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The Accessorial Nature of Participation

In penal systems based on the dualism of perpetration and participation, the punishability of participation generally depends on the crime perpetrated (or at least attempted) by the prime perpetrator (the accessorial nature of participation). The article deals with various aspects of accessoriness (the quantitative and qualitative accessoriness) and the currently topical question in Slovenian criminal law of whether the prime perpetrator's intent should be regarded as a condition for punishability of the participators. The author supports such a limitation on the punishability of participation and critically analyses the regulation of this area in the Slovenian Criminal Code where the subject matter is not handled consistently (an intentionally committed act by the prime perpetrator is a condition for the punishability of aiding and abetting, but not for punishability of instigation). In the conclusion, the author discusses whether the deviation from the principle of the accessoriness of participation which is represented by the punishability of attempted instigation, is justified.

Key words: perpetration, participation, accessoriness, instigation, attempted instigation, aiding and abetting