who provokes, in committing a crime in order to expose the latter to the committed".

List of references:

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