INTELLIGENTE AGENTEN UND DAS STRAFRECHT

Zusammenfassung

Das Vordringen mehr oder weniger segensreicher Intelligenter Agenten in unser Leben ist eines jener Phänomene, das die Rechtsordnung und speziell das Strafrecht vor praktische, aber auch vor grundsätzliche Fragen stellt, die sich mit den hergebrachten Lehren nicht wirklich beantworten lassen. am Menschen ist – eine Frage, die insbesondere für das Strafrecht als das den Menschen höchstpersönlich adressierende Rechtsgebiet von höchster Relevanz ist. Der strafrechtlichen Zurechnungslehre fehlt bisher das adäquate Instrumentarium, um bei

113 *Huxley*, Brave New World, 1932, vidi: https://archive.org/details/ost-englisch-brave_new_world_aldous_huxley (posećeno 18.07.2014).

dem Zusammenspiel zwischen dem (möglicherweise wenig intelligenten) Menschen und der (möglicherweise sehr intelligenten) Maschine über die sachadäquate Zuweisung von Verantwortung zu entscheiden. Dabei dürfte die Einführung einer Strafbarkeit Intelligenter Agenten für die voraussehbare Zukunft ein bloßes Denkmodell bleiben. Anders als bei einer Strafbarkeit juristischer Personen ließe sich eine Bestrafung Intelligenter Agenten auch nicht als mediatisierte Bestrafung der im Hintergrund stehenden natürlichen Personen für deren „Organisationsverschulden" interpretieren. Jedenfalls könnte man ein solches individuelles Verschulden der Betreiber des Intelligenten Agenten ebenso wirksam durch die unmittelbare Bestrafung der Betreiber wegen ihres eigenen vorsätzlichen oder fahrlässigen Kausalbeitrags zu der von dem Agenten verursachten Schädigung sanktionieren. Schwerer ist die Frage nach der Strafbarkeit des „Menschen hinter der Maschine" zu beantworten. Ruft die Aktion eines Intelligenten Agenten einen strafrechtlich relevanten Schaden hervor, so haftet der Mensch jedenfalls dann als unmittelbarer Täter, wenn er den Agenten in der Absicht oder in dem Wissen benutzt hat, dass mit seiner Hilfe ein Straftatbestand verwirklicht wird oder werden kann. lung der Menschen hinter der Maschine festzuschreiben; vielmehr bietet es sich an, das Strafrecht nur in dem Maße zurückzunehmen, wie der allgemeine soziale Nutzen des Intelligenten Agenten die Hinnahme der mit ihm verbundenen Risiken für die Allgemeinheit rechtfertigt. Rechtsmethodisch kann man dieses Ergebnis durch die Einführung flexibler Generalklauseln erreichen, etwa indem man die erforderliche Sorgfalt des Betreibers durch die Gestattung eines „Entwicklungsrisikos" beschränkt oder indem man einen Rechtfertigungsgrund des „sozialadäquaten Einsatzes" von Intelligenten Agenten schafft. Im Sinne der Gesetzesbestimmtheit wäre allerdings der mühsamere Weg vorzuziehen, die Maßstäbe für das erlaubte Risiko bei verschiedenen Typen und Einsatzbereichen Intelligenter Agenten durch Gesetz oder Verordnung festzulegen.

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GENOCIDAL INTENT

Abstract: Due to the tragic events on the territory of the former SFRY, the subject of genocide has become very current topic in wider social and scientific circles. This offense and the Convention on the Prevention and Punishment of the Crime of Genocide (1948), has become rather discussed subject on the territory of former Yugoslavia, but also outside of it. In that sense, the subject of genocidal intent has particularly intrigued Jovan Ćirić, because that element is what substantially defines genocide as such. The common standpoint of classical criminal justice law is that without the intent of destruction of national, ethnical, racial or religious group there is in fact no genocide. However, the problem arises when we try to define the intent itself. In English, for instance, there is no concept, a word that would define the intent. In Serbian literature and language, there is just a slight difference – the intent is mostly defined as special, particularly strong form of intent**.** Until recently, that was rather common concept in the world literature for the understanding of genocide. However, the trials before the International Criminal Tribunal in Hague concerning former Yugoslavia and Rwanda showed that it is very difficult, almost impossible to prove someone's guilt, i.e. genocidal intent. Prosecutors Carla Del Ponte and Geoffrey Nice complained during the trial of Slobodan Milošević that they won't be able to prove genocidal intent. It could be said that is the main reason western European criminal thought developed the theory that the existence of genocide requires no intent, as a special form of 'strong' intent, but that the existence of indirect intent is sufficient. The author claims such statements are absurd for they make the intent and genocide into something incidental, much like collateral damage. Related to that is the subject of media prejudice and breach of the presumption of innocence. Namely, media had at one point blown out of proportions the story of guilt and intent of several accused individuals and in such state there was no need to prove the guilt and intent, for the media verdict had already been given. Serbs were persistently, constantly and tendentiously shown in the worst possible light and in such situation it was difficult, almost impossible to be objective and impartial in the trials for the war crimes. Special attention needs to be drawn to the propaganda of genocide which is prohibited by the Convention as a sort of incentive to genocide. However, that is connected with numerous problems concerning the so-called hate speech, but also with freedom of speech – the complicated question where the freedom of speech stops and the hate speech and incitement to genocide emerge. One question that

is particularly interesting is the unbelievable, hysterical anti-Serbian propaganda during the nineties which no one took the blame for, which raises many questions and foremost speaks about the politicization of the phenomenon of genocide. Jovan Ćirić also believes that a genocidal intent has to be considered having in mind particular historical context. It is one thing if intent, psychological attitude of perpetrator towards the act, develops in a particular moment, i.e. short span of time (almost in the heat of passion), and completely different thing is if it develops and repeats itself in continuity. The author predominantly has in mind the continuity of Serbo-Croatian relations and points that what Ante Starčević had in mind continues in what Ante Pavelić did and what Franjo Tuđman in his 'transcripts from Brijuni' said. Present, particularly when we talk about genocide and genocidal intent, cannot be fully understood and perceived without considering the historical context.

Key words: genocide, intent, media, propaganda, politicization, historical continuity

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CAUSALITY OF AIDER'S CONTRIBUTION IN RELATION TO A PERPETRATOR'S ACT

SUMMARY

There are a number of different views about possible causality of aider's contribution in relation to an act of the perpetrator. Majority understanding assumes that aider's contribution must represent a *condicio sine qua non* of the consequence of the offense. However, this view is generally not accepted by the jurisprudence, considering that it is sufficient that the act of the aider improves the action of the perpetrator. In addition to these basic notions, in literature are also presented opinions that aiding embodies a deed of abstract endangerment and that the aider's contribution increases risk to the protected good. The author concludes that in many issues the difference between these ideas is only apparent, and that this theoretical debate only conceals the central feature of this form of participation – that assistance must constitute certain facilitation of the offense.

Key words: aiding, *condicio sine qua non*, attempted aiding, mental assistance.

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FREEDOM AND RIGHTS OF PERSONS WITH MENTAL DISABILITIES – Disadvantages of the Law on the Protection of Persons with Mental Disabilities –

Abstract: It has been two years from the adoption of the Law on the Protection of Persons with Mental Disabilities. Bearing in mind the necessity of improvement of protection of the rights of persons with mental disabilities, as well as issues facing the law enforcement, there is a need to examine existing solutions and to determine what should be changed. In that aim, considering main freedoms and rights of persons with mental disabilities, this paper is analyzing certain aspects of the protection of those persons, such as the question of their right to so called deinstitutionalization treatment; voluntary and involuntary accommodation of persons with mental disabilities in a psychiatric institutions; physical restraints and isolation; medical researches on persons with mental disabilities; status and treatment of persons with mental disabilities, perpetrators of criminal offences and misdemeanors; as well as the police treatment of the persons with mental disabilities. Summary contains certain given recommendations in the aim of the improvement of the normative framework in the field of protection of persons with mental disabilities.

Keywords: persons with mental disabilities, deinstitutionalization, voluntary hospitalization, involuntary hospitalization, physical restraining.

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WHY IS IMPOSSIBLE THAT THE PERPETRATOR OF PREDICATE CRIMINAL OFFENCE BE A MONEY LAUNDERER

SUMMARY

Abstract: The emergent form of this paper, and maybe even the style of writing significantly deviates from the form that we usually meet. The importance of solving problem isnt just the matter of correct legal qualification but primarily the defence of “the physics among social sciences”, and that is criminal substantive law. Not single filed of law has ever been so close to natural sciences. It is about that either we respect the system or we try with the attempt of “pulling the brick out” by which we ruin everything that has been made. It would be rather interesting when we would, in case of neurosurgeon “pull out” his knowledge of brain anatomy and than let him operate. The norms of the basic part of criminal substantive law with their “above the law nature” have come to the doorstep of reason, to protect it. One who decides to change or violates them must be very careful not to enter in change or breach of the reason. Further on, we will see that “playing” with the basic part of criminal substantive law withdraws with it validity and need of the criminal judiciary existence and criminal lawyers at all. The question that we here deal with reminds us of predominance that basic part has over the special simultaneously warning on fraudulence of the norm lex specialis derogat legi generali. The relevant international acts as well as the situation in comparative law are also analyzed in the paper. The writer asks the reader to overlook the fact that these lines are written by the student and jurist that is at the beginning of dealing with this profession.

Key words: money laundering; predicate offence; ostensibly ideal competition; tax fraud; burden of proof; financial investigation.