

Criminal Participation in Comparative Law

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Abstract: *In the comparative law, in the case of the co-operation of several persons for the commission of a crime, several systems are established, where other categories of participants appear next to the author. A first category of legislation recognizes only the existence of the author and the accomplice, others provide for the participation in the form of the author, the accomplice and the instigator, and the last category stipulates four categories of participants. For all of this, it is important to distinguish between categories and to analyze which are the specific papers for each one, for their correct classification. It is also important to note that, while in a country's law, complicity has a definition, it may have the meaning of instigation in the law of another.*

Keywords: *determination; juxtaposition; previous law; simultaneous; resolution.*

Introduction

Criminal participation is a complex institution in which there is a univocal subjective connection between the participants, from the sense of the instigator and the complicated, towards the author. The subjective position of the three is nonetheless homogeneous, some dominating its intention, and others guilty, or even without guilt. Starting from this representation of the criminal projection, from the intellectual and the volunteer of the participant, doctrinal and practically dissociated treatments are reached.

1. The French criminal doctrine classifies criminal participation in three forms, depending on the degree of organization: *participation through juxtaposition, participation through negligence, and participation by understanding* [1].

Participation through juxtaposition is characterized by the fact that several individuals participate in the same action, but without a prior understanding between them (for example, in the event of a fight between several people, a person suffers more injuries without knowing who caused them). In the case of intentional offenses, French jurisprudence appealed to the “*single scene of violence*”. If it is impossible to specify the number and the intensity of the violence applied by each of the perpetrators, the offense is considered as a whole, and the responsibility lies with all the participants. The arguments are the following: 1. *from a technical point of view*, each perpetrator is the accomplice of others and each participant is the accomplice of the one who applied the more severe blows; 2. *from the practical point of view*, it is impossible to determine the role of each person; 3. *the plurality of perpetrators increases the danger* of the act and it could not be admitted as an action of many perpetrators.

In case of offenses at fault, the adopted solutions were different.

Participation through negligence takes into account situations of criminal liability for the deed of another. Although the principle of personal liability for committing a crime is established, there are situations in which its application must be nuanced (e.g. the employer's liability for the offenses committed by the employee). Practically, in such situations, there is a presumption of criminal liability of decision-makers for the deeds of those in their subordination, provided that the subjective conditions are fulfilled.

Participation by understanding exists when, for the commission of one or more offenses, there is an agreement between the perpetrators. Depending on the mode of the established understanding, this type of participation is classified into a *simple understanding* (the so-called complicity) and *enhanced understanding* (the so-called organized crime).

The French law recognizes, by way of exception, the notion of moral (intellectual) author, punished in principle for complicity by provocation. Sometimes, however, he is sanctioned in an autonomous manner as a true materialist perpetrator. For example, in case of genocide, both the perpetrator and the person responsible for committing the offense are punished in the same manner. Otherwise, the moral author is punished as a co-author of a crime. There are also situations when the moral author may be more severely punished (the one who coordinates or organizes a drug trafficking group).

The complicity act is an add-on to the act of author, lending its criminality (the theory of loan crime). Thus, for the existence of complicity in French criminal law, it is necessary to have a principal punishable act, that is, to be provided by the criminal law and to constitute an offense.

As regards the obligation to commit a crime, under French law, there must be taken into account the tripartite distinction between crimes, offenses and contraventions. Complicity in crimes and felony is always punishable, even in the case of unintentional felony [2].

As regards the relationship of the main deed with the author and accomplice, it must be stated that it is punishable the complicity, if there is an act having the object of a punishable act, even if the author benefits from a personal cause of non-liability.

The act of complicity, being related to the main act, and not to the offender, the absence of repression as regards the author, has no effect on the penalty of the complicity act.

Also, the French jurisprudence has also decided that the change of legal classification of the main author does not influence the legal classification of the accomplice.

The French doctrine indicates two cases of complicity: *instigation and help or assistance*.

Previously, the French Criminal Code provided for instigation and aid or assistance and the provision of means as a means of complicity.

Accomplice by instigation can take two forms: *the challenge and the provision of instructions*. They must be consumed, to consist in a positive act, to be prior or concurrent with the offense.

Although the French legal literature claims that there can be no complicity in the case of offense by negligence, the jurisprudence admits cases of complicity to unintentional crimes (for example, in the case of murder by imprudence or in the case of misleading advertising).

Regarding the moment of intent in the person of the accomplice, it must be concomitant with the provision of instructions or providing help or assistance.

2. The Dutch criminal doctrine shows that participants in the commission of a crime can only be held criminally liable, if the acts of participation are committed intentionally. The acts of participation are considered to be acts of those who, through gifts, promises, abuse of authority, violence, coercion, misleading, creating an opportunity, making available the means or information that provoke the perpetration of the deed.

The punishment of participation acts is governed by the diversification system, providing for offenders a reduction of one-third of the maximum of the basic punishment set for the offense. In the case of offenses punishable by life imprisonment, the punishment of the participants will be of 15 years. The complementary punishments will be the same for the participants [3].

3. The Belgian criminal doctrine enshrines the criminal participation in a distinct chapter, entitled "*On the Participation of Several Persons for committing the Same Crime or the Same Offense*" (articles 66-69).

It should be pointed out that, from the wording of art. 66 the Belgian legislator applies the system of dividing the penalty punishment, both for acts of authorship and co-authorship or instigation. Also included in this category are complicity acts by providing indispensable help for committing the crime or offense.

According to art. 67 it shall be punished as accomplices those who have knowingly acquired weapons, instruments or any means which have served to commit the crime or offense which have helped or supported the perpetrators of the crime or offense.

Also, according to art. 67 Criminal Code there are believed to be accomplices and punished as such, also those who know the criminal conduct of those who committed robberies or violence acts against the state, public order, person or property, offered them accommodation, a place of retreat or a meeting. As regards the punishment for complicity, art. 69 of the Belgian Criminal Code, the law provides that they will be inferior to those applied to that crime or offense.

Thus, we note that in the case of acts assimilated as authorship, there are included both authorship (co-authorship) contributions and instigation or complicity, all of which are subject to the same punishment (the system of legal diversification). Concerning complicity, it includes a number of contributions that can be categorized as instigating (giving instructions), but also complicity (procurement of weapons, instruments, means, etc.). In addition, those who commit acts of posterior complicity (favoritism) are appreciated as accomplices. All of them are subject to penalties lower than those prescribed for authors (the system of legal diversification).

4. The Luxembourg Criminal Doctrine emphasizes that participation only exists in the case of committing crimes and felonies, and that the offense must have been consumed or left in the attempted phase [4].

The criminal treatment applicable to accomplices is more favorable than that applied to the perpetrators. Thus, a convicted offender is punished with a lower degree of punishment compared to the case of the perpetrator. The punishment applicable to accomplices may not exceed two thirds of that applicable to the perpetrator.

5. The Scandinavian criminal doctrine shows that offenses are conceived as having a single author. However, sometimes more people can co-operate in committing a crime in various ways. The Danish and Swedish criminal codes contain general provisions providing for punishment in case of complicity. The Norwegian code does not contain such provisions, but complicity is incriminated in the special part, in the incrimination text of many acts. The lack of provision of complicity in the rule of incrimination leads to its non-punishment. However, in certain circumstances, the punishment can also be applied to those who have contributed to the crime by the perpetrator. For example, in the case of murder by imprudence, it can be detained in the task of the person who puts his car at the disposal of a person who, in an advanced state of drunkenness, kills a person in a traffic accident. Both intentional and involuntary complicity can be punished.

In the case of complicity through imprudence, it is necessary for the deed to be incriminated in the case of imprudence. As far as the intentional element is concerned, it is not necessary for every participant in the offense to have the intention of committing it himself, and his contribution is sufficient to have known that another person will commit the offense.

In the Danish and Norwegian law, the failure of complicity can also be punished (for example, a person tries unsuccessfully to convince another person to commit a crime). In the Swedish law, the attempted complicity is punished only in a few cases expressly provided.

6. The Finnish criminal doctrine treats criminal participation in a common chapter alongside the attempt (chapter 5), entitled "*The attempt and the Complicity*".

The Finnish Criminal Code also incriminates the moral author (the mediated author) in Section 4, entitled "The commission of an offense through an agent", the person committing an intentional offense using another person who cannot be punished for the offense due to lack of discernment, intention or other grounds related to the conditions of criminal liability. This mediated author is punished as the author.

7. Spanish criminal doctrine does not define criminal participation. Art. 28 Spanish Criminal Code defines the author as the one who executes himself the deed or with others, or the one who uses it as an instrument. Instigation is also considered to be an authorship form. Thus, it is the author and the one that causes another to execute the deed, but also the one who cooperates in the execution of the deed through an act without which the deed could not have been executed. The accomplice is defined as the person who contributes to the execution of the deed through previous or simultaneous acts.

As regards the sanctioning of the participation, the legislator opted for the system of punishment diversification.

8. The Portuguese criminal doctrine defines the accomplice as the one who, in bad faith and in any form, grants material or moral support for the purpose of committing a crime by another person and he is sanctioned with the punishment provided for the author, but attenuated. Also, art. 29, states that each participant is punished according to his guilt, unrelated to the guilt of the other co-participants.

9. The criminal doctrine of Kosovo establishes the criminal participation in a chapter entitled "*Collaboration for committing Offenses*".

Thus, the participation is defined as the joint commission of a crime by two or more persons by participating in committing it or by the substantial contribution brought in any way. The punishment will be applied in accordance with the provisions for that offense.

The complicity is meant also giving instructions, making available the means of committing, the removal of the existing obstacles, the promise given before committing to conceal the evidence of the commission of the offense, the identity of the author, the used means or the profit resulting from the commission of the offense. The coauthor, instigator, or accomplice that prevents the commission of a crime will not be sanctioned.

10. The Japanese Criminal Code defines the author (the perpetrator of the offense), the instigator (the one who causes a third party to commit the offense) or the accomplice (who assists the main author).

11. The Polish Criminal Code distinguishes between the material author and the moral author (the one who directs the perpetration of the deed through another person), as well as between the instigator and the accomplice through assistance.

12. The criminal laws in Argentina, Uruguay, Peru, Chile, Venezuela and Bolivia deal separately with authors, primary accomplices (*cooperadores inmediatos*), instigators and secondary accomplices (those who strengthen criminal resolution, giving instructions, help or assist).

Conclusions

The criminal laws of different states distinguish between *author, co-author, complicit, instigator or so-called "encubridores/concealers"* (Spanish Criminal Code) who, knowing of a crime, without having participated as authors or accomplices, intervene after committing it, helping the perpetrator to use the product of the offense, erasing his traces, in order to prevent disclosure or ensuring the escape of the perpetrator.

The definitions of forms of criminal participation are varied, so that through complicity it can be understood either the provided the aid or the assistance, but also the simple promise of aid, or as it can be seen, what in the Romanian legislation is called author of the favoring offense, in the Spanish law is a form of criminal participation.

References

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- [5] Claire de Than and Russell Heaton, Criminal Law (4th edn), Oxford University Press, 2013
- [6] French Criminal Code, Dutch Criminal Code, Belgian Criminal Code, Portuguese Criminal Code, Spanish Criminal Code, Polish Criminal Code.