

Chapter Six

PARTICIPATION IN THE COMMISSION OF CRIME

- **A crime may not always be committed by single persons.**
- **A crime can be committed by several persons who participate in the commission of a crime at different or same capacities.**
- **It is therefore important to determine the degree of involvement and the role played by such persons in the commission of the crime**
- **such degree and the involvement may be principal, co-criminal, instigator, complicity and accessory after the fact.**

The Principal

- **Principal participation exists where those persons who do the act or acts constituting the offence or abstain from acting when they are bound to act.**
- **It is, therefore, the case that a person is considered to be the principal offender in homicide who stabs another by a knife; or he or she is the principal offender in an offence of theft if he or she snatches the bag from another.**
- **If the persons who involve themselves in the commission of the crime are more than two, they are still called principal criminals.**

The Ethiopian Context

A Principal Criminal(Art32)

- ***(1)any person shall be regarded as having committed a crime and punished as if:***
 - ***(a) he actually commits the crime either directly or indirectly, in particular by means of an animal or a natural force; or (material criminal)***
 - ***(b) he without performing the criminal act itself fully associates himself with the commission of the crime and the intended result; or (Moral Criminal)***
 - ***(c) he employs an infant or a person who is mentally deficient or unaware of the circumstances, for the commission of a crime or compels another person to commit a crime.(indirect criminal)***
- ***(2) Where the crime committed goes beyond the intention of the criminal he shall be tried in accordance with Article 58(3).***
- ***(3) Where two or more persons are involved as principal criminals in the commission of a crime, each shall be liable to the punishment attaching thereto. The Court shall take into account the provisions governing the effect of personal circumstances (Art. 41) and those governing the award of punishment according to the degree of individual guilt (Art. 88).***

Co-criminals

- **Co-criminals are dealt with under Article 32 and 33 of the Criminal Code of Ethiopia as “where several co-criminal are involved, they shall be liable to the same punishment as provided by law (32/3)”.**
- **An accused person may be prosecuted as a co-criminal when, by his/her acts he/she fully participated with knowledge and intent in the commission of a crime which can be committed only by certain specified persons such as members of the Armed forces or officials or only by male persons as in the case of rape.**

Participation in Secondary Capacity

- This refers to the involvement of persons in the commission of a crime in the second degree. This exists either before or during the commission of the crime.
- A person is not considered to be principal criminal as his participation in this case is less than the principal criminals.
- *This relates to incitement or complicity, which are also called accessories either before or during the commission of the crime.*
- Accessory after the fact does not come under participation for one cannot take part in the commission of the crime after it is

Incitement (Article 36)

- **1)“whoever intentionally induces another person whether by *persuasion, promise, money, gifts, and threats or otherwise to commit a crime shall be regarded as guilty of having incited the commission of the crime.***
- **2)The person who incited the commission of a crime shall be liable to punishment provided the *crime was at least attempted*”.**
- **3)The punishment to be imposed shall be that provided by law for the intended crime. It may be reduced within the limits specified by law if the circumstances of the case**

The legal effect of being an instigator

- The instigator will be liable to punishment under the law for the intended crime. This is the case for instance that a person who incited the commission of the crime of robbery will be liable under Article 36/670.
- What if the *incited* goes beyond the intention of the instigator? Art 36/4
- The principal offender is punished alone for what goes beyond the intention of the instigator.
- This is the case that the incitee /principal/ criminal is alone liable for the rape he committed while he was persuaded to commit robbery.
- There is, however, a possibility that courts may reduce the punishment to be imposed upon the instigator within the limits of the law as per Article 179 of the Criminal Code.

Complicity

- From this provision, the word accomplice is used to describe all persons who are accountable for crimes committed by another without considering whether they were or were not actually present at the time when and the place where the crime is committed.
- It may generally be said that a person participates in the commission of a crime in his or her secondary degree as an accomplice if he or she gives assistance to the principal criminal either before or during the commission of the crime with the intent thereby to promote or facilitate the commission of a crime.

The Ethiopian Context(Art 37)

- **Article 37 of the Criminal Code as “*an accomplice is a person who knowingly assists a principal criminal either before or during the carrying out of the criminal design, whether by information, advice, supply of means or material aid or assistance of any kind whatsoever in the commission of an crime.*”**
- **2) An accomplice in an intentional crime shall always be liable to punishment.**
- **3) The accomplice shall be liable to punishment provided the crime was at least attempted.4) The punishment to be imposed shall be the punishment for the**

Criminal Conspiracy

- Conspiracy is defined as an agreement between two or more persons to effect something unlawful. In case of conspiracy there is a need of an overt agreement beyond independent intentions of the persons involved which of course constitutes the material element of the crime.
- *The crime of conspiracy is completed at the moment when two or more persons have agreed that they will do at once or at some future time an act which is unlawful.*
- Therefore, the crime of conspiracy is said to be completed even if there is no further act to put the agreement into effect. Agreement in conspiracy refers to the meeting of two or more minds. It is the understanding of the parties each other to perform an act which is forbidden.
- In the Ethiopian law, conspiracy, as a rule, is *not* considered to be an independent crime. Rather, it is a ground for aggravating punishment when persons participate in the commission of a crime based on prior agreement as per Article 38(1) of the Criminal Code of Ethiopia.

The Ethiopian Context

- **The Provisions of Art. 38. Of the Criminal Code:**
- **Where two or more persons enter into an agreement to commit a crime, the provisions regarding participation and aggravation of punishment due to the above mentioned circumstances are applicable. (Art. 84(1)(d)).**
- **The foregoing provision shall, however, not affect the provisions contained in the Special Part of this Code relating to conspiracies against the essential interests of the State and its defense, the forming of unlawful associations and the participation therein, as well as to the organization of gangs or associations of wrongdoers. (Art. 257, 274,300 and 478).**
- **Though our law disregards the act of conspiracy as an independent crime, Article 38(2) provides exceptions that it is taken as an independent crime.**
- **When persons conspire to commit crimes against the state as per Article 257 (b)**

Accessories After The Fact:Art.40

- **Accessory refers to a person who gives assistance to the principal criminal after the realization of the crime.**
- **The form of assistance may be, hiding and aiding the criminal as per Article 445 of the Criminal Code: under the topic Harboring and aiding.**
- **For the Ethiopian Context (Art 40)**