

Summary of the doctoral dissertation

Criminal liability for incitement, aiding and abetting in German, Polish and Austrian law. On similarities and differences.

The subject of the dissertation is to compare criminal liability for incitement and complicity in German, Polish and Austrian law. The inducement for this consideration was the observation that in each of the countries mentioned, criminal complicity was regulated based on a competing theoretical model despite the emergence of criminal legislation in a similar place and time. In addition, it has been shown that there have been legal solutions to criminal complicity in the respective countries for decades, which have not fundamentally changed, and yet many vital issues are contested. The topicality of the issue is also influenced by the fact that, despite the passage of years since criminal codes have been binding, the respective institutions related to criminal complicity are interpreted differently. This state of affairs means that the defendant's conduct can be classified differently not only in Poland, Germany and Austria but also within one country. In such circumstances, the implementation of the guiding principle of criminal law, i.e. *nullum crimen sine lege* and the principle of legal certainty, was seen to be infringed. Furthermore, the doctrine attempts to assign a legal qualification of the act contrary to the actual areas of application of the criminal complicity provisions, which also goes against the above-mentioned legal principles.

A comparison of the Polish legal regulations on criminal complicity with those in force in Germany and Austria has made it possible to see how certain disputed cases in the science of criminal law are classified in the countries indicated. The above, in turn, allowed for a better understanding of domestic constructions to correctly apply them and assign an appropriate legal classification, which has not been analysed from this perspective so far.

With the above in mind, the dissertation tested the following specific research hypotheses: - if the direct perpetrator is extraneous, neither he nor any person acting in concert with him is liable for the individual offence; - inducement or assistance to a person in error constitutes either perpetration or incitement or aiding and abetting, depending on the excusability of the mistake on the part of the person performing the acts of execution; - where

there is no intentional equivalent for the prohibited act, a person who induces or assists another person to commit the offence and in so doing misleads that person as to the circumstances constituting the feature of the prohibited act or takes advantage of the fact that the person is under the influence of such a mistake, even if the mistake is unjustified, shall be liable as a perpetrator; - in the case of so-called inappropriate incitement and aiding and abetting, the absence of accountability for accessorial liability does not prejudice the lack of accountability of the instigator and the abettor in general, since in certain cases they may be liable as perpetrators; - in the case of proper incitement and aiding and abetting, classification shall be on the basis of the provision sanctioning the intentional type of a prohibited act, even if the direct perpetrator has acted unintentionally.

The issues discussed successively in the dissertation served to verify the indicated hypotheses, as detailed in the introduction of the research. In the first chapter, the theoretical assumptions on which the Polish, German and Austrian rules on criminal cooperation are based, are presented and compared with the letter of the applicable law. Chapters two, three and four analyse *de lege lata* the current legal regulations on solicitation and facilitation of a prohibited act in Poland, Germany and Austria, respectively. The possible forms of qualification of the defendant's behaviour are presented first. The following part discusses the issue of whether or not the conduct of inducing another person to commit a criminal act and facilitating the commission of a criminal act constitute separate offences, taking into account the issue of unlawfulness and the legal good targeted by the conduct of the abettor and the facilitator. Next, the substantive and subjective features of incitement and aiding and abetting in Poland and Germany, as well as perpetration by incitement and perpetration by contribution in Austria, are discussed. The issue of liability for behaviour consisting of inciting and facilitating the commission of a criminal act that has not reached the stage of commission, remaining at the earlier stages of the procession of the offence, and the limits of punishment for incitement and aiding and abetting are presented next. The considerations of the second, third and fourth chapters made it possible in the fifth chapter to compare the scope of the criminalisation of incitement and aiding and abetting (perpetration by incitement and perpetration by aiding and abetting) using the example of intentional homicide in the basic type and manslaughter.

The dissertation mainly draws on recent case law and the latest views of the doctrine of the countries in question, which is definitely an added value to existing studies on the subject. The research was carried out using the formal-legal method and legal hermeneutics. The current legal regulations on criminal complicity in Poland, Germany and Austria are analysed. In

addition, a historical method was used, especially in the context of comparing the legal predecessors of the regulations sanctioning incitement and aiding and abetting and the older case law. The legal-comparative method was of primary importance for this dissertation, which made it possible to compare existing legal regulations and doctrinal views. The above made it possible to see similarities and differences in criminal liability for incitement and aiding and abetting in Poland, Germany and Austria, to compare criminalisation's scope and verify the veracity of the research hypotheses formulated.