

Some more complex issues of instigation

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It is generally known that individuals cannot realize their goals by themselves in many areas of human activity but achieve them by associating with other people. This is also true for the area of crime, in which a large proportion of criminal offences are committed on the basis of collaboration of several people. In conceptual terms, criminal law distinguishes various forms of participation in criminal offence and also attributes different effects to different forms. Traditionally, instigation is one of the forms of collaboration in a criminal offence (participation). This form can be defined as intentionally influencing someone to commit an act which has the characteristics of a criminal offence and is unlawful.

This short and concise definition of instigation nevertheless raises numerous further questions with various implications and it depends on their assessment whether an individual will be held responsible as an abettor in a specific case. Answers to these questions derive from the principles of criminal law and criminal policy. In addition to those issues of instigation in which there is a nexus of criminal law and criminal policy aspects, there is also a whole range of questions in which criminal policy considerations prevail. In particular, here belong issues of the framework of punishment for instigation and the culpability of unsuccessful abetting. These two questions are treated in the concluding part of the paper.

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