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Review Paper

THE HISTORICAL DEVELOPMENT OF THE INSTITUTE OF COMPLICITYIN CRIMINAL LAW

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Abstract. *Complicity is one of the most complex forms of crime. The paper presents the development of this criminal law institute, starting from the legal sources of the ancient world, the slave-holding society, and the feudal society criminal legislation. The authors also analyze the emergent forms of complicity in the French bourgeois society and German law. In particular, the authors focus on the institute of complicity in the criminal legislation of feudal (medieval) and bourgeois Serbian society, in the Principality of Serbia, the Kingdom of Serbia, and the Kingdom of Yugoslavia. Finally, the authors examine the criminal legislation of post-World War II Yugoslavia and the contemporary criminal legislation of the Republic of Serbia. The aim of the paper is to point out to possible directions for the reform of this very important criminal law institute.*

Key words: *criminal law, co-perpetration, criminal legislation*

1. INTRODUCTION

Complicity exists in case where a criminal offence is committed by several people, i.e. where the prohibited consequence occurs as a result of involvement of several persons (Jovašević, 2006: 659). It is one of the most complex institutes in the field of criminal law. The aim of this scientific study is twofold: on the one hand, to elaborate and explain all important issues in the sphere of relations among several participants who have different roles in the commission of a criminal offence and, on the other hand, to build a theoretical framework which may serve as guidelines for developing penal policy and legal grounds for punishing the participants while remaining within the frame of subjective criminal liability.

The basic question that has been posed for centuries is whether, apart from the perpetrator of the crime, some type of punishment should also be imposed on other

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persons who contributed to the commission of a criminal offence. In other words, what is the legal ground for the accomplices' criminal liability and punishment: does it lie in their own activities or is it to be found in the perpetrator's action which caused the consequence of the crime? It has given rise to another question: does complicity constitute an independent form of criminal liability, or does it rest on the same legal ground that is required in case of an individual perpetrator, which entails the existence of a mental element (*mens rea*) expressed in the form of intent or negligence.

In seeking answers to these questions, different points of view emerged in legal theory, resulting in different legislative solutions. It leads to the conclusion that this relatively simple human act is actually a very complicated criminal law institute.

Russian theorist A. Zhiraviev put forward the following standpoint about complicity: "It seems that it is really impossible to resolve this issue in its entirety, especially in science. The answer to this question is to be found in the field of philosophy; hence, this task has always shared and will keep sharing its fate, that is, it will never be finally resolved" (Jovanović, 1974: 73-74). The institute of complicity was theoretically framed by the classical school of criminal law, but it does not mean that this phenomenon had not been recognized in criminal legislation of earlier times. In accordance with the theoretical concepts presented in this paper, the authors will analyze the development of this institute, starting with the landmark legal documents of the ancient world, the slave-holding society and feudal society, as well as the emergent forms of complicity in the French bourgeois society and German criminal legislation. Finally, the authors deal with the institute of complicity in the criminal legislation of feudal and bourgeois Serbia, the Kingdom of Yugoslavia, as well as in the modern criminal legislation of the Republic of Serbia. The paper aims to indicate possible directions in the process of reforming this very important criminal law institute.

2. CO-PERPETRATION IN THE OLD AGE AND THE MIDDLE AGES

In ancient Mesopotamia, neither the Code of Hammurabi nor its precursors, such as the Code of Ur-Nammu and the Code of Lipit-Ishtar, or the Enshuna City Code (the Code of King Bilalama), contained provisions that regulated punishment for complicity as known in the contemporary legislation. Yet, Article 109 of Hammurabi's Code prescribed that an innkeeper shall be punished if he did not report the criminals found on the premises after the commission of a criminal act. Therefore, Hammurabi's Code did not prescribe punishment for complicity but for not reporting the perpetrators of a crime that had already been committed. The act of concealing a crime did not constitute complicity, but rather a separate offence correlated to committed crime i.e. accessory offence *ex post facto* (aiding the perpetrator after the committed crime). Article 16 of Hammurabi's Code provides that, if a person gives shelter to fugitive slaves or harbours them in his home and does not disclose them when their flight has been publically announced by a herald, such host shall be killed (Višić, 1985: 123). Thus, we can note that there was a concealment of a crime, which was equaled with complicity, while the contemporary criminal law criminalizes it as an independent criminal offence. Collective responsibility is one of the few relics of ancient times which was present in Hammurabi's Code, but to a limited extent. Article 23 of Hammurabi's Code stipulates that, if a robber is not apprehended, the injured person should testify before God about the loss he has

sustained, and the community and the elder of the settlement where the robbery was committed shall compensate the victim's loss (Višić, 1985: 123). There is a notable effect of irrational evidentiary instruments ("testimony before God"), which had probative force in the past. This provision is another bit of evidence supporting the claim that the Oriental legal tradition had given much more consideration to solidarity and fairness than the Western legal tradition (Stanimirović, 2011: 149). Namely, in case the robber was not caught after the committed crime, the Code envisaged the possibility for the injured party to claim damages before God, i.e. to seek redress for everything that had been taken. For such situations, the Code introduced the principle of collective responsibility of villages, settlements and elders of settlements in whose territory the robbery was committed, which were obliged to compensate the injured person for all the damage caused by the committed crime (Nikolić, 1997: 73-75).

The codes of ancient Mesopotamia included transgressions against gods, the secular state as a reflection of the celestial or divine state, transgressions against the family as the basic unit of every society, as well as transgressions pertaining to blood revenge and retribution. Yet, these codes did not provided either legal or logical classification of crimes, nor did they make a clear distinction between civil, criminal, procedural and labor law.

In ancient Roman law, the Law of Twelve Tables (tablets) contains a provision similar to the one in Hammurabi's Code, which reads: " In case the stolen property is found on formal search of one's house (*furtum conceptum*), the punishment is threefold."[1] This provision is about concealing a crime, i.e. accessorial offence.. In Roman law, there is little information about the institute of complicity, and criminal liability was equal for all participants, regardless of their individual contribution. According to the Digest *Ad legam aquiliam*, in case of theft, there was a distinction between giving an ordinary advice and advice with a real effect. In contemporary law, it is comparable to an ordinary contribution in aiding/abetting and a substantial contribution in co-perpetration.

The major Medieval legal documents did not recognize the institute of complicity, but they regulated it indirectly. From the early Middle Ages, we have selected to examine the most significant legal documents: *Russkaya Pravda*, the Salic Law, and *Zakon Sudnyi Lyudem (*the Law on the Trial of People*)*. Given that relevant provisions of the Saxon Mirror (*Sachsenspiegel),* the *Constitutio Criminalis Carolina* promulgated by Emperor Charles V, the Penal Code enacted by Empress Maria Theresa, and the Napoleonic Code *(Code civil des Français)* significantly contributed to further development of the institute of complicity, we will also present some solutions that regulate complicity in these legal documents.

Rysskaya Pravda (Russian Justice/customary law) does not recognize the institute of complicity, but Article 3 is related to the payment of blood money as retribution. Article 3 stipulates that, if a prince's man is killed in a brawl, and the culprit is not found, a fine (blood money) of 80 *grivnas* is to be paid by the municipality on whose territory the head of the killed one has been found. However, a more lenient penalty was prescribed for the killing of a commoner; if a commoner was killed, the penalty was only a fine of 40 *grivnas*, which is half of the penalty prescribed for the murder of a prince's man (Nikolić, 2000: 135-136). In this case, the killer and the members of the "*verva*" (local community)

[1] Zakon XII tablica (*Leges duodecim tabularum*), Retrieved April 17.2020 from http://www.harmonius.org/sr/pravni-izvori/pravo-eu/privatno-pravo/Zakon_12_tablica%20.pdf.

bear the responsibility and compensate for the damage by paying blood money, in spite of the fact that the members of the *verva* did not participate in the commission of the crime. Hence, the community members were considered to be accomplices. Therefore, it can be said that the ancient Russian law always punished accomplices, usually by imposing in the same penalty, regardless of their role and contribution in the commission of the crime. This reflects the application of the principle of objective (strict) liability, which is very rarely found in contemporary legislations and may be said to represent an exception to the principle of subjective (individual) liability. Due to this simplistic view of punishment and the practice of imposing the same punishment to all participants of the committed crime, the legislation of the slave-holding society and the feudal society legislation in the early Middle Ages did not contain provisions regulating complicity in its entirety but, in this period, complicity was based on some kind of cooperation with the perpetrator, which was not intentional and malicious, and was not the cause of the commission of crime.

The Salic Law or ancient Salian Frankish law prescribed a fine for a murder committed by a criminal band (gang), as well as in drinking binges. Article 42 of the Salian Law states that, if one gathers a robbery gang, attacks a free man in his house and kills him there, particularly if the killed person belonged to the king's entourage, he was sentenced to pay 72,000 denars (1,800 solids/shillings). If the person did not belong to the royal palace but was in the service of the king, the murderer had to pay 600 solids. However, if three or more wounds were detected on the body of a murdered man, the first three gang members who were found guilty of murder had to pay 600 solids, the next three members were to pay 90 solids, and the other three members had to pay 45 solids (Nikolić & Đorđević, 2002: 108). Hence, it may be assume that the amount of fine depended on the guilt of the gang members; given that the highest amount was paid by those gang members who were found guilty of murder, while the other gang members paid less, we may assume that they were not directly involved in the commission of the criminal act. In this case, we can recognize the element of co-perpetration as a form of complicity; co-perpetration exists not only when each of the perpetrators directly commits the crime but also when one of the perpetrators takes other actions that enable and substantially contribute to the commission of the act. Article 42 does not specify the contribution of the second three and third three gang members who have to pay 90 and 45 solids respectively, but the very fact that the fine was prescribed for co-offenders indicates that actions of the other gang members did not constitute direct commission of the criminal act of murder but facilitated the commission of the crime.

Article 43 of the Salian Law provides that, if one is killed in a drinking binge involving five persons, the remaining four persons shall disclose the culprit or they shall all be held liable for death; if there are more than seven persons involved, the punishment will be imposed on those who are proven to be guilty of committing the crime. If a person is killed outside one's home or on the road by a gang of robbers and has three or more wounds, then three gangs members who are proven to have committed the act will be held individually liable for the person's death (Nikolić & Đorđević, 2002: 109).

*Zakon Sudnyi Lyudem (*Law on the Trial of People, Law for judging ordinary people) from the 9th century is one of the earliest collections of Slavic law and the most important source of law in medieval Russia, which was subject to ample modifications with the aim

of affirming and strengthening Christianity as a newly adopted religion.[2] When it comes to complicity, in most medieval legal texts, this institute was regulated in a similar fashion; thus, if a number of persons contribute to the commission of a crime, or cause the consequences of the crime, they shall bear criminal liability together (jointly). Article 3 of this Law (on the distribution of loot and spoils of war) is interesting because it is not a legal norm in the formal sense: it contains a disposition but does not include a sanction; it is more like an instruction, a recommendation, or even a war custom that was not sanctioned. In particular, Article 3 of this Law prescribed that loot and spoils of war were to be distributed to all participants in the battle, including the senior rank officials, who may be considered to have been accomplices in the war campaigns, as they pursued the same goals. Thus, the prince received one-sixth of the spoils of war, but the soldiers from the ranks of serfs or ordinary soldiers who demonstrated great courage, heroism or valor in battle could receive an additional reward from the prince's one-sixth of war gains. This article shows that fairness was a hallmark of that era, considering that each warrior was evaluated and received a portion of the spoils of war on the basis of his contribution and conduct in battles. The provision did not include a sanction for not respecting this customs of war, which reflected the solidarity and fairness of the time, by envisaging that anyone who contributed to the state received a due portion of war gains. Thus, it may be said that the particular legal provisions on complicity can be found in the landmark legal documents of medieval Serbia, which will be presented in the next part of this paper.

3. Complicity in the Law of Medieval Serbia

The most important legal document of medieval Serbia, Emperor Dušan's Code, did not recognize the institute of complicity, but the Code explicitly prescribed punishment for property crimes, the most common of which was robbery, which was typically committed by several persons acting in complicity.

Article 145 of Dushan's Code ("On Brigands and Thieves") strictly prohibits the activities of robbers and thieves in all lands, cities, villages and parishes[3]. Robbers were sentenced to death by hanging, and thieves were blinded. Interestingly, the Code also prescribed the responsibility of the village elder, in whose territory the thief or robber was located, who was obliged to pay for any damage caused by the robbers and thieves. In this case, the village elder did not participate in the commission of the crime but was obliged to pay for any damage inflicted by the robbers and thieves; therefore, it can be said that he was responsible as if he had been complicit in the commission of the act. Generally speaking, in this period, the law generally envisaged equal punishment for all accomplices and possible accomplices, regardless of their role or individual contribution to the commission of crime or the occurrence of socially dangerous and forbidden consequences. The equal punishment of all participants in the commission of a crime is the reason why the law did not prescribe specific provisions that would regulate complicity in its entirety, or some of its forms.

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[2] See more in: Nikolić and Đorđević, 2002

[3] *Dušanov zakonik* (Dushan' s Code), Retrieved April 17.2020 from http://www.atlantaserbs.com/learnmore/library/DUSANOV-ZAKONIK.pdf,

Article 69 of Dushan's Code ("On Commoners") addresses the congregation of *Sebras* (common people, subjects, subordinate population in medieval Serbia) in public assemblies (council) and stipulates severe punishment for participants and "impellers" of this offence: "Commoners shall have no Council. If one meets in council, let his ears be cut off, and let the impellers be parched on the face". In contemporary law, *impellers* may be equaled with instigators or inducers of crime. Thus, we can say that our oldest legislation contributed to the development of the institute of complicity.

Article 132 also mentions abettors in the criminal offense of theft, which shows that Dushan's Code comprises the first traces of the criminal law institute of incitement. Some authors believe that the above cases entail aiding and abetting (counsel and procurement) rather than incitement or inducement; we cannot agree with the former because we believe that impellers (as initiators of public assembly and the crime of theft) are more likely to be equaled with instigators or inducers of crime than with aiders and abettors, particularly considering that aiding and abetting is the weakest form of complicity (Tomić, 1987: 94).

Article 146 provides for criminal liability of prefects, administrators or lords of certain territorial units who, although notified of the presence or activity of robbers or thieves in their territory, fail to issue appropriate orders and instructions for their capture and disclosure.

Article 148 provides for criminal liability and public condemnation for persons who disobey an act or an imperial court order with regard to the prosecution and punishment of the perpetrators of robbery or theft.

The term 'co-operation' is first mentioned in the Saxon Mirror *(Sachsenspiegel),* the most famous compilation of customary law of the 13th century Germany, which envisaged equal punishment for thieves, robbers, persons who harbour them, and other persons who co-operated with them by providing assistance or advice. Thus, under Dushan's Code, the omissions of prefects, administrators and lords of certain territorial units to issue orders and instructions that would facilitate the disclosure of criminal acts of robbery and theft are most likely deemed to have been a kind of "co-operation" and assistance; thus, the lords of these territories were held criminally responsible for these omission and obliged to compensate all damage caused by robbers and thieves.

In other words, the legislation of medieval Serbia still made no distinction between the emerging concept of complicity and an accessorial offence, which is an independent criminal offence, separate from but closely related to complicity. Today, complicity and accessorial offences *ex post facto* (aiding the perpetrator after the committed crime, by warning or harbouring the offender, dishonesty or trickery to prevent arrest, etc.) are two separate criminal offenses, but the intertwining and overlapping of complicity and accessorial offences persisted until 1768, when the Austro-Hungarian Penal Code was enacted under the auspices of Empress Maria Theresa. It was for the first time in the criminal law history that a legislative act envisaged ***causation*** as an objective criterion for distinguishing complicity from accessorial liability of the accessory *ex post facto*. Pursuant to Maria Theresa's Code, complicity exists only if there is intentional and malicious co-operation of the accomplices involved, which motivated and caused the commission of the criminal act.

4. The Napoleonic Code and the Laws of the Uprising Serbia in Light of Regulating the Institute of Complicity

The French bourgeois revolution marked a special stage in the development and regulation of the criminal law institute of complicity. Yet, the activities of the instigator and the accomplice were for the first time clearly defined in the Napoleonic Code *(Code civil des Français,* 1810).

According to the Napoleonic Code, the instigator is considered to be a person who induced the perpetrator to commit the crime by promise, gift, threat, order or direct incitement to commit the crime by means of a public speech, a poster or a leaflet. The accomplice is any person who has procured the means, weapons or instruments by which the crime has been committed. It follows from these definitions that the instigator and the accomplice are subject to criminal liability only for the committed criminal act and not an attempted criminal offense. Under certain conditions, the instigator and the accomplice may incur the same penalties for their actions as in case where the consequence is caused by the direct action of the perpetrator. Thus, the Napoleonic Code contributed to developing the subjective aspect of complicity. According to this Code, an accomplice is any person who undertakes an activity knowing that it contributes to the commission of a criminal offence.

In this period, the Serbian legal history engendered two important criminal law documents; The Criminal Act of 1804, written by Archpriest Mateja Nenadović, and Karađorđe's Criminal Code of 1807, both adopted during the First Serbian Uprising (1804-1813), the struggle for independence led by Đorđe Petrović- Karađorđe.

Article 3 of the 1804 Criminal Act prescribed the theft of lambs, pigs or horses. This kind of theft can be cover or overt, committed by day or night, by one person or by a criminal group (several persons), whereby the law does not distinguish different forms of punishment depending on the conditions and circumstances under which the crime was committed (Zdravković, 2008: 72). In Article 3 of this Act, we may notice that the institute of complicity was regulated in an indirect manner, without specifying any circumstances under which the offense is considered to be committed or the contributions of each persons involved in the commission of this criminal offence.

Article 34 of Karađorđe's Criminal Code (1807) prescribed corporal punishment by beating for the criminal offence of aiding a robber. Under the Code, this offence is committed by a person who gives food to a robber or an outlaw, and fails to report him to the village authorities.[4] Thus, criminal liability was envisaged for assisting persons prosecuted for committing the crime of robbery (Novaković, 1907). Article 36 of this Code prescribes the activities that constitute the act of aiding and abetting (accompliceship) as well as the act of inciting or inducing a crime. Moreover, this Article prescribed criminal liability and punishment for inciting/inducing other persons to commit the criminal act of brigandry. This act may also be committed by a person in position of power (a community elder, a judge or some other government official) who instigates others to join the outlaws and rob people, and give the stolen property to him. In such a case, this person is considered to be the direct perpetrator (rather than an instigator and accomplice). The prescribed punishment for such a person is the same as the one prescribed for the direct perpetrator (outlaw or brigand); it is corporal punishment by beating the offender on the arms and legs, and then capital punishment by crucifying the offender on the wheel (Zdravković, 2008: 73).

[4] See: Karađorđev kriminalni zakonik 1807 (Karadjordje's Criminal Code,) Retrieved 18 April 2020, from http://www.smrtnakazna.rs/Portals/0/SrbijaPropisi/Karadjordjev%20Kriminalni%20zakonik,%201807.pdf

5. COMPLICITY IN THE CRIMINAL LEGISLATION OF THE PRINCIPALITY OF SERBIA, THE KINGDOM OF SERBIA, THE KINGDOM OF YUGOSLAVIA, THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA, AND THE REPUBLIC OF SERBIA

The systemic designation of complicity in Serbian criminal legislation was engendered by enacting *the* 1860 *Penal Code of the Principality of Serbia*. Chapter 3 of this Code (titled "On Accomplices") defines the acts of incitement and aiding/abetting as forms of complicity. Under Article 46 (paragraphs 1 and 2), an accomplice in a crime or transgression is: 1) "who, by gifts, promises, threats, abuse of authority or personal dignity, fraud or otherwise, persuades or induces another to commit a crime or transgression; 2.) who instructs a culprit how to commit a crime or transgression, who procures the culprit with a weapon, a tool, or any other means that is to be used in the commission of a malevolent act, knowing that it will be used for that purpose, and who knowingly assisted the culprit, by which the malicious act has been prepared, facilitated, or perpetrated."[5] In effect, paragraph 1 defines incitement as a form of complicity, while paragraph 2 defines an act of aiding and abetting.

Speaking of the difference between the instigator and the accomplice, in his *Commentary to the 1860 Penal Code*, Đ. Cenić (1866)[6] notes: "An accomplice differs from an instigator insomuch as the instigator conceals his evil intent and seeks another to bring it to effect, while the accomplice has done nothing to incite evil intent in another; he only approaches the person with whom the evil intent has already been conceived, to assist him and to execute his intention, and if that person forfeits to bring the deliberate act to completion, he withdraws with all his help. He will not ask another to do the intended act, as the instigator would do in case of one accomplice's refusal, by asking another to help him do his evil intent, nor does he have any other interest in the commission of the act but for holding a grudge, craving for the misfortune of another, or hating the one who the evil act is aimed at, or as an act of love and loyalty to the perpetrator "(Marković, 2017: 58, fn. 242).

In his monograph *the Criminal Code of the Principality of Serbia*, D. Nikolić (1991)[7] points to the accomplice's liability. Thus, under Article 47 (para.1), "an accomplice in a crime or transgression shall be punished in the same way as he would have been punished had he committed the act himself. But, when the law imposes death penalty for a crime and it is proven that the accomplice's acts set forth in Article 46 (para.2) were not such that no crime would be committed without them, then the accomplice shall be punished by long-term imprisonment, and if there were some mitigating the circumstances, he shall be sentenced to a term of imprisonment from 2 to 10 years".[8]

The chapter on complicity ends with defining the scope of liability. Thus, Article 52 of the Penal Code of the Principality of Serbia prescribed as follows: "The act of the culprit or an accomplice which is deemed to be culpable or justifiable shall not be taken into account in adjudicating other culprits or accomplices of the same crime, where such an act does to not exist". Under specific conditions, Article 47 of this Code provided for a

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[5] Krivični zakonik Kneževine Srbije 1860/*Казнителнији законик за Књажевство Сербију 1860.godine* (Penal Code of the Principality of Serbia), Правителственој печатњи, Београд , Retrieved April 18, 2020. from http://www.smrtnakazna.rs/Portals/0/SrbijaPropisi/Kaznitelni%20zakonik%201860.pdf

[6] See: Ђ. Д. Ценитъ /1866/*: Обясненъ Казнителногъ законика за Княжество Србію*, Београд,

[7] See: D. Nikolić /1991/: Krivični zakonik Kneževine Srbije, Niš,

[8] Penal Code of the Principality of Serbia, 1860

more severe punishment for aiding and abetting the offender. This austerity was mitigated by the provisions in Article 52 (Živanović, 1967: 464-465).

Article 34 of *the Criminal Code of the Kingdom of Yugoslavia* (1930) includes a provision incitement and aiding and abetting. Article 34 (para. 3) of this Code states that "whoever intentionally assists another in the commission of a crime may be subject to a less severe punishment."[9] Unlike the previous one, this Code does not enumerate particular forms of assistance, but emphasizes the accessory nature of aiding and abetting in relation to the principal criminal act and upholds the mitigation of punishment.

In the 1947 *Criminal Code of the Federal People's Republic of Yugoslavia* (FPRY), Article 24 of this Code enumerates the specific forms of assistance, stipulating as follows: "Whoever intentionally assists others in committing a crime, in particular by giving advice, instructions, making means and resources available, and removing obstacles to committing a crime, as well as by the promised concealment of the criminal offence, concealing the instruments used in the commission of the crime, the traces of the crime or the items obtained by the commission of the crime, such person shall be held criminally liable as if he had committed the crime oneself." Notably, the scope of liability for the commission of this criminal offence was provided in Article 26 (para. 1), which reads: "The instigator and the accomplice shall be held criminally liable depending on their intent and the extent of their contribution to the commission of the crime", including the possibility of being released from punishment if they prevent the commission of the crime or the consequences thereof (Article 26 para. 2).[10] However, the most significant feature of this Code is the absence of a provision on reducing the sentence and mitigation of punishment for the accomplice. The amended Criminal Code of the FPRY of 1951 introduced the provision which stipulated that, if the criminal offence was only attempted (but not committed), the instigator and the accomplice shall be held liable and punished for the attempt (Article 16 CC of the FPRY).

The *Criminal Code the Socialist Federal Republic of Yugoslavia* of 1976 upgraded the previous code, but the major novelty was the explicit regulation of *co-perpetration* . It was the first time that this concept was explicitly defined in our legislations. Thus, Article 22 of this Code stipulated: "If more than one person participates in the commission of a criminal offence or otherwise jointly commit a criminal act, each of them shall be punished by a sentence prescribed for this crime. "[11]. Notably, in Chapter 2 , section 3 ("Complicity in crime), the legislator provided relevant punishment for different forms of complicity: co-perpetration (Art. 22), incitement (Art. 23), and aiding (Article 24).

The *Criminal Act of the Federal Republic of Yugoslavia* (FRY) of 1992 is the transposed and renamed Criminal Code of SFRY, which includes the same concept of *co-perpetration* and the same classification of different forms of complicity.[12]

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[9] Krivični zakonik Kraljevine Jugoslavije (Criminal Code of the Kingdom of Yugoslavia), entered into force January 1, 1930, Državna štamparija Kraljevine Jugoslavije, 1931.

[10] Krivični zakonik Federativne Narode Republike Jugoslavije (Criminal Code of the Federal People's Republic of Yugoslavia , hereinafter: FPRY), *Službeni list FNRJ*", br.. br.. 106/1947, i 13/1951.

[11] Krivični zakonik Socijalističke Federativne Republike Jugoslavije (Criminal Code of the Socialist Federal Republic of Yugoslavia, hereinafter: SFRY), „*Službeni list SFRJ",* br. 44/76-1329.

[12] Krivični zakon Savezne Republike Jugoslavije (Criminal Act of theFederal Republic of Yugoslavia/ FRY) „Službeni list SFRJ", br..44/76-1329.. 54/90-1773 i "Službeni list SRJ", br. 35/92-651….61/01)

A major change in the legislation was the adoption of the *Criminal Code of the Republic of Serbia* on 29 September 2005, which entered into force on 1 January 2006, which was subsequently amended and is still applicable in the Republic of Serbia. [13]

Generally speaking, pursuant to the Criminal Code (CC) of the Republic of Serbia (2006), we can distinguish three groups of persons who may participate in a criminal offense: 1) the perpetrator (direct perpetrator, indirect perpetrator and co-perpetrator); 2) accomplices (including instigator, aider and abettor); and 3) other persons whose contribution to the commission of a crime is not of such quality and intensity that it should be subject matter of response of criminal law. Although the institute of co-perpetration is classified as a form of complicity (Chapter 3, Section 3 "Complicity in a criminal offence", Article 33 CC), the very concept of co-perpetration proves that it would not be quite appropriate to resort to such unilateral classification. In effect, it may be said to occupy an "interspace" between two correlated but separate concepts: complicity and perpetration.

Article 33 of the CC largely clarifies what constitutes co-perpetration, but some questions remain. According to the current Criminal Code of the Republic of Serbia (accessed on 17 April 2020), the definition of co-perpetration reads as follows:"If several persons, jointly participating in the commission of a criminal offence, jointly commit a criminal offence either intentionally/deliberately or negligently and, or substantially contribute to the commission of a criminal offence by undertaking some other deliberate action in order to carry out a jointly made decision, each of them shall be imposed the punishment which is prescribed by law for the particular criminal offence" (Article 33 CC).

This provision reflects two legal situations. According to the first designation, the co-perpetrator takes part in the perpetration, either intentionally (with premeditation) or negligently, thus jointly committing the criminal offense with another co-perpetrator. The second designation is less specific and more difficult to determine in practice: the co-perpetrator undertakes some other action, which does not constitute the perpetration of a criminal act but it is done deliberately and knowingly (with intent) in order to carry out a jointly made decision and substantially contribute to the commission of the crime. Such formulation gives rise to a number of dilemmas in terms of what "other actions" may come into play, what is meant by "a jointly made decision", as well as the need to define the term "substantial" contribution to the commission of a crime. The term "substantial" contribution is another important issue when distinguishing co-perpetration not only from perpetration (commission of a crime) but also from the act of aiding and abetting, which is the least serious form of complicity. Aiding entails an ordinary degree of contribution, whereas co-perpetration entails a more substantial degree of contribution. Given that the fact that the judicial practice has not generated an itemized list of actions that may constitute 'ordinary' or 'substantial' contribution to a criminal act, the thin line between these two forms of complicity can only be designated by pinpointing the meaning of 'ordinary' and 'substantial' contribution.

The latest amendments to the Criminal Code of the Republic of Serbia clearly did not lead to the delimitation of the terms 'ordinary' and 'substantial' contribution to a criminal act. Therefore, it remains for the courts to determine on the merits of each specific case whether the accomplices will be held liable for co-perpetration as the most serious form of complicity, or to determine whether the accomplice's actions constitute substantial or ordinary contribution to the committed crime. In case of establishing the latter, it implies

[13] Krivični zakonik Republike Srbije (Criminal Code of the Republic of Serbia), „*Službeni glasnik RS",* br. 85/2005...35/2019).; available at https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html

the criminal act of aiding and abetting, as the least serious form of complicity; it may serve as one of the optional grounds for mitigating the sentence, which is certainly more favorable to the offenders.

6. In Lieu of Conclusion

Complicity is one of the most complex criminal law institutes. It is manifested in several forms: aiding and abetting, incitement, and co-perpetration. The basic theoretical and practical problem in this criminal law institute is to determine the degree of criminal liability of individual accomplices who have contributed to the commission of a specific crime in different ways and to a different extent. The appropriate regulation of this issue is significant both in terms of developing criminal policy and in terms of providing proper punishment for the perpetrators of these criminal offenses within the frame of subjective criminal liability.

The legal position of accomplices has changed through different historical periods. By analyzing relevant provisions of different legal documents, this paper aims to underscore the importance of regulating the criminal liability of accomplices, particularly from the point of view of legal certainty and exercising the principles of general and special prevention.

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Ključne reči: *krivično pravo, saučesništvo, saizvršilaštvo, krivično zakonodavstvo*