

# **Indirect perpetration**

## **Abstract**

This diploma thesis deals with the institute of indirect perpetration. First it mentions its historical development, since the acceptance of indirect perpetration was inconsistent in earlier times. Now the principle of accessory criminal liability of the participant applies in our country, and the participant can be criminally liable only if the perpetrator is criminally liable. Back then the opposite principle was applied, namely the principle of independence of the participation. Indirect perpetration was not necessary and was only accepted by such authors who recognized it as another specific form of perpetration. Participation, especially instigation and organization, is very close to indirect perpetration. The indirect perpetrator or a participant, do not fulfil the elements of the offence by their own activity, but they contribute significantly to it. The major difference between them is what person they are instigating. If the person is fully criminally liable and commits the offence intentionally, it is participation, if not, it is indirect perpetration. An indirect perpetrator must be aware that he uses a person that is not criminally liable or at least not criminally liable for specific offence. In addition, he must have the intention to commit his offence through such a person, the so-called “live instrument”. The current Criminal Code contains exhaustive list of examples of indirect perpetration. Indirect perpetrator is a person who uses another person, that is not criminally liable due to lack of age, insanity, mistake, or because they acted under a circumstance precluding wrongfulness, did not act, acted without culpability or without specific intention or motive, if required. All these cases are examined in detail in the thesis, and there are examples and case-law. The author deals with indirect perpetration also in connection with legal persons and describes how one legal person can use the other as a “live instrument”. The main aim of the thesis is to evaluate the current regulation of indirect perpetration in the Criminal Code, to point out its shortcomings and to propose the solution.

**Key words: indirect perpetrator, live instrument, accessory criminal liability of the participant**