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BOOK REVIEW:

PARTICIPAȚIA PENALA (THE CRIMINAL PARICIPATION), Author: Monica-Eugenia UNGUREANU, UNIVERSUL JURIDIC Publishing House, Bucharest, 2017

Calina Andreea GARDKIOTIS[1]

Abstract

The work entitled "Criminal participation" approaches a widely debated theme within the criminal law doctrine and with significant implications in the judicial practice. The author analyzes the issues which have raised controversy in the Romanian and foreign doctrine and also relates to the deficiencies of the regulation of this institution within Romanian criminal law.

The monograph contains five chapters, including more sections, as well as de lege ferenda proposals, which, in the opinion of the author, could contribute in future to the aligning of the institution with the regulations established in the foreign legislation.

The work presents useful information for the theoreticians and also for practitioners within the field.

Keywords:

Criminal participation, Romanian Criminal law, foreign legislation, perpetrator, criminal liability.

The work entitled „Criminal participation" approaches a widely debated theme in the criminal law doctrine and with significant implications in the judicial practice.

The author analyzes the issues which have rised controversy in the Romanian and foreign doctrine and also relates to the deficiencies of the reglementation of this institution within Romanian Criminal law.

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Based on the critics expressed in the doctrine, the author draws de *lege ferenda* proposals, which align the concept of criminal participation with the reglementations from the foreign legislation.

The Romanian criminal law doctrine initially excluded the principal perpetrator and coauthors from the participants or included also the moral authors within the main participants, besides material, executional perpetrators. The authors argumented that, having in consideration that the rule was of the unique perpetrator, this was automatically included in the definition of the crime and therefore could not be mentioned between the participants. If no text was needed for the perpetrator, no text would be needed for more authors also, given that the legal status of the perpetrator is the one established for the author of the crime, by the law.

The previous criminal Code has partially adopted this systematization, without mentioning the coauthors between the participants. This insufficiency of the criminal law is partially adjusted by the new criminal law Code, i.e. art. 46 defines the concepts of perpetrator and also the one of coauthor. The shortfall of this Code lies in the fact that it entitles chapter VI, referring to participation, „The perpetrator and the participants", failing to mention the coauthor within the title, this failure suggesting that the notion of participants includes also the coauthor, which would be incorrect, besides the fact that would conflict with the normative instructions from the new code, i.e. art. 46 which defines the perpetrator as well as the coauthor, with an identical formulation. Further to the discussions within the doctrine, the new criminal Code makes a clear distinction between the persons which participate directly to the criminal offense and the other persons which participate indirectly, through perpetrator or coauthor.

Within the analysis of the forms of participation, aspects with great implications in the current judicial practice are dealt with, namely liability of the inciter, as well as the reglementations of the forms of participation from the foreign legislations, and especially the status of participants within the organized crime and the criminal organizations.

The monograph contains five chapters, including more sections, as well as de *lege ferenda* proposals, which, in the opinion of the author, could contribute, in future, to the aligning of the institution with the regulations established in the foreign legislations.

In the first chapter, the author issues the importance of this institution, the main and controversial problems in Romanian and foreign

doctrine, as well as the deficiencies in regulation of the criminal participation in the romanian criminal law.

The second chapter issues on criminal participation, the concept, the conditions of existence, as well as the forms of criminal participation in older doctrine, in the previous legislation and in the new Criminal code, referring to comparative law.

The third chapter keeps under review the issued theories of the legal bases of participation and the criminal liability of the participants, also the different sanctioning regimes and the criticism in the relevant published literature.

The next chapter reviews the forms of criminal participation, the author, co-author, instigation and complicity, examining the concept and the controversies expressed in Romanian and foreign doctrine, as well as the inconsistencies of the present criminal law and the new concepts from the actual criminal law, which eliminate partly shortcomings in the actual regulation of the author of crime. In equal measure, it analyses the institution of criminal instigation and complicity, from the point of view of the first Romanian authors, as well as the opinion of the modern criminal doctrine.

In the next chapter, the analysis highlights the forms of criminal participation in foreign legislations, issuing aspects of real interest, such as the participants in organized crime and criminal organizations.

The author concludes on the main controversies in the judicial practice on the issue of mediated criminal author, the necessity of a distinct regulation for the incitement of a incapable person.

In the author's view, the criminal law should define within the notion of perpetrator and the person who is committing the act by another person in order to distinguish the situations in which the mediated author's provisions are indisputably applied and in those in which the instigation of an irresponsible person, who is in an essential error or morally constrained, have the nature of an author. At the same time, she emphasized the importance of giving up the institution of improper participation and returning to the theory of the mediated author, which responds better to the practical implications and aligns the Romanian regulation with the modern criminal laws.

The author concludes, underlining that the arguments offered by the foreign legislations on the restrictive theory on the institution of the perpetrator would end the debates from the romanian criminal doctrine on this institution.

The work presents useful information for theoreticians and also for practitioners within the field.

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