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GENERAL CHARACTERISTICS OF LEGAL INSTITUTE OF CO-PARTICIPATION IN ANGLO-SAXON CRIMINAL LAW

Abstract

Anglo-Saxon criminal law has roots and has been developed in present-day Great Britain. It turned to be dominant in such a form into majority of states where colonial influence of Great Britain was evident. It is the case with legal institute of co-participation which has specific forms in this system unknown to the continental criminal law systems. The objective of this research is exactly to investigate specific features of the legal institute of co-participation in Anglo-Saxon criminal law system. Basic methods that make realization of this objective possible are comparative, historical-legal, dogmatic and normative method. By implementation of the methods quoted above it has been established that practices in almost all Anglo-Saxon criminal law systems are unequal and inconsistent, since they made steps to deviation from traditional principles of accessory liability. While criminal law practice of Great Britain, by adoption of model of "joint criminal enterprise" deviated from traditional doctrine of accessory liability and expanded liability for acts not included into joint plan, as systems in Australia and Jordan did, practice in the USA, though loyal to traditional idea of accessory liability, is unequal and inconsistent not only within federal level but on the level of certain federal states too. Due to these reasons, a reform of this practice is a necessity of contemporary societies of this system whose primary objective is reaffirmation of the principle of legality in the cases of accessory liability in Anglo-Saxon criminal law.

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INTRODUCTION

The legal institute of co-participation has ever been a complex legal practice that needed special approach and attention both of legal and judicial organs within the procedure of implementation of legal solutions. Both Anglo-Saxon and Continental criminal-legal systems approached to this matter in a similar, but yet different way, regarding the character of their legal systems. The Continental criminal-legal systems clearly standardized conditions of *accessory liability*, obliging proceeding judicial organs in their decision making procedure referring to their guilt. On the other side, Anglo-Saxon criminal-legal systems created their practice procedure by precedents and thereafter confirmed it through time. Anglo-Saxon criminal-legal systems confirmed their general principles and practices both by their practices and practices of other states from the same group of criminal-legal systems, consequently precedent.

Anyway, first among them had the most evident theoretical, even practical significance. English criminal-legal practice is the first state of this order that established basic principles and practices of Anglo-Saxon criminal-legal law, the legal institute of co-participation among them. In Great Britain complicity represents a criminal-legal practice that defines a definite group *actus rea* by which it can be performed and for which obligatory intention of an accessory is issued as a mandatory *mens rea* element of his guilt. Normative act from 1861, by which was established such a relation between the needed objective and subjective elements of accessory liability was dominant through almost a century and was a model for numerous other Anglo-Saxon criminal-legal systems. However, traditional principles of complicity were radically changed in 1985, when, by the adopted precedent, English criminal-legal practices extended accessory liability including outside criminal acts, namely those that were not integral part of "joint plan and objective" of accessories

and perpetrators of a criminal act. In such a way the newly formed idea of accessory liability, known as "joint criminal enterprise", though accepted by other states of this system, did not manage to secure continuity that traditional principles of accessory liability had in that precedent system, and even in 2015 it was outlawed. Nevertheless, even such a short period of only thirty year implementation in this system was sufficient to make an impact on other countries of this group. Among them was one of the biggest states of Commonwealth – Australia, as well as the typical representative of Anglo-Saxon criminal-legal system in Middle East – Jordan, that had accepted the changes of traditional principles of accessory liability and made possible their punishment for criminal acts that were out of joint plan. However, though these states retained those changes, contrary to Great Britain, both of them considerably limited application of this model of accessory liability by precise standardization of conditions. Contrary to them, the legal system of the USA remained loyal to traditional principles of accessory liability in Anglo-Saxon criminal-legal system. Through its century-old application, this system did not succeed to codify unique principles and coherent practice in establishing accessory liability, so that unbalanced practices of courts in federal states present the main feature of the system regarding accessory liability. The attempt of unification through the Model of Penal Code did not provide expected effect, and a reform of legislature proved to be necessary not only in the section of accessory liability but in sections of other principles and practices of USA criminal law as well.

GENERAL CHARACTERISTICS OF LEGAL INSTITUTE OF CO-PARTICIPATION IN GREAT BRITAIN LAW

Criminal-legal doctrine and practice of Great Britain are the source of precedent or Anglo-Saxon legal system. This system used to be the most typical representative of Anglo-Saxon legal system for a long time until the USA took over the role. The present day domination of USA legal system in Anglo-Saxon legal scope of activity has rather more political than professional character. This is due to very developed legal system, even when the USA as a state did not exist, while, at the other side, actual economic and military power of one of global forces, as the USA undoubtedly reflected to the importance that the legal system of that state had, compared to other similar systems, especially to international criminal law.

Though at the beginning of its development typically precedent, namely multi-source law that originates, among other things, out of court decisions, English criminal legislature has significantly evolved towards codification of legal standards and unavoidably approached to continental legal system. English criminal legislature is almost fully codified today, except for some administrative units within this system as Scottish is, which retained judicial precedent as essential source of law (Škulić, 2010: 82-84).

The question of complicity was primarily established in English criminal legislation by the law known as *Accessories and Abbettors Act 1861* (Baker, 2015: 7-20). However, the problem of complicity in general was not introduced in this legal system only with this document. It was codified then for the first time, whereas it was practically introduced several centuries before.

Complicity was generally treated in numerous precedents gathering its elements and forms through century-old practical use. Nevertheless, what was established by precedents as a legal standard for complicity, was formally confirmed by standardization in section 8 of *Accessories and Abbettors Act* (http://www.legislation.gov.uk/ukpga/Vict/24-25/94/ section /8). This Act was supplemented

later by the amendment 65 (4) that was included in the Criminal statute from 1977 (http://www.legislation.gov.uk/ukpga/Vict/24-25/94/section/8).

This Act defines complicity in general sense as *„an action of supporting, inducing, advising or providing (referring to material means and persons) definite things intended for performance"* of any punishable criminal act, while the one who does any of the quoted actions is considered responsible under definite conditions connected to subjective relation of accessories to possible criminal acts, namely *mens rea*.

The essence of the necessary subjective relation or *mens rea* according to *Accessories and Abettors Act 1861* consisted of intention of the perpetrator of a criminal act (Baker, 2015: 7-20). Intention was the essential psychical relation of an accessory that made him responsible for the committed criminal acts. That was the limit beyond which it was not possible to act.

So founded, the principle of establishing accessory liability was extended much later, in 1985, by judicial precedent which opened a possibility to pass liability to accessories even for criminal acts which used to be referred only to perpetrators up to then. Legal case that introduced this precedent in English criminal legislation is the case of *Privy Council Chang Wing-Siu v The Queen 1985 AC 168 (https://www.supremecourt.uk/ca-ses/docs/uksc-2015-0015-judgment.pdf).* That decision was confirmed by the decision of the House of Lords in the British Parliament in 1999 *(House of Lords in R v Powel and R v English (1999) 1 AC 1) (https://www.supremecourt.uk/cases/docs/uksc-2015-0015-judgment.pdf).*

The standard of "carelessness" or "negligence" based on "predictability" of possible consequence that may arise from "joint plan or purpose" of a perpetrator and an accessory was introduced by the case of *Privy Council Chang Wing-Siu v The Queen 1985 AC 168.* In many ways this was a revolutionary approach to English legal doctrine up to then. One of the essential elements of revolutionary spirit of this solution consisted of the changes by which it was possible to introduce liability of an accessory for criminal acts that were

not included into "joint plan and purpose" of a perpetrator and an accessory if the accessory could predict them. That opened possibilities for considerable expansion of liability of an accessory and traditional doctrine of *mens rea* accessory based on "intention" descended to a lower level of possibility of establishing accessory liability based on "carelessness". Never before was it the case either in this or in continental legal doctrine, except for some definite situations with accessory liability in French criminal legislature.

New problems emerged from the application of the new approach very soon. One of them was doctrinaire foundation of the approach. The essence of the problem with later reform of the doctrine of complicity in English criminal-legal science consisted of setting the needed limit of accessory liability lower, that opened the possibility of extending accessory liability, including criminal acts for which an accessory was not responsible up to then.

Though the precedent got the merited position, it lasted relatively short time. Criticisms came both from professional and layman circles under whose influence *Serious Crime Act 2007* was adopted (Baker, 2015: 7-20). Some definite necessary reform measures that appeared to be a reaction to problems that emerged from the period of 1984 to the moment of their adoption were standardized by adoption of this Act. Certain legal situations that emerged as the consequence of more and more distinct standpoint of profession were codified since the adopted precedent from 1984 was counteracting to basic principles of criminal Law. The question of "intended participation" has been regulated by article 44 and the question of "demand of indirect intention" by article 45 of this Act (Baker, 2015: 61).

However, even they did not provide an answer to a series of illogical situations and legal contradictions that emerged from introduction of a new standard of accessory liability in 1984. Outstanding legal professionals, Baker among them, noticed that even these reform modifications did not give a response to the legal adventurism that arose out of adoption of the standard of "prediction", so that the actual solution was subdued to criticisms further on, while reform measures remained without effects. Due to this Baker, and other authors too, proposed

further reform of legal system aiming to include the standard of "predictability" in standardized law in the case the creators of this standard remained firmly certain in good order of their solution (Baker, 2015: 61).

In accordance with such a proposal, within a period of several years from 2010 to 2015, a Board was founded that had several sessions with participation of authoritative representatives of the idea of law with only one task: to decide on further position of the standard of "predictability".

The result was clear and unambiguous. It was founded by the decision of the Supreme Court of Great Britain within the case of *R v Jogee; Ruddock v The Queen (2013) EWCA Crim 1433 and JCPC 0020 of (2015)* from the year 2015. The standard of "carelessness" based on "predictability" of accessories was proclaimed unfounded and opposed to judicial practice. Consequently, The Supreme Court called for cease of further application of this standard and confirmed validity of the standard of "intention" that was dominant up to 1984.

By this Decision the legal adventure referring to accessory liability made through the decision in 1984 came to an end. Thereafter accessory liability was brought back to the level of legal standpoint that used to be present in English criminal-legal doctrine and practice before. So, as long as accessory liability was referred to, the twenty year period of relativistic approach to traditional or conservative English doctrine ended. Our point of view is that such a standpoint should have strong influence on similar precedent legal systems as well as on decisions of international courts which used this legal precedent for their even more radical creations of accessory liability. Anyway, one of them is a third form of standard named "joint criminal enterprise" of the Tribunal for the former Yugoslavia (Baker, 2015: 59-61). Namely, this Court used the already abolished doctrinaire opinion from the English legal system for majority of decisions in cases of serious international criminal acts. It did this by further erosion of legality and legal foundation of solutions that were adopted in the form of the third form of standard "joint criminal enterprise". Such an approach presents a dangerous precedent in contemporary international criminal law with unpredictable consequences.

It is essential to point out that the main topic of those decisions was exclusive subjective element of legal institute of co-participation, namely *mens rea* in Anglo-Saxon legal doctrine, while objective element or *actus rea* remained either unchanged or with unimportant modifications that did not change its essence.

Consequently, we find out that the doctrine of complicity in English criminal-legal science had two important stages in its development. First, lasting for many centuries, up to 1984, and second lasting within the period from 1984 to 2015. Thereafter the doctrine was returned to its old roots, so that the continuity of prevailing doctrinaire attitude up to 1984 was confirmed. We note that this decision of the Supreme Court of Great Britain is of recent date, so that it did not reflect on other systems where the influence of English legal doctrine is very big, such as Australia, Jordan, and some others. Besides it, the fact is of special importance for international jurisdiction, especially for the Tribunal for the former Yugoslavia which maximally exploited the unfounded standard of "predictability" in its practices by forming a type of guilt whose legal foundation is expected to be subject of doctrinaire disputes within the next period.

INFLUENCE ON CRIMINAL LEGISLATURES OF AUSTRALIA AND JORDAN

English criminal legislature was a model to numerous national criminal legislatures that had accepted the system of precedent as the foundation of their legal systems. It is the case with Australia and Jordan. By accepting the standard "of joint plan or purpose" on the basis of "predictability" as an integral part of criminal-legal idea of "carelessness", both of them accepted a specific system of establishing liability of accessories that acts in the structure of "joint criminal enterprise".

That is how criminal legislature of Australia took the standpoint that an accessory bears the same liability as a perpetrator of criminal acts when together

with him participates in a "joint criminal enterprise", even when the accessory did not explicitly or implicitly agree with commitment of that criminal act (Gold, 2003: 18)[2]. Thereby, establishment of "the way of contemplating of the parties that share (joint, *note of the author*) purpose", namely whether the act of the perpetrator was encompassed by joint plan and purpose of the accessory as well, is applied as the key test for establishment of liability (Gold, 2003: 18).

It is evident that the quoted approach is identical to the approach of the previous English doctrine in the section of "joint criminal enterprise" what we have confirmed by quoting normative solution from Criminal Law of Australia.

On the other hand, Jordan organized normative arrangement of accessory liability for criminal acts out of "joint plan" more precisely, but it proved to be insufficient again, according to acknowledgment of representatives of scientific idea in Jordan. Due to this, correspondent codification of criminal jurisdiction in this area showed up as a necessity. Just for the sake of a remark, such a codification was carried out in Great Britain in the course of 2015, while no such codification measures have been undertaken in Jordan yet (Gold, 2003). Regarding precedent nature of these legal systems and generally distinct global influence of English criminal-legal practice, it is expectable for a reform of criminal legislature to take place in Jordan very soon after the reform carried out in Great Britain.

The question of accessory liability for collateral criminal acts in Jordan has been regulated by articles 76 and 80 of the Criminal Code of Jordan, no. 16 from 1960 (Mouaid, 2015: 105).

[2] More about it in the explanation that follows: "Under Australian law, when two parties embark on a joint criminal enterprise, a party will be liable for an act which he contemplates may be carried out by the other party in the course of the enterprise, even if he has not explicitly or tacitly agreed to the commission of that act. The liability which attaches to the traditional classifications of accessory before the fact and principal in the second degree may be enough to establish the guilt of a secondary party: in the case of an accessory before the fact where that party counsels or procures the commission of the crime and in the case of a principal in the second degree where that party, being present at the scene, aids or abets its commission. The liability extends to any offenses that arise as a possible consequence to the criminal venture. "

Article 76 of this legal act has regulated the question of accessory liability for collateral criminal acts. It predicted that an accessory is responsible for such a collateral criminal act if such a criminal act is the result of an agreement between a perpetuator and an accessory, while article 80 regulates liability of an accessory for criminal acts whose commission he has supported deliberately, therefore he is responsible as if he had committed it himself (Mouaid, 2015: 105-106)[3]. Thereby, all possible actions of support as objective parts of this incrimination have been quoted in article 80, which are evident in the Footnote four.

However, the problem appeared in situations where a criminal act that is not included in joint agreement or plan of a perpetuator and an accessory appeared,

[3] More about it in the explanation that follows: "Therefore, under Australian law, courts must consider the common purpose of the principal offender and the accomplice. The scope of this "common purpose" is determinative of whether an accomplice liability shall attach."
More about it in the explanation that follows: "Under the JPC, complicity cases either involve some kind of agreement between the offenders (Article 76), or, according to Article 80 (2), a person can become involved in the commission of an offence by another person by intentionally helping its commission."
Article 76: "If more than one person jointly commits a felony or a misdemeanour, or if that felony or misdemeanour consists of more than one act and each one of them commits one act or more of those constituting that offence with the intention of bringing about that felony or misdemeanour, then all offenders are to be considered as accomplices in the commission of that offence and punishable with the specific punishment of that offence as indicated in the Code as a primary perpetrator of that offence."
Article 80: "A person is an accessory to the commission of a felony or misdemeanour where such person:
Helps the commission of such an offence by providing instructions;
Helps the commission of such an offence by giving the principal perpetrator a weapon or tools or anything else which helps the commission of such an offence;
Present at the scene where the offence is committed for the purpose of frightening the victim or supporting /encouraging the determination of the principal perpetrator or to ensure the commission of the intended offence;
Helps the principal perpetrator to set up acts which prepare or facilitate or complete the commission of the offence;
e) Agreed with the principal perpetrator or accessories prior to the commission of the offence and participates in covering up the commission of that offence or hiding or marketing the whole or part of the things obtained by its commission or harbouring one or more of the offenders who participated in its commission;
f) Although having knowledge of the criminal history of offenders who have committed banditry/ robbery/brigandage, violent acts against the security of the state or the public safety or against persons or property, proceeds with providing such offenders with food or a place to hide or assemble."

consequently a criminal act or acts that are out of joint plan or aim, which were encompassed into English legal doctrine under the standard of "joint criminal enterprise" (Mouaid, 2015: 106).[4]

Regarding this normative gap and reality of commission of such criminal acts, legal experts in Jordan took the standpoint that an accessory can not be responsible for a collateral criminal act if he did not contemplate or was not aware of commission of such a criminal act as a possible consequence, as if, by such contemplating or awareness, he prolonged commission of a criminal act they agreed about. Thereby, they took the standpoint that an accessory is not responsible for a collateral criminal act which he could not foresee or which is not encompassed by his contemplating or awareness (Mouaid, 2015: 106 -107).[5]

In totally identical way was solved the situation in which an accessory-abettor provided means for commission of a criminal act to a perpetuator, and later a different criminal act from the one of joint plan or aim was committed, not the one for which such a weapon was provided. In this case theoreticians took the standpoint that the accessory is liable only in the case he had in his mind, namely contemplated and was aware of that collateral felony as a possible consequence, and in such circumstances continued commission of the planned criminal enterprise (Mouaid, 2015: 107)[6].

[4] More about it in the explanation that follows: "…Article 76 of the JPC (which governs the liability of accomplices who commit an offence pursuant to their agreement or joint intention) does not make any reference to the liability of the accomplice if one or more of the parties act beyond the agreed offence (the subject of their primary criminal venture) and commit an additional offence."

[5] More about it in the explanation that follows: "In the course of committing theft, C surprises P1 and P2, and in response, P1 produces a knife and stabs C causing injury. Pursuant to Article 76, both P1 and P2 are responsible for theft. But the problem in relation to the doctrine of common purpose arises in relation to P2's liability for P1 injuring. The common view held by legal commentators concerning the liability of P2 for the commission of the additional offence is that P2 should not be responsible for that offence unless he or she has contemplated its commission as a possible consequence of carrying out the theft, and has accepted to continue to participate in the venture. By contrast, if the accomplice did not foresee or contemplate the commission of the additional or alternative offence, that accomplice should not be liable for its commission."

[6] More about it in the explanation that follows: "In the absence of explicit reference in Article 80 (2) on this question, it is commonly argued by legal commentators that the principles concerning the liability of the accomplice (as discussed above) for the commission of the additional

It is evident that legal theoreticians from Jordan in this way decided to copy the standard of "predictability" based on "carelessness" from English criminal legislature and introduced the standard of "joint criminal enterprise" in the legal practice and criminal legislature of Jordan (Mouaid, 2015: 107).

In order to make copying of English doctrine nearly identical in the sphere of accessory liability for a collateral criminal act, legal experts proposed a reform in codification of regulations of article 76 and 80 of the Criminal Code of Jordan in the way identical to the standpoints in Serious Crime Acts 2007 from Great Britain and its practice "claim of indirect intention" (Baker, 2015: 7-20).

However, it remains unclear how will Australia and Jordan reply to newly established precedent in Great Britain by which the standard of "predictability" for criminal acts out of "joint plan" inside "joint criminal enterprise" was proclaimed unconstitutional and opposed to judicial practices and outlawed. This is primarily important because judicial practice in these countries is under distinct influence of English criminal-legal doctrine which had impact on creation of standard of accessory liability through this concept. It is very certain that a return to traditional principles of accessory liability in this criminal-legal system will have influence on other criminal-legal systems where the principle of accessory liability is present further on through the model of "joint criminal enterprise", based on English criminal legislature.

offence should likewise apply in relation to the liability of the accessory for the commission of an additional offence by the principal offender. Namely, the accessory shall not be liable for the additional offence unless he or she has contemplated its commission as a possible consequence of the primary criminal venture and yet continued to participate in that venture."

GENERAL CHARACTERISTICS OF LEGAL INSTITUTE OF COMPLICITY IN USA LAW

Criminal legislature of the USA provides complicity on federal level and on level of criminal legislatures of federal states. Though differences are possible and present due to the nature of legislatures and authority of federal states, practice of federal and associate courts today does not record significant differences in what is considered complicity in the sense of necessary objective elements. The essence of complicity in real sense in America on federal level is defined as an action committed by everyone who *"having intention to support or facilitate commission of the basic criminal act he* (the perpetrator of a criminal act, *author's remark*) *(i) asks another person to commit a felony, (ii) aids or agrees with or tries to give support to another person in planning or commission of a felony or (iii) has a legal duty to prevent commission of a felony but misses to commit a suitable action to fulfil his duty"* (Model Penal Code – The American law Institute, 1985).[7] Actions that can be undertaken by persons that do not appear as perpetuators of felonies but they do as collaborators in their commission are pointed out in the above quoted actions. For the wholeness sake, it is necessary to point out that American criminal legislature treats the fact of complicity in a felony in a different way before and after its commission, but, in accordance with the trends of this legislature, that fact reflects only on punishment of collaborators in felonies, but not on other elements of his guilt.

On the other hand, considering the question of conditions of subjective accessory liability intended for his qualification as a liable person, theory and practice are not uniform as they are in the case of objective elements of complicity. The main characteristic of this question is its incoherence and difference in application of *mens rea* principle. Besides unclear practice that existed on the level of the USA federal states, there was a bigger confusion on federal level, and the biggest in implementation of federal law by the courts of federal states. All of that caused the consequence that the question of necessary

[7] More about it in article 2.06 Model Penal Code – Official Draft and Explanatory Notes.

psychical relation of an accessory towards a felony was treated quite in a different way by different courts. Such an inconsistency in defining the relation of a suspected person towards a committed felony was for a long time a fact of burden within the work of courts on all levels. In such circumstances, there were numerous trials of norm codification in criminal law by which majority of questions of criminal-legal character would be defined in a uniform way and treated in accordance with European, namely continental criminal-legal models. Final result was a codified document named Model Penal Code which was intended for surpassing the quoted problematic practice in the USA (Model Penal Code – The American law Institute, 1985). The primary aim of such trials was the intention to fundamentally prevent the possibility of arbitrary enforcement of this legal practice, and all of that with final objective referred to respect of the principle of legality in criminal procedure.[8] Nevertheless, it's most outstanding reach is that this optional prescription succeeded to surpass the problem, but did not surpass it thoroughly. Inconsistency is still evident since all federal states did not adopt this model and its definition but remained loyal to their own solutions (Bajovic, 2009: 17-18).

Legal practice principally stands at the point that an accessory is liable for a committed felony if he intentionally gives aids of abets the perpetrator of a felony to its commission. Thereby, the problem arises at interpretation of such an intention that may appear as intended assistance or support to a perpetuator of a felony or as intention to make the perpetuator of a felony commit a felony (Gold, 2003: 13).

Ambiguity in a part of basic formulation passed to practice itself. Some courts consider that an accessory must predict a felony that a perpetuator is going to

[8] If we consider this more closely such a worry, which should be considered quite regular and correctly noticed, we remind of existing debate of scholars and practitioners while giving an answer to the question whether the idea of UZP is in accordance with the principle of legality of international criminal law or not. Therefrom comes a reasonable question whether this Court, but other international courts as well, should have regulated this problem in a different, rather more predictable and more transparent way, so that the danger of violation of all international legal system with unavoidable consequences within national legal systems.

commit, while others consider that an accessory must have knowledge about a felony that the perpetrator has committed (Gold, 2003: 13).

Some others have accepted the interpretation of the Model of Penal Code according to which an accessory is liable for the felony of the perpetuator if:

a) he acts with liability that is sufficient for commission of a felony or if the accessory induces an innocent person to commit such a felony,

b) he is liable for proceeding of other person in accordance with the law or other prescription that defines that felony or

c) he is an accessory to the perpetuator of a felony at its commitment (Gold, 2003: 14).

Principally, the courts that did not accept conditions of liability according to the Model of Penal Code stand at the point that both the perpetuator and the accessory share "… the intention for commission of a felony …" (Gold, 2003: 14). Thereby, this Law and its successors were not ready to widen liability of an accessory to situations in which the accessory liability is based on carelessness (Gold, 2003: 14).

Thus, the third group of federal states did codification of accessory actions into their criminal laws (such as: supporting, urging, advising, encouraging, supplying and others), did not prescribe demanded psychical relation of accessories in a felony related to the perpetuator and to the felony itself, but accepted general standpoint of liability in precedent legal system (Gold, 2003: 15). Some of them, as in the case of *"Jahnke v. State"*, took the standpoint that the accessory should share criminal intention with the perpetuator of the felony (Gold, 2003: 15). Others applied the "standard of prediction" which is basically founded on knowledge of accessories about perpetuator's felony, as is the case of "People v. Beeman", where the guilt of an accessory is based on natural and reasonable consequence of a felony that a perpetuator takes with knowledge or intention (Gold, 2003: 15). Contrary to them, certain courts, as in the case of *"USA v. Peoni"* rejected the "standard of prediction" of a felony

by an accessory and demanded from the accessory that he had got involved into commission of a felony as an action that he wanted to happen and in which he took part intending to succeed in final result (Gold, 2003: 16).

Similarly to them, certain courts insisted to reach a compromise solution in the part of accessory liability through seriousness of a committed felony. Others considered level up to which an accessory consciously helped a perpetuator of a felony as an important fact and so on (Gold, 2003: 16).

In essence, there is no uniform practice or application of unique approach in the part of accessory liability in the USA. The Model of Criminal Code tried to reconcile the developed practice, as well as numerous other questions within this biggest precedent system in the world, but without some evident success, as we have previously remarked.

Similar to practices, legal theoreticians did not define unique proposal of solution of this question, but did agree on non acceptability of the existing development in this area.

F. A. Sarch thinks that theoreticians supporting the point of view of common law complicity *mens rea* doctrine is sufficiently broad to supply responses referring to accessory liability altogether, both when they refer to less important and serious felonies, are not right (Sarch, 2015: 177-178). Namely, he thinks that treatment both accessories in less important and those in serious felonies and punishing them equally is totally unjust. He especially thinks so having into account the importance of felonies both of them have committed. Therefore, the author infers a serious reform of accessory liability question is important, especially in the section of establishment of level of guilt for complicity on various levels. The main objective of corrections that the author proposes should be to avoid unjust result by equalizing the guilt of accessories for totally different felonies according to their importance, or better according to social danger they stand for.

Very close to Sarch's point of view is Michael Bohan with his standpoint that there is no "remarkable confusion" in present day USA precedent legal system

as far as accessory's psychical relation to basic felony that makes him liable for the committed felony (Bohan, 2015: 640). According to the author, confusion arises from the fact that precedent legal system has not yet clearly taken a standpoint referring to the question whether accessory liability should be established according to his personal relation towards actions in supporting and urging and his awareness of principal perpetuator's felony consciousness whom an accessory gives support to or urges him or whether it should be established on the basis of some other parameters or on the bases of combination of both elements (Bohan, 2015: 640). The author himself gives support to or urges him or whether it should be established on the basis of some other parameters or on the bases of combination of both elements (Bohan, 2015: 640). The author himself points out different practices and approaches that Sarch, Gold and others discussed and quotes definite specific approaches that confirm such different practices, as the approach of practice in Colorado and other federal states. Finally, the author devotes himself to the approach that the court practice in Colorado took in the case of "Childers" quoting three basic principles on which accessory liability should be based on (Bohan, 2015: 660-661).

Joshua Dressler keeps the same standpoint. He criticizes the existing position in precedent practice of the USA, the section of accessories' guilt, and makes effort to make possible adoption of "substantial participation" standard (Dressler, 2008: 448). The standard of "substantial participation" is founded on making essential difference between the importance of participation of accessories in commission of a felony and appearance of consequences without taking into account reasons for participation in such a felony (Dressler, 2008: 448). According to him, only an accessory who considerably participated and contributed to commission of a felony should suffer the same punishment as the perpetuator of the felony. Other accessories should be liable, but for lower level of guilt than the perpetuator of the basic felony.

Majority of other authors have similar standpoints. However, except for intensive theoretical debate and attempt to informally codify these and other questions, no further results have been attained in the practice of the USA,

besides the presence of the Model of criminal Code which should have solved these and other questions in a uniform way.

In contrast to the practice of Great Britain where precedent practice, combined with standardization and codification of disputable questions attained suitable results and corrected deviations that arose in the section of accessory liability for a felony, the practice in the USA is rather different. Though deviations in the section of accessory liability within the case of "joint criminal enterprise" did not have such an effect as they did in the case of practice in Great Britain, the difference and fragmentary practice significantly burden the practice in the USA regarding this question, while, at the other side, the practice of Great Britain reacted faster and returned things to the level based on traditional theory and practice of criminal law in this state.

We suppose that the way of solving this question in the USA will be identical or similar to the one in Great Britain, but with extremely uncertain result regarding the moment and the scope of such corrections having in mind big number of criminal-legal questions in the USA practice which need some kind of standardization in use and thereafter codification as universal principles.

CONCLUSION

Models of accessories' guilt are alike in almost all states that have accepted Anglo-Saxon legal system. Nevertheless, certain special features exactly in this section characterize the most important among them, while that influence was transferred to other states of this system. The most striking representatives of this legal order are Great Britain and USA, and their specific influence was transmitted to Australia and Jordan as well as to some others based on the same legal order.

English criminal legislature is meritoriously considered to be the creator of Anglo-Saxon legal system. It justifies this epithet according to its advantageous solutions in the section of complicity as well as in various other fields. In

favour of this speak numerous codifications of the basic act on the complexity of complicity that came as an answer to public criticisms by scholars and practitioners of solutions that significantly degraded traditional principle of accessory liability. It predominantly refers to the standard of "predictability" as an inseparable part of accessory liability within the idea of "joint criminal enterprise". Final result of such a critical standpoint by scholars and practitioners was the decision of the Supreme Court of Great Britain by which the standard of predictability within the frame of "joint plan" through "joint criminal enterprise" was abolished, while traditional principle of accessory liability again took its position that it had occupied in this criminal-legal system before.

On the other hand, American legislature and practice within the section of accessory liability is characterized by inconsistency, missing of uniform codified solutions, open debate and unjustifiably big influence on international criminal legislature.

Namely, accessories' problem of guilt within the part of its subjective relation to a felony committed by a perpetuator is treated differently on various levels. Practice of allied courts is various, and again, the practice of those courts is unequal within the practice of courts on federal level. Even federal codification through the Model Penal Code is not accepted thoroughly by a certain number of federal states. Except for traditional felonies, inconsistency is evident within the section of procedures going on in front of American allied and federal courts for war crimes. We point out the well known case of war crimes named "Caterpillar", among some others (Gwynne, 2006).

Shortage of equally codified solutions of this question could be considered as a consequence and a reason from the previous inconsistency. Anyhow, the essence of precedent criminal-legal system comes out from the fact that practice establishes prevailing solutions, but when practice is unsuccessful, a demand arises for judicial or normative authority that will codify acceptable solution. The Model Penal Code is an imperfect trial of such a codification, since numerous federal systems have not accepted it even now as a basic

material, criminal-legal act, though practice in proceeding is unequal in regard of majority of practices of criminal law, even regarding the legal institute of co-participation.

Both these characteristics resulted in a broad dispute of experts about this question. Common denominator of these disputes is an appeal for a general reform of criminal legislature in USA, aiming to define a series of open questions in the field of criminal legislature, even of the legal institute of co-participation, in a right and universal way.

Legal system of Australia and Jordan, though precedential, have rather more precisely standardized the question of complicity in their formal acts, even in their practical implementation. It is primarily due to the influence of the English legal doctrine, which, though mainly precedential, has standardized tenets, principles and practices of criminal law that contributed to equalization and consistency of this legal system. Generally regarded, such an approach is significantly more adequate for two reasons. First refers to presence of codified legal standards and practices in the law, while second refers to mandatory implementation of codified rules, so that the implemented practice should fully correspond to the aims of legislator. In this way have been avoided the problems that arise from implementation of typical Anglo-Saxon criminal-legal practices. The English criminal-legal practice is exactly an example of positive effects of codification in the Anglo-Saxon system, while, on the other hand, a decennial reform of the USA criminal-legal system is a proof of such a positive approach.

It is quite certain that a thorough codification of complicity practice in Anglo-Saxon criminal-legal system modelled on the basis of English or continental criminal-legal legislatures alike could eliminate all problems that this practice meets today. Parallel with this solution the role and the importance of the principle of legality would be significantly reaffirmed together with other present day principles of criminal and international criminal law.

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ОПШТА ОБЕЛЕЖЈА ИНСТИТУТА САУЧЕСНИШТВА У АНГЛОСАКСОНСКОМ КРИВИЧНОМ ПРАВУ

Апстракт

Ангосаксонско кривично право је настало и развило се у данашњој Великој Британији. Као такво, временом је постало доминантно у већини земаља где је колонијални утицај Велике Британије био изражен. Тако је и са институтом саучесништва који у овом систему има своје специфичне облике непознате у континенталним кривичноправним стиемима. Циљ овог истраживања је управо да истражи специфичности института саучесништва у англосаксонском кривичноправном систему. Основне методе које омогућавају реализацију овог циља су компаративна, историјскоправна, догматска и нормативна метода. Применом наведених метода је установљено да је пракса у скоро свим земљама англосаксонског кривичноправног система неуједначена и неконзистентна обзиром да је начинила искораке у смислу одступања од традиционалних принципа одговорнсоти саучесника. Док је кривичноправна пракса Велике Британије усвајањем модела „удруженог злочиначког подухвата“ одступила од традиционалне доктрине одговорности саучесника и проширила њихову одговорност и за дела изван заједничког плана, као што су то учинили и системи у Аустралији и Јордану, дотле је пракса САД, иако верна традициолном концепту одговорности саучесника, неуједначена и неконзистентна не само на федералном, већ и на нивоу различитих савезних држава. Управо из тих разлога реформа овог института представља потребу савремених друштава овог система чији је основни

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циљ реафирмисање владавине начела законитости у случајевима одговорности саучесника у англосаксонском кривичноправном систему.

***Кључне речи**: институт саучесништва, англосаксонско кривично право, САД, Велика Британија, објективни и субјективни елементи.*