

## The Basis for Criminalization of the Act of “Inciting People to Commit Crimes or to Infringe Laws and Orders”

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### Abstract

Article 153 of Criminal Code provides the offense “inciting people to commit crimes or to infringe laws and orders”. However, the bases for criminalizing such acts remain vague. On one hand, the effect of the inciting acts directs to the legal good secured by the norm, which is incited to breach. On the other hand, the offense is listed in chapter “order disturbance” of the special part of the Criminal Code. Therefore, the context shows that the offense also involves the collective legal good, in the name of “public order”. Which one is the legal good deemed to be protected eventually? The author supposes neither of them could be considered as the legal good at issue. One could not set substantial bases for typifying the acts by asserting that inciting is a special mode of accessory. Nor could he take inciting as an abstract potential damages offence against all the legal goods provided in Criminal Code. Furthermore, the meaning of the legal good concerned, the so called “public order”, overlaps the overall normative function of the Criminal Code. The author thus presumes “sabotage of the reliability of the norm validity” as the substantial bases for criminalization. Under such understanding, the scope of “inciting” in the current provision is obviously too broad. Accordingly, it’s necessary to interpret the term strictly basing upon the purpose of the norm.

**Keywords:** Article 153 of Criminal Code, inciting, inciting people to commit crimes, inciting people to infringe laws and orders, forbiddance of regress, public order, legal goods, collective legal goods, reliability of the norm validity

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