

Summary

Indirect perpetration

The concept of indirect perpetration applies when a deliberate crime is committed through a person which is not liable under criminal law for the act (by so-called „live instrument“ or „innocent agent“). Such a person may however be held liable for another offense, but not for a deliberate crime for which she had been used.

In order for an activity to be regarded as an indirect perpetration, the direct perpetrator must have a „dual intent“: to commit an offense and that the innocent agent be not criminally liable. The legislation provides the following examples of indirect perpetration: use of a person not criminally liable for the lack of age or insanity, a person acting under a mistake or in self-defense, extreme emergency or other circumstances precluding unlawfulness or a person which did not act or did not unlawfully culpably, or a person which did not with a special intention or and intention presumed by the law.

Indirect perpetration is in many cases similar to participation in crime (accessory), especially to counseling. The difference between indirect perpetration and participation is that the former involves using a person which is not criminally liable. The similarity between indirect perpetration and participation led some authors to refuse the former concept at the time when the liability of an accessory was independent of the liability of the principal. Following the adoption of the Criminal Code of 1961 which established the principle of accessory criminal liability, the concept of indirect perpetration has become undisputed, even though cases, which could not have been before 1990 regarded as participation due to the principle of accessory criminal liability, would have been regarded as a preparation.

Indirect perpetration was explicitly regulated in criminal legislation for the first time in the Criminal code effective from 2010; it had only been theoretically inferred before.

Some special criminal offenses cannot be committed through indirect perpetration: this includes acts which have to be committed personally by the principal (such as bigamy) and proper commissive acts. The thesis deals with omissive acts as well.

The author deals in detail with individual cases of indirect perpetration, as well as with its relationship to the direct perpetration, preparation, attempt, complicity and in particular participation of which the legal regulation is considered substandard.

Listed are some types of mistakes characteristic for indirect perpetration. The final section of the thesis contains a short overview of selected international arrangements.