

При этом не признаются соавторами физические лица, не внесшие личного творческого вклада в создание изобретения, полезной модели, промышленного образца, а оказавшие автору (соавторам) только техническую, организационную или материальную помощь либо только способствовавшие оформлению прав на изобретение, полезную модель, промышленный образец и их использованию.

Автору (авторам) или нанимателю в случае создания служебного объекта принадлежит право на получение патента (ст. 6 названного Закона).

Согласно п. 1 ст. 1132 Гражданского кодекса Республики Беларусь к правам на интеллектуальную собственность применяется право страны, где испрашивается защита этих прав.

В ситуации создания двумя и более изобретателями «многонационально» изобретения, если различные национальные законы применяются в отношении по меньшей мере двоих из них, достаточно ли этих положений белорусского законодательства, чтобы разрешить вопросы, связанные как непосредственно с авторством, так и с владением патентом? При этом лицо, заинтересованное в патенте на такое изобретение, вынуждено учитывать и действующие законы иных государств, которые могут отличаться от страны к стране.

Например, Европейская патентная конвенция не содержит определения авторства или соавторства. Таким образом, понятие «авторство» устанавливается национальным законодательством и сложившейся правоприменительной практикой. В частности, в немецкой практике автором изобретения признается физическое лицо, которое творческим трудом создало изобретательскую идею и разработало методы (инструкции) по ее технической реализации. Соавтор – это лицо, которые внесло свой творческий вклад в изобретательский замысел.

В Великобритании автор – это фактический изобретатель изобретения, что, как правило, обозначает лицо, которое внесло вклад в патентоспособные аспекты изобретения. В французской практике изобретатель – это лицо или лица, от которых происходит изобретение и изобретательский уровень.

Таким образом, при попытке получить патенты на одно и то же изобретение в нескольких странах заявитель может столкнуться с серьезной проблемой определения авторов «многонационального» изобретения. На наш взгляд, существует необходимость в разработке гармонизированного подхода к решению назревшей проблемы, в том числе в создании международного стандарта определения авторства изобретения и иных объектов промышленной собственности.

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SOME LEGAL ASPECTS OF REALIZATION OF PRINCIPLE OF INDIVIDUAL CRIMINAL RESPONSIBILITY IN INTERNATIONAL CRIMINAL LAW

The principle of individual criminal responsibility is one of fundamental principles of international criminal law. But in practice, the realization of this principle meets some difficulties not only in legal enforcement, but also in legislative drafting. On the international level this principle took place in Statute of Nuremberg Tribunal at first. "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced", wrote the Nuremberg Tribunal in 1946.

More direct realization became this principle in Article 6 of Statute of International Criminal Tribunal for Rwanda: A person, who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime ... shall be individually responsible for the crime [1].

The Rome statute of International Criminal Court also stands on this position. In accordance with Article 25 of this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission [2]. As we understand, the most part of war crimes and crimes against humanity can be done only in cooperation or with use of military or other armed force. Most of 'clientele' of International Criminal Court will not be the actual perpetrators of the crimes, soiling their hands with flesh and blood. Rather, they will be 'accomplices', those who organise, plan and incite genocide, crimes against humanity and war crimes [3, 101].

As we see, Rome statute clearly distinguishes between three forms of perpetration: direct or immediate perpetration ("as an individual"), co-perpetration ("jointly with another"), perpetration by means ("through another person"). Thus, co-perpetration is no longer included in the complicity concept but recognized as an autonomous form of perpetration [4, 9].

Also Rome statute contains other forms of participation which themselves, however, establish different degrees of responsibility. Subparagraph (b) of Article 25 refers to a person who orders, solicits or induces the commission or attempt of a crime. Subparagraph (c) codifies any other assistance ("aids, abets or otherwise assists ... including providing the means") in the commission or attempt of a crime "for the purpose of facilitating" it. Generally speaking, participation in the case of subparagraph (b) implies a higher degree of responsibility than in the case of subparagraph (c) [4, 10].

The International Criminal Court, like its earlier models at Nuremberg, The Hague and Arusha, is targeted at the major criminals responsible for large-scale atrocities [3, 102]. And this is a reason why a big part of defendants are persons, who had earlier some governmental powers or were commanders of armed forces.

In such cases prosecutor determines a status of this organizations (legal fundament of acting, the presence or absence of hierarchy in this organization, discipline and so on). Next point of investigation is discovering of place which took defendant person in organization: Is defendant the person who only followed orders or the person who planned and organized crimes. Each act of defendant person will be examined and regarded or not regarded a crime. A punishment for defendant will depend on level of participation in crimes.

An example of this would be a case The Prosecutor v. Bosco Ntaganda (ICC-01/04-02/06, Situation in the Democratic Republic of the Congo). Bosco Ntaganda was one of the leaders of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (the "UPC/FPLC"). There are substantial grounds to believe that as early as the beginning of August 2002, the "UPC/FPLC" adopted an organisational policy to attack part of the civilian population, belonging to ethnic groups other than the Hema (the "non-Hema") and to expel them from Ituri Province, in the Democratic Republic of the Congo. Pursuant to this policy, between on or about 6 August 2002 and on or about 27 May 2003, the UPC/FPLC perpetrated a widespread and systematic attack against the non-Hema civilian population [5].

The Prosecutor is charging Mr. Ntaganda on such articles: Article 25(3)(a) of the Statute – Indirect Co-Perpetration; Article 25(3)(a) of the Statute – Direct Perpetration; Article 25(3)(b) of the Statute – Ordering; Article 25(3)(b) of the Statute – Inducing; Article 25(3)(d) of the Statute – Contributing in any other way; Article 28(a) of the Statute – Acting as a Military Commander [5].

As we see, one action can be determined as many crimes, especially if defendant person was a military commander or had other authority powers. Of course, any participant in a crime can only be liable for own contribution of defendant person to the crime without regard to the liability of other participants. Although this is not expressly stated in the Statute, but, as thinks Kai Ambos, it follows logically from the guilt principle and the principle of individual criminal responsibility itself [4, 12]. This implies that the responsibility of each participant has to be determined individually on the basis of his or her factual contribution to the crime in question.

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