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Causation in Complicity in a Crime According to Georgian and Anglo-American Law

According to Georgian law, causation is an objective ground for liability for complicity. Anglo American Law does not require causation for complicity. Person may be liable as accomplice if his conduct has contributed to the commission of the offence by the principle. However, some Anglo American legal scholars recognize causation in complicity, though they think that in every case we should distinguish between causal and non causal accomplices.

Key words: *Complicity, principle, aider, objective side of the crime, risk creating offence, civil agent doctrine, concealment of the crime, causation, result, freewill, condicio sine qua non, "but for test".*

1. Introduction

Complicity in a crime is one of the interesting and complex issues of the general part of criminal law. Despite the fact that the mentioned institution is comprehensively examined in Georgian legal literature, there are still lots of important issues under discussion even today.

Study of experience of foreign countries shows that despite the reconciliation and harmonization of legal systems, advanced countries maintain different approaches to the institutions of general part of criminal law, one of which is complicity in a crime.

In modern legal systems there is a diversity of opinions about the grounds for liability for complicity, forms of its manifestation, objective and subjective connection between the act of a culpable accomplice in crime and the outcome, the difference between principle offender and an accomplice in crime and so on.

The present paper deals with one of important themes – a causation between the act of a culpable accomplice in crime and the result. It should be noted that the common law doctrine and case-law does not require causation between the act and the result. However, a question arises, - if not on a causation, then on what ground the liability for complicity should be based. On the other hand, the objective ground of liability for complicity is firmly established in Georgian criminal law, though its certain aspects are subject different views.

2. Causation in Complicity in Georgian Criminal Law

Causation in Georgian criminal law is part of objective side of the crime expressly required by written law¹. According to par. 1, of Article 8 of Criminal Code: "If a crime is deemed completed

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¹ *Turava M.*, Criminal Law, Review of General Part, Tbilisi, 20, 13, 90 (in Georgian).

only when an act has caused an unlawful result or created a specific threat of the occurrence of such result, it shall be necessary to establish causation between this act and the result or threat.” Part two of the same article for establishing causation uses hypothetical elimination method (but for test) “Causation shall exist when an act constituted a necessary condition for the unlawful result or specific threat provided for under the relevant article of this Code, without which this time the result or such threat would not have occurred”².

In Georgian criminal law it is firmly established that complicity implies the existence of causal link between an act of the accomplice in crime and the result.

In opinion of Professor *Otar Gamkrelidze* causation in complicity has double meaning: firstly, it functions as some kind of guarantee; it is the limit, beyond which responsibility can't be spread for complicity in a crime. Secondly, the object of encroachment of a principal and accomplice in the crime is one and the same.³

In the Soviet criminal law the necessity of establishing causation in complicity was disputed by A. Vishinsky, who shared the approach of English criminal law of that time and considered that any connection of a person with a crime was sufficient for complicity. According to this approach, concealment of a crime is one of the forms of complicity⁴. T. Tsereteli correctly states that the concept “any connection” is so broad and infinitive, that it may trigger criminal responsibility on persons, who not only had not participated in the crime, had not even known anything about it”⁵.

According to *T. Tsereteli*, “The unity of objective side of the participants’ act first of all is expressed in such a way that each participant’s conduct must be in causative connection with the criminal result. So this result must be a product of their common activity⁶.”

T. Tsereteli criticizes the approach of some Western Criminal jurisdictions, which deny the existence of causative connection between the participant’s act and the result of a crime to such extent that “a perpetrator, which decides “freely” to commit a crime, always starts a chain of a new and independent causation”⁷.

She states: “A special nature of psychological regularity allows us to substantiate the causative character not only of the principal’s act, but also of the instigator’s and helper’s acts. Humans are able to influence the environment by means of volitional act, to submit its regularities to the consciously set goal. But at the same time a human’s will is conditioned not by his will itself, not from emptiness, but by the human’s environment. As far as the person’s will is determined by the human

² In modern Georgian criminal literature there is a consideration that this legislative formula of causative connection has to be replaced by unwritten formula of “regular condition” and complemented by unwritten element of crime – category of objective imputation. *Turava M.*, Criminal Law, Review of General Part, Tbilisi, 2013, 90 (in Georgian). This formula of causation is constructed only on result crimes, though in complicity it logically includes objective connection of the participant’s act with the conduct crime committed by the perpetrator.

³ *Gamkrelidze O.*, Criminal Law Problems, Vol. II, Tbilisi, 2010, 236 (in Georgian).

⁴ *Isereteli T.*, Criminal Law Problems, Vol. II, Tbilisi, 2007, 19 (in Georgian).

⁵ *Ibid.*, 20. The necessity of causation in complicity was also rejected by *Mishunin P.*, according to him causal connection between participants’ act and the result of the delict committed by the perpetrator of crime is not a theoretical base for the construction of complicity and for the concept of complicity minimal subjective connection between participants is necessary. See *Tsereteli T.*, Criminal Law Problems, Vol. II, Tbilisi, 2007, 27 (in Georgian).

⁶ *Isereteli T.*, Criminal Law Problems, Vol. II, Tbilisi, 2007, 12 (in Georgian).

⁷ *Ibid.*, 14.

environment, the person by his any act does not start a new chain of causation, which terminates the chain existed before, but he continues it, adding new rings to it”⁸.

According to *T. Tsereteli*, it is not hard to establish causative connection between the act and the bad result, when an assisting offender physically participates in committing a crime, for example, when a person handed a firearm to the perpetrator to commit murder or brought him a ladder to get into a storage house in order to rob it. *T. Tsereteli* concludes, that “in these cases a physical helper creates the necessary condition, without which a criminal result would not have been carried out”⁹, but more complicated is a causative connection between a psychical accomplice in crime and a criminal result. The influence of a psychical accomplice in crime will pass through the mind of the perpetrator, will become a motive of his volitional act and so he will be involved in the chain of the causative connection”¹⁰.

The opinion that the participants’ act must be in causal connection with the criminal result was recognized in the theory of the Soviet Criminal Law and it was also shared by courts¹¹. The evidence of it is the judgment of the Criminal Panel of Supreme Court of the Soviet Union dated on the 15th of July, 1942, on the case of Kosenkov and Iakushin, whose wives upon instructions of their husbands put dry wheat into sacks and kept them in the pantry, by which act, according to prosecution, they encouraged their husbands not to return the wheat. As it was remarked in the court decision these acts had not encouraged their husbands in not returning the wheat. Husbands were obliged to return the wheat in any case regardless of the place where the wheat was kept.¹²

This case cited by *T. Tsereteli* is very interesting from the causation point of view and it has a certain analogue in the court practice of the common Law. There is a question whether the responsibility of the wives could have been established from the point of view not of physical, but from psychological assistance.

In the Soviet Law the necessity of the causative connection in complicity was conditioning the difference between the previously promised and not promised concealment. The previously promised concealment was perceived as complicity, but previously not promised concealment was qualified as an independent crime (see above).

Professor *Otar Gamkrelidze* thinks, that “responsibility in complicity might be based on physical, as well as on psychical causation”¹³. At the same time, he admits, that “a psychical phenomenon is a fact of social life, which must be subjected to causation regularity. If we recognize the point of view that causative connection exists only in the material world, then we must admit the complete arbitrariness in the social sphere and the complete freedom of human will¹⁴”.

The opinion that the act of an accomplice in crime must be in causative connection with the criminal result is shared by many authors in modern Georgian criminal Law. For example, *Adam Makharadze* in connection writes: “Modern criminal legislation, practice and theory firmly defend

⁸ *Isereteli T.*, Criminal Law Problems, Vol. II, Tbilisi, 2007, 16 (in Georgian).

⁹ *Ibid.*

¹⁰ *Ibid.*, 17.

¹¹ *Ibid.*

¹² *Isereteli T.*, Criminal Law Problems, Vol. II, Tbilisi, 2007, 18 (in Georgian).

¹³ *Gamkrelidze O.*, Criminal Law Problems, Vol. II, Tbilisi, 2010, 224 (in Georgian)

¹⁴ *Ibid.*, 222.

the opinion that the act of the accomplice in crime together with the act of the perpetrator must cause the criminal result. It is a firm guarantee to fend the principle, according to which responsibility might be charged on the culprit only for the result which was caused by his act; besides, on the basis of the causative connection between the participant's act and the criminal result caused by the perpetrator we can conclude that an accomplice in crime encroaches and damages the same legal interest, which is encroached and damaged by the perpetrator of the crime"¹⁵.

A different opinion connected with the necessity of causative connection in complicity in a crime is developed by *K. Mchedlishvili-Hedrikh*. Basing on the modern doctrine of German Criminal Law she concludes, that the existence of the causative connection between the aider's act and the crime committed by the perpetrator is necessary, though "there is no requirement for the aider's act to be inevitable condition „*condicio sine qua non*” of the committed crime. The assisting accomplice in crime will be responsible even when the perpetrator commits a crime without his act. For qualifying the act as assistance it is decisive that the assistant's act is involved in certain causation, facilitates commitment of the crime and increases the chance of producing the result"¹⁶. In order to confirm this statement *K. Mchedlishvili* is citing following example: "When the person assists the robber by lighting a torch for him and is only facilitating searching for jewelry or is helping a housebreaker by carrying a ladder for him, he is only facilitating the commitment of the crime and is not the necessary condition for carrying out the crime"¹⁷.

This opinion of *K. Mchedlishvili* on the one hand stands in interesting correlation with the opinion of contemporary American authors, according to which complicity in a crime requires not necessary, but possible causative connection, though on the other hand this opinion needs more justification because according to Georgian Criminal Code the concept of causative connection is based on *condicio sine qua non* formula.

3. Causation in Complicity in a Crime According to Anglo-American Criminal Law

Anglo-American law maintains an approach, according to which the complicity in a crime does not require the participant's act being in causative connection with the principal's act and the criminal result¹⁸. One of the supporters of this opinion is *Stanford Kadish*. In his work "Complicity,

¹⁵ *Makharadze A.*, Criminal Responsibility for Assisting in the Commission of a crime, Tbilisi, 2006, 41 (in Georgian). The significance of the causative connection in complicity is also emphasized by Prof. *Nachkepia G.*, according to which at this time a causative connection is peculiar and the theory of equivalency of conditions is unable to distinguish the organizer's act from the assistant's act, which would have made possible individualization of responsibility, General Part of Criminal Law, group of authors, Tbilisi, 2007, 191 (in Georgian).

¹⁶ *Mchedlishvili Q.*, Criminal Law, Individual Forms of Manifestation of a Crime, Tbilisi, 2011, 233 (in Georgian); on the other hand, when a case concerns an instigator Prof. *Mchedlishvili K.*, says The instigator's case must be causatively connected with commitment of a crime. He must persuade the perpetrator to commit a crime, i.e. incite him to make decision of committing a crime. *Mchedlishvili K.*, Criminal Law, Individual Forms of Crime Manifestation, Tbilisi, 2011, 219 (in Georgian).

¹⁷ *Mchedlishvili K.*, Criminal Law, Individual Forms of Crime Manifestation, Tbilisi, 2011, 233 (in Georgian).

¹⁸ It is interesting that in American criminal trial proceedings the accusation party is not obliged to prove that the accomplice's share was essential in producing a criminal result. The accusation is not obliged either to prove by which form of complicity was acting the accused. Furthermore on giving a verdict complicity is not pointed to. The accomplice is announced to be guilty by the same form as the principal. The same rule is acting in England.

Cause and Blame: a Study in the Interpretation of Doctrine”¹⁹, he remarks that complicity, as other forms of crime commitment, is closely connected with the concept of “blame”, which includes judgment on the person’s responsibility and is connected with freedom of choice. We are not only evaluating the person’s act negatively, we are also blaming the person for making such a choice²⁰.

On the other hand, according to Kadish, one is blamed for harmful result only when this result is imputed to him. For this purpose criminal Law developed two doctrines of attaching liability for a harmful result. One is causative connection and the other is complicity²¹. Kadish admits that if we consider the accomplice’s act as a cause of the principal’s act, then we are in contradiction with the concept of blame²².

In relation to causation and free will he states following: We perceive human actions as differing from other events in the world. Things happen and events occur. They do not occur anarchically and haphazardly, but in sequences and associations that have a necessary quality about them. We express this quality in terms of causation and we understand it in terms of laws of nature that are beyond our power to alter. Human actions stand on an entirely different footing. While man is total subject under the laws of the natural world, he is total sovereign over his own actions. Except in special circumstances, he possesses volition through which he is free to choose his actions. He may be influenced in his choices, but influences do not work like wind upon a straw; rather, they are considerations on the basis of which he chooses to act. He may

also be the object of influence in the larger sense that he is the product of the forces that shaped him. But his actions are his and his alone, not those of his genes or his rearing, because if he had so desired he could have chosen to do otherwise. This is the perception that underlies the conception of responsibility which, in turn, is central to the conception of blame”²³.

According to *Kadish* a human’s free acts have two meanings for the doctrine of complicity. “First, when we examine a sequence of events that follows a person’s action, the presence in the sequence of a subsequent human action precludes assigning causal responsibility to the first actor. What results from the second actor’s action is something the second actor causes, and no one else can be said to have caused it through him. This is expressed in the familiar doctrine of *novus actus interveniens*. Second, when we seek to determine the responsibility of one person for the volitional actions of another, the concept of cause is not available to determine the answer. For whatever the relation of one person’s acts to those of another, it cannot be described in terms of that sense of cause

Lippman M., Contemporary Criminal Law, Concepts, Cases and Controversies, Sage Publications, 2007, 158; *Dressler J.*, Reforming Complicity Law, Trivial Assistance as Lesser Offence, Ohio State Journal of Criminal Law, Vol. 5:427, 448; *Ashworth A.*, Principles of Criminal Law, 5th ed., 2006, 415. For example, in the verdict on *Gianetto (1977)* case court alleged that the accused either killed his wife himself or hired somebody to kill her. So far this rule spread in common law has endured the filter of Article 6(3) of the European Human Rights Convention, according to which the accused must be informed in details the point and ground of the prosecution against him, *Ashworth A.*, Principles of Criminal Law, 5th ed., 2006, 412.

¹⁹ *Kadish S.H.*, Complicity, Cause and Blame, Study in the Interpretation Doctrine, California Law Review, Vol. 73, Issue 2, 1985.

²⁰ *Ibid*, 331.

²¹ *Ibid*, 333.

²² *Ibid*.

²³ *Ibid*, 330.

and effect appropriate to the occurrence of natural events without doing violence to our conception of a human action as freely chosen”²⁴.

Accordingly, *Kadish* concludes that the role of the accomplice in committing a crime is expressed not in terms of causation but in terms of influence or assistance²⁵:

Kadish says: “Responsibility of the accomplice for his influence on the principal’s decision completely corresponds to the given fact that his acts are conditioned by his own choice. Recognizing that a person is influenced by what other people say and do, ... does not imply that volitional acts are caused, in the physical sense, the way natural events are determined by antecedent conditions. The choice of the principal is what ultimately determines the effectiveness of the influence²⁶”.

In the opinion of *Kadish* the influence of the accomplice on the principal to some extent is like causality: the accomplice’s liability depends on his success. Unsuccessful assistance or incitement (for example, if an individual shouts encouragement to another to attack a third person and the attacker is deaf or otherwise unaware of the encouragement, also when a person unlocks the door of a building in order to facilitate a burglar’s entrance. Unaware of this, the burglar breaks and enters through a window) must not be complicity, but might be some other independent crime, though in complicity the formula “*condicio sine qua non*” is not used²⁷. Complicity as well as causality is excluded by a distant, unanticipated, abnormal or coincidental connection (for example, if I told someone involved in a quarrel in Hindu language that he could find a knife in the drawer, but he could not understand, as he did not speak that language; and quite by chance another bystander, who understood Hindu conveyed the information to him and the quarrelsome used the knife²⁸).

Kadish concludes that complicity and causation are related concepts, though complicity requires weaker connection with the crime, than causation. Namely, complicity does not require *condicio sine qua non*, but requires successful complicity. According to *Kadish* complicity is successful, if it assisted the principal to carry out the intended act”²⁹.

The position of *Kadish* that for complicity it is not necessary to prove causative connection with the principal’s act is quite firmly established in contemporary American Law. Michael Moore substantiates this position in the following way:

“A very standard view of why accomplice liability is noncausal contains two premises.¹⁵ It first asserts that the criminal law’s causal requirements include a “necessary condition” (a “*sine qua non*”, or counterfactual element): for an act *A* to cause a harm *B*, *A* must be necessary for *B* (i.e., if *A* had not happened, then *B* would not have occurred either). So if accomplice liability had a causal structure, then the act of an accomplice would have to be a necessary condition for the prohibited harm to occur. To be an accomplice to murder, for example, one would have to have done something necessary to the death occurring. The second premise is that there are many cases of accomplice lia-

²⁴ Ibid, 332.

²⁵ *S. Kadish* thinks that opposite to complicity a person is acting causally in the process of mediation.

²⁶ Ibid, 343.

²⁷ Ibid, 357.

²⁸ Ibid, 368.

²⁹ Ibid, 359.

bility in which the act of the accomplice is not necessary to the occurrence of the harm. Ergo, the conclusion: accomplice liability is noncausal in its structure³⁰.

The opinion that in complicity prosecution is not obliged to prove causative connection is also shared by English authors. Basing on court practice Ashworth says that it is sufficient to prove that the accomplice somehow assisted or might have assisted the principal³¹.

Rejecting the necessity of causative connection in complicity some authors conclude that complicity is a risk creating form of committing delict and not a form of creating a crime with result. According to this opinion each accomplice could be liable for a danger creating act committed only by him regardless of the occurrence of the result.³² This approach is criticized by Professor *J. Dressler*. According to him hardly few will share the opinion that the accomplice will not be liable for harmful result caused by crime³³.

Interesting considerations on the issue of complicity are expressed by American scholar *Jacob Kreutzer*. Reviewing the theory and court practice he affirms that if the prosecution had duty to prove causation in complicity, it would be n very hard for prosecutor's office to indict an accomplice³⁴. He agrees with Kadish and says that judging on causation can be only in physical world, but in psychological world we are never sure how a free human will behave³⁵. Accordingly in complicity it is enough to prove that the acts of the accomplice have influenced the commitment of a crime. The court practice confirms that this influence might be even minimal, for example, such as presence and applauding the concert conducted in violation of the law³⁶, or preparing meal for the perpetrator of a crime.³⁷ *Kreutzer* says, that attempt of a crime and complicity in a crime somehow are alike, in some probability rate both are connected with a criminal result (or presumable result), accordingly in case of complicity, as well as in case of attempt we demand a high degree of guilt - intention³⁸.

³⁰ *Moore M.*, Causing, Aiding and Superfluity of Accomplice Liability, 156 U. PA. L. REV., 395, 2007, 55.

³¹ *Ashworth A.*, Principles of Criminal Law, 5th ed., 2006, 415.

³² *Dressler J.*, Reforming Complicity Law, Trivial Assistance as Lesser Offence, Ohio State Journal of Criminal Law, Vocril. 5:427, 2008, 444. Authors who don't recognize causality of complicity, are basing liability on different grounds. According to the civil agency doctrine the accomplice agrees with the acts of the perpetrator's, as his agent's, and he personally liable for these acts, i.e. the accomplice allows the perpetrator to act and takes his acts on his responsibility; according to *forfeited personal identity doctrine* a person who chooses to aid in a crime forfeits his/her own personal identity and that his/her identity becomes bound up in that of the principal; see *Courtreau C.*, The Mental Element Required for Accomplice Liability, Luiziana Law Review, Vol. 59, 1998, 327. According to the theory of *Kadish S.*, about the complicity in a crime committed by another, the accomplice is punished because he/she aids the perpetrator in violation of a law (see *Kadish S.H.*, Complicity, Cause and Blame, Study in the Interpretation Doctrine, California Law Review, Vol. 73, Issue 2, 1985); according to the theory of *complicity as omission* because of specific connection of the accomplice with the crime we are separating the accomplice from all the persons who did not obstruct committing the crime and charging him/her criminal liability. *Kreutzer J.*, Complicity and Repentance, Reexamining Complicity in the Light of Attempt Doctrine, NY Journal of Law and Liberty, Vol. 3:155, 2008, 5.

³³ *Kreutzer J.*, Complicity and Repentance, Reexamining Complicity in the Light of Attempt Doctrine, NY Journal of Law and Liberty, Vol. 3:155, 2008, 6.

³⁴ *Ibid*, 11.

³⁵ *Ibid*, 12.

³⁶ *Ibid*.

³⁷ *Ibid*.

³⁸ *Ibid*, 10.

After discussing the above mentioned opinions it is very interesting to consider the opinions of those scholars, which recognize causation in complicity. Among them is American Professor *J. Dressler*.

Professor *Dressler* thinks that causality is very important in criminal law. “First of all” – he says, it connects a culprit with a criminal result”³⁹. “From two hunters, who shoot a man carelessly and independently from each other, criminally liable will be the one, whose act is in causative connection with the occurred result”⁴⁰. According to Professor *Dressler* the second important role of causative connection is that it enables to accuse the accomplice according to his/her deserts and imposes punishment just proportional to the result, caused by him/her⁴¹. He admits that just this fundamental principle of criminal law is rejected by complicity law, which does not require the necessity of establishing the causative connection and allows us to make the person having a slight role in the crime answer like the perpetrator⁴².

Professor *Dressler* agrees with *Kadish* on the issue that processes in human mind differ from processes in physical world, though in his opinion it does not give ground to reject factual, as well as normative causation in complicity⁴³. “Its true”, he says “voluntary human conduct is less predictable than, say, the laws of gravity, the proposition that voluntary human conduct is invariably less predictable than some natural events, for example, the direction a tornado will take, is false”⁴⁴.

The same opinion is shared by Professor *Gardner*, who says the following:

“Many say that... humans, as responsible subjects, have a free will and they can resist causation. Accordingly, their conducts are not causative connection chains. They are saying that if we subject the perpetrator’s act to causation, we don’t perceive him/her as a responsible subject. This statement is obviously wrong to me. When I pay money hitman to kill my adversary, the result of my act will be that he will kill my adversary, i.e. he will die. Accordingly, I am inciting and assisting the hired killer and am causing the death by his assistance. It is a simple causative explanation of the previous and next acts. It does not depreciate the role of the hired killer, as a responsible agent⁴⁵”.

Professor *Dressler* separates causal and non-causal accomplices, also substantial and insubstantial participant accomplices and concludes the following:

“A person is not accountable for the actions of the perpetrator unless her assistance not only satisfies the causation requirement but there is evidence that the accomplice was a substantial participant, not a bit player, in the multi-party crime. Conceptually, an accomplice who satisfies both the causation and substantial-participant standards would be accountable for the conduct of the primary party and subject to the same punishment. The causal-but-minor accomplice would also derive her guilt from the principal (since she satisfies the but-for standard) and thus be guilty of the same offense as the principal, but she should be entitled as a matter of right to a reduced sentence because

³⁹ *Dressler J.*, Reforming Complicity Law, Trivial Assistance as Lesser Offence, *Ohio State Journal of Criminal Law*, Vol. 5:427, 2008, 448.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*, 437.

⁴³ *Ibid.*, 439.

⁴⁴ *Ibid.*, 439.

⁴⁵ *Gardner J.*, Complicity and Causality, 1 *Crim. L. and Phil.* 127, 2007, 14.

of her minor assistance. The *non*-causal participant would not derive liability for the completed offense but would instead be guilty of a lesser crime and, thus, be punished less severely for that reason alone”⁴⁶.

The idea of differentiating between accomplices according to the causal connection to the result is also shared by *Jacob Kreutzer*. He thinks that had not an accomplice influenced on the perpetrator’s act, punishment of the accomplice would be pointless, because we would not have avoided the criminal result anyway⁴⁷. As an example he gives different forms of participation in crime and differentiates them according to causative roles:

a) Client

Ali hires Peter, who is a professional killer, to kill his wife – Violet. Peter takes money and kills Violet.

Jacob thinks that here is obviously the causative connection and Ali must be punished for murder.

b) Specialist

Abe is very good at disabling security systems. In fact, he’s one of the best in the business. That’s why Paul contacts Abe when he wants to rob a bank that uses a very sophisticated security system. It’s a rush job they’ll be robbing the bank the day after Paul contacts Abe. Abe takes the system offline, allowing Paul and his other henchmen to enter the bank and steal various valuables from the vault.

Jacob thinks that here is also evidently the casual connection, because without the Abe’s assistance Ali would not have been able to rob the bank.

c) Superfluous helper

Paul is a professional burglar. His wife, Alice is aware of this fact and approves of his endeavors. In fact, she prepares for him a boxed meal that he can eat between burglaries, so that he does not get hungry and quit early.

Kreutzer thinks that by the current law Alice will be liable for the crime committed by Paul but by the proposed reform proposal Alice is a non-causal accomplice and must be held less liability. The mere supposition that maybe these crimes would not have happened without Alice does not justify recognition her as an accomplice⁴⁸.

d) Easily replaceable helper

Anthony has no particular skills that he can bring to bear to further a criminal enterprise. Rather, Paul simply asks him to act as a lookout for Paul while Paul robs a bank, and pays Anthony for his time. While Paul would not have robbed the bank without having somebody act as a lookout, there was no pressing need for Anthony to be the person acting as a lookout. Others were readily available and willing to help, and would have done an equally good job.

⁴⁶ *Dressler J.*, Reforming Complicity Law, Trivial Assistance as Lesser Offense, *Ohio State Journal of Criminal Law*, Vol. 5:427, 2008, 447.

⁴⁷ *Kreutzer J.*, Causation and Repentence, Reexamining Complicity in the Light of Attempt Doctrine, *NY Journal of Law and Liberty*, Vol. 3:155, 2008, 4.

⁴⁸ *Ibid*, 15.

According to *Kreutzer* it is a quite tricky case. According to current Law Anton is an accomplice in robbing, but by the proposed solution it is disputable whether he is causatively connected with robbery. By deduction method he does not act causatively, because Paul could have received the assistance from others as well. *Kreutzer* leaves this question open for the assessment by juries⁴⁹.

Anglo-American approach in connection of causality of complicity arises many questions, though gives many interesting leading signs.

In the first place it should be noted that breaking of causative connection by a free will of the perpetrator is not in conformity with the contemporary scientific and non-scientific (general) understanding of causation. If the perpetrator's free will had broken causal chain the causality, there would not have been the expression existed in many languages of the world "to have something done"⁵⁰ and also the historical truth "David Agmashenebeli (Builder)" built Gelati (because from the point of view of Criminal Law David Agmashenebeli presumably had not put even a single stone in building of Gelati, He was only an "organizer" of construction"⁵¹)

Though the second issue concerns the deduction method, legalized by Article 8 of Georgian Criminal Code. It does not always explain the accomplice's connection with the criminal result. Accordingly Professor Dressler's opinions on differentiating causal and non-causal accomplices will be interesting for Georgian criminal law.

4. Conclusion

Research shows that accomplice liability in Georgian and Anglo-American law is based on different objective grounds. According to Georgian criminal law the objective ground of liability is causation, while the doctrine dominated in Anglo-American criminal law and court practice doesn't require establishing of causal link.

By moving away from causation, Anglo-American theory of complicity in crime loses the objective basis of imputation of the result and is forced to search for other theories of liability, the scientific and practical value of which is disputable.

On the other hand the doctrine of Georgian law has defects, as there are cases, when causative connection between the accomplice's acts and the criminal result is disputable. In case of complicity the substitution of formula *condicion sine qua non* by other formula of increasing risk, offered by K. Mchedlishvili is not based on legislation, because it goes beyond the limits of causative connection stated by Article 8 of Criminal Code.

On this background, opinions of *Professor Dressler* and *Professor Kreutzer* on differentiating causal and non-causal (substantial and insubstantial) accomplices seem to be interesting. We think that in Continental, as well as in Anglo-American criminal law research must be continued in this direction in order to improve the complicity law and harmonize legal systems.

⁴⁹ Ibid, 18.

⁵⁰ In English: *make somebody do something*, In French: *faire faire*, in Spanish: *hacer hacer algo* and others, for example, have coffee boiled, have the bread brought and so on.

⁵¹ American author Daniel *Yager* remarks the same. He says: "Lue XIV built Versailles, though he did not build it himself"—*Yager D.*, *Helping, Doing and the Grammer of Complicity*, 15 *Crim. Just. Ethics*, 1996. 25.