

Abstract

The submitted rigorous thesis comprehensively deals with the institute of participation in the offense in Czech criminal law (hereinafter referred as „complicity“). The thesis particularly focuses on *de lege lata* interpretation of the complicity, i.e. on existing legislation, Act. No. 40/2009 Coll., Criminal Code. The text contains numerous proposals *de lege ferenda*, which results from the critical approach to current regulation of the complicity in Czech legal system.

The participation is a traditional and complicated topic of the criminal law doctrine. The issue of criminal liability for participation in the offense is one of the most complicated issues of criminal law theory and practice. The complexity of problem stems primarily from the fact, that the institute of complicity prohibits a conduct, which is not ordinarily directly fulfilling the basic elements of the crime offense. Therefore it is necessary to derive the actions of an accomplice from the actions of an offender, who always (at least partially) fulfils those basic elements of the crime. We can also say that similarly, depending on the different systems of complicity, the criminal liability of accomplice is more or less based on the criminal liability of offender. The work is divided into seven chapters, which are further subdivided.

Initially we deal with the terminology. We distinguish between so called eventual (facultative) and necessary (obligatory) complicity, complicity in its narrow and broad meaning, and at last we deal with the term of criminal cooperation, which we propose to replace with the term „related crimes“. This replacement should be reflected in the legislation as well (e.g. „Some other forms of criminal cooperation“ in Chapter 8, Head X. of Criminal Code).

Next, we discuss the institute of complicity from the general theory point of view. We mention possible legislative concepts that are known from other legal systems of continental Europe (differentiate model vs. unitary model), we provide an overview of theories dealing with the criminal liability for participation

in the offense, including not only the causal theory and theory of accessory, but also a theory dominating in Italian doctrine (so called theory of plurality of basic elements constituting the crime). Afterwards we deal with the issue of so called material (physical) and moral (psychological) complicity while concentrating on determination of criminal liability minimal coefficient.

The main part (fourth) of the thesis is devoted to a thorough analysis of Czech legislation *de lege lata*, where we as well discuss the reasons for the punishment related to the individual forms of complicity. We deal in detail with the specific manifestations of help, guide and organization. Within the chapter we criticize in particular high level of strictness according to the accessory, on which the Czech Criminal Code is built, and the existence of the institute of organizer. The new Czech Criminal Code practically copied the provisions on complicity from the previous socialistic Criminal Code from 1961, which was effective until December 31st, 2009. From our point of view, the new Criminal Code could be called as missed opportunity.

There is a chapter on the weight and seriousness of complicity behavior included in at the end of discussion about complicity's various forms. The examples that are mentioned show that less serious forms of complicity in general might in particular case be more serious than most serious ones in general (e.g. a help more serious than a guide). The complicity itself might be more serious than the act of committing. That is the rule in the case of an organizer. The discussion on the seriousness is followed by the fifth chapter dealing with the punishment of complicity.

In sixth chapter we discuss some specific issues. First we focus on the institute of an agent provocateur from the substantive point of view. Unlike the majority of current doctrine we incline to the application of the conclusion of the criminalization of complicity even in case of the agent provocateur, and therefore to his/hers impunity. Furthermore, we deal with the basic elements constituting the crime of the participation in an organized criminal group, which are according to our opinion constructed

incorrectly and that leads to its inapplicability in practice. Finally, we discuss the complicity in relation to the criminal liability of legal persons, which unfortunately is not included in the new Act on criminal liability of legal persons.