# COMPLICITY IN A CRIMINAL OFFENSE AND PROVOCATION OF A CRIMINAL OFFENSE: PROBLEMS OF CORRELATION

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**Problem statement.** The formation of Ukraine as a democratic and legal state presents a significant number of important tasks for state bodies, including the improvement of methods of combating crime. Special attention is paid to effective countermeasures against criminal offenses that pose a threat to society. These include crimes that are committed jointly. Provocation of a criminal offense is investigated within the framework of the institution of complicity in crime. Considering the provocation of a crime as a special issue of responsibility for complicity, the problem arises of establishing the correlation of provocation with the types of complicity provided for in Art. 27 of the Criminal Code of Ukraine.

**Objectives.** The main task is to consider the concept and features of such legal institute as complicity in a criminal offence and provocation of a criminal offense, analyze the issue of correlation of these phenomena in criminal law.

**Methods.** The following set of methods is applied in this work: methods of generalization, comparison, and expert evaluations.

According to Article 26 of Criminal Code of Ukraine, complicity in a criminal offense is the intentional joint participation of several subjects of a criminal offense in the commission of an intentional criminal offense [1].

The institution of complicity allows to justify the criminal responsibility not only of people who directly committed the criminal offence (executor), but also of those who assist and encourage its commision. Thanks to the norms of this institute, the issues of criminal responsibility of accomplices of the offence are resolved.

The analysis of the legislative definition of complicity allows us to identify the following main features: a) participation of several subjects in the commission of an intentional criminal offense; b) theirs joint participation in the commission of such an act; c) intentional participation in the commission of an intentional offense.

Article 27 of the Criminal Code clearly defines the types of accomplices: executor (co-executor), organizer, instigator, accomplice. Each of them has its own role and different functions from the point of view of the execution of the composition of the criminal offense and, nevertheless, all of them are accomplices.

For a more in-depth analysis of complicity in the science of criminal law, judicial practice and the current Criminal Code forms are distinguished complicity in a criminal offense. Forms of complicity are association of accomplices, which differ among themselves in the nature of the roles they perform (the first classification criterion) and in the degree of stability of subjective connections

between them (the second classification criterion). Based on the content Part 1 of Art.27, which determines that accomplices are the executor, the organizer, an instigator and an accomplice, and part 2 of this article also names a co-executor, it can be concluded that complicity in terms of roles which performed by accomplices, can be divided into two forms: simple - without distribution of roles and complex - with distribution of roles [3, p.222].

Complicity does not create any special, fundamentally different grounds for criminal liability compared to an individual's act committed alone. Accomplices are distributed general principles of responsibility under criminal law, according to which the basis of criminal responsibility is the commission of an act that contains all the signs component of a criminal offence [4, p.185].

In addition to the general issues of responsibility of accomplices to a criminal offense, a number of special issues of responsibility for complicity arise. These include, in particular, provocation of a criminal offense.

Currently, there is no normative definition of provocation of a criminal offence. There are different definitions of provocation in the scientific literature. According to O. Alyoshina, the provocation means the creation by a person of an exclusionary situation that excludes the commission of a criminal offence by another person, or complicity in such an offense, with the aim of exposing it, blackmailing or causing other material or non-material damage to such a person [2, p. 4].

It should be borne in mind that there is only Art. 370 of the entire Criminal Code of Ukraine, where provocation is a criminal act. But provocation (as a process) cannot take place without the person who carries it out, that is, the provocateur. Moreover, in Part 1 of Art. 370 of the Criminal Code of Ukraine "Provocation of bribery" provocation is interpreted as "actions to incite a person" who receives an illegal benefit. The term "incitement" in this case should be understood as an activity (process), but if it is an activity, then its subject in this case is the instigator. Considering the above, it seems necessary to compare the signs of incitement with the signs of provocation. [5, p. 326].

At the heart of the matter, both the instigator and the provocateur - both want the incited (provoked) person to commit a crime, but with different goals, both want a criminal result, but each intends to dispose of it personally. The purpose of the provocateur's actions is to cause harmful consequences to the person who was provoked. Therefore the provocation of a criminal offense is not determined by such a type of complicity as incitement, because it has its own characteristics.

**Conclusion.** The importance of the study of this topic lies in the need to study the theoretical and practical aspects of complicity and provocation in the criminal law of Ukraine, the normative delimitation of the above concepts and mechanisms for preventing and solving the consequences of the phenomena under study.

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## AUTHENTIC INTERPRETATION OF LAWS. RISK TO THE PRINCIPLES OF SEPARATION OF POWERS AND NON- RETROACTIVITY?

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It is reasonable to agree that only judges should resolve cases and disputes between citizens, state and citizens. Practically and given the separation principle, legislators cannot do that job and ought not to. Facts-finding is a judicial task; measuring the proportionality of punishment, damage evaluation, and others are also purely court issues. But what is it in the separation of powers principle that does not allow authentic interpretation (AI) of law by the lawmaker, especially if given as an abstract interpretation? If the judges are not generally authorized to make a law, why then should they have the only right to interpret it? Maybe it is the legislator who has to interpret its laws *ex officio?*

When these questions are addressed to opponents of AI, the answer is that legislators interfere with the judge's function to interpret the law. Why is it only the judge's power? They might answer that the principle of the separation of power ostensibly says so. However, the principle's root was quite different as the Montesquieu - author of the separation thesis – thought that *"judges are nothing but 'mouthpieces of the law,' 'inanimate beings' incapable of modifying either its force or its rigour. ...".*