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**THE VALIDITY OF CRIMINAL LAW WITH REGARD TO PLACE AND TIME IN PARTICULAR WITH PARTICIPATION**

Dealing with the validity of criminal law with regard to place and time in particular with participation is typically not very common at least among states of southeast Europe (the Balkans) and certainly not in Slovenia (neither before the breaking apart of the former common Yugoslavia in the early nineties of the last century, nor during the independence of the state). In the history of these states one typically can’t find special legal grounds on place and time of the participating act nor on the validity of criminal law with regard to place and time in particular with participation. According to available sources there is no special interest on this topic among criminal legal theoreticians or at least no extensive scientific publications, dedicated to this special topic. It seems that the theoretical principle, called accessority of participation is understood rigidly as a self evident sufficient legal ground also for place and time of participating acts and the validity of criminal law with regard to place and time in particular with participation.

Criminal codes, sometimes called penal codes in their general parts in prominent titles traditionally define the place of perpetration (commission or omission). This means on the definition level, that it is done for the perpetrator exclusively. The place of perpetration is - for the perpetrator - typically defined according to the so called ubiquity theory of the place of perpetration: the place of perpetration of crime is the place, where the perpetrator was active or should have been active as well as the place, where the forbidden consequence occurred. Usually special norms are dedicated to the place of the attempt of crime. For the participant there typically are no special provisions, including no general provisions on applicability of norms for the place of perpetration also for participants or similar legislative approaches.

Very similar is the legal situation regarding the time of perpetration. It is defined for the perpetrator exclusively and bound to, according to the so called acting theory of the time of perpetration, to the moment, when the perpetrator was active or should have been active, that is with no regard of the moment, when a possible given forbidden consequence occurred. For the participant there typically are no special provisions, including no general provisions on applicability of norms for the time of perpetration also for participants or similar legislative approaches.

Under the legality principle the perpetration in legal texts is not to be interpreted in such a wide sense, that it can cover participation. Those two terms are in codes typically very clearly distinguishable as well as distinguished and defined narrow enough, that no terminological mixing- and substitution-tricks in interpretation are allowed.

Participative act upon definition is not perpetrative. *Per definitionem* it is not causal or at list it is not of the same kind causally connected with the forbidden consequence (when it appears). It is born and lives its own life next to the perpetration or (in the case of unsuccessful instigation) instead of it. This is true although accessority of participation is today almost universally accepted in criminal legal theory and codifications around the world. In theory as well as in codified law it is obvious, that participation in relation to perpetrative acts is in so many senses a world of its own.

Participative act is typically performed in another time and on another place, than perpetrative and even more obvious than the forbidden consequence, when we have to deal with it. At the classical, that is successful instigation the time of the participative act is upon definition before the time of the perpetrative act - they can never overlap. It is obvious, that the problem of at least the time of participation in relation to the time of perpetration inherent to the phenomenon of participation. It is inevitable. This is not some abstract, dogmatic, marginal question, but a first class theoretical problem of one of the most important institute of the general part of substantive criminal law in modern theory as well as judicial practice.

Of course in all forms of participation and especially in instigation the distance in time and space between the participative act and the perpetrative act (and even more the forbidden consequence, if present), can be huge. It can involve different state borders and several changes of law during time. It is of greatest importance of the applicability of statutes of limitations (for the participant) and obviously fundamental to the legal security of the participant as a potential accused in a criminal case. That is why it really surprises, why so many legislations and criminal legal theoreticians stick as self evidently necessary for such a long time so rigidly to the accessority of participation also regarding the validity of criminal law with regard to place and time. When somebody in the center of Ljubljana, the capital of Slovenia, for instance is making a phone call to Afghanistan, ordering a terrorist attack there and this attack is attempted with one year delay, according to this perception of accessority the caller is acting in Afghanistan and in one year time. Is this really so self evidently correct? Is there enough legal ground in the given penal codifications for such a conclusion?

We are confronted with a very interesting case of potential undernorming in the sense of lack of legal norms, regulating very basic questions of the general part of substantive criminal law in several states. Slovenian legislator is at this very moment examining some possible changes of the place and time of participative act in the Criminal Code. Comparative criminal law science is heavily provoked here and it seems that there is high time to find adequate solutions in criminal codes and even more urgent in theory of so many states, including Slovenia. Perhaps a pointed scientific comparison between the (theory of) general parts of the substantive criminal legal systems of Slovenia and Ukraine could be a productive good start in the given direction.