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Intention and Negligence in Complicity in Georgian and American Criminal Law

The given article relates to the problem of intention and the negligence in the context of complicity in Georgian and American criminal law. Mens rea of complicity raises many disputable questions in contemporary criminal law. The author of the article concludes that the complicity by dolus eventualis is possible in certain categories of crimes while negligent complicity should be generally left unpunished. However, the legislator can introduce provisions in specific part of the criminal code criminalizing complicity by recklessness (as well as dolus eventualis) and negligence in specific cases.

Keywords: *Complicity, principle, recklessness, negligence, excess of the principle offender.*

1. Introduction

Complicity in the crime constitutes a significant but complex problem in criminal law. The question of what should be the mental state or objective link of the accomplice towards the principal and his conduct is decided differently in different countries. In this respect it is important to compare the similarities and differences between Georgian and American criminal law. Georgian criminal law requires that accomplice should be linked to the main crime objectively by causation and subjectively by intention. In difference, American criminal law does not require causation as a prerequisite and on the other hand, negligence suffices for holding the accomplice liable. In Georgian as well as in American criminal law, problematic issues are the content of the intention in case of complicity, the liability for complicity with recklessness and negligence and the assistance by "neutral" actions. The given article overviews the specific features of two legal systems in the light of the specific practical examples and concludes the line between the criminally punishable and non-punishable complicity should be drawn in the forms of intention. In the result crimes complicity should be limited only by such cases where the principle has the first or second degree intention with regard to the result of the crime and this is known to the accomplice. However, the accomplice can have *dolus eventualis* towards the result of the crime in such circumstance. Georgian criminal code contains provisions by which the assistance by *dolus eventualis* (when the accomplice is not sure about principle's intention) is criminalized in the form of a separate offence. The author also overviews the cases of so called negligent complicity and believes that such cases should not be punished at all.

2. Cases for Consideration

In order to analyze the problems presented in this article, it shall be useful to consider several cases, which shall be discussed at the end of this article.

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1. In order to dig a tunnel from his house to reach a safe of a bank and steal money B has borrowed a spade from A. "A" which was convinced that "B' would not be able to dig a tunnel and neither penetrate into the safe. However he did not want to anger B and gave him the spade. By using the spade, B has dug a hole, penetrated the safe of the bank and stole the money. Shall "A" be responsible for complicity in the theft

2. B has made a bet with his friends that he would be able to cross the entire city by car in 10 minutes in the afternoon hours, for which he has borrowed a car from A. A knew was that such conduct was highly dangerous, however, we was completely reckless to the consequences. By speeding up, B crashed into a car at a crossroad and caused death of two persons. Shall A be responsible for the results of this crime?

3. Shop seller A has overheard a conversation between clients wishing to buy knifes in the shop and guessed that they wanted to commit robbery using these knives. Despite that, A has sold knives to the clients, by which they committed bank robbery. Shall A be responsible for the assistance in the bank robbery?

4. A who was a security guard of a store has forgotten to turn on the alert system during the night. The thieves have seized this opportunity and robbed the store during the night. Shall A be criminally liable?

5. A who was late for the work told the tax driver that he would pay double in case of speeding up. The taxy driver has complied with the request and speeded up the vehicle in the excess of speed limit. However he has caused an accident and death of several persons. Shall A be responsible for the results?

6. A has borrowed money from B. Later he told B that he would not be able to pay the debt, but proposed him to break into his aunt's house and steal the jewellery. B broke in the house of the aunt of A, however the aunt was there and has resisted to the breaking, during which she was killed. Shall A be responsible for the murder of his aunt?

3. Forms of Intention and Negligence in Georgian and American Law.

Before we examine the mens rea of complicity, we should compare each other the forms of negligence and intention in Georgian and American criminal law.

US model criminal code differentiates between four types of mens rea: Purpose, Knowledge, Recklessness and Negligence. In Georgian criminal law, the corresponding forms of mens rea would be first degree intention, second degree intention, *dolus eventualis*, conscient negligence and unconscious negligence.[1] The concept of recklessness in American criminal law, which is in the middle way between negligence and intention corresponds with *dolus eventualis* and conscious negligence in Georgian criminal law.[2] We should bear this in mind while discussing the mens rea of complicity in Georgian and American criminal law.

[1] See *Tsikarishvili K.,* Dolus Eventualis in Contemporary West European and American Criminal Law, Journal "Justice and Law", №3, 2008, 35 (in Georgian).

[2] Ibid.

4. The Question of Intentional and Negligent Complicity in Georgian Criminal Law.

In soviet legal literature there was no uniform approach to the mens rea of complicity. Part of the scholars believed that complicity was possible only in case of intentional crimes, while the others believed that it was also possible in negligent crimes.[3] Some authors believed that complicity was possible only with direct intent, while the others recognized complicity with *dolus eventualis*.[4]

Tinatin Tsereteli believed that complicity was possible only in intentional crimes. She thought that an accomplice in negligent crime should be considered as principle acting through intermediate person, while complicity in negligent crimes should be left unpunished.[5] As to the negligent crimes, she believed whenever there is a result caused by negligence, the person should be liable directly as a principle of negligent crime.[6]

With regard to the complicity in the negligent crimes, professor Otar Gamkrelidze wrote following:

"If we may not talk about complicity in cases, where one party is acting negligently, it will be even more difficult to classify as complicity those cases, where all participants act negligently. In such case, everyone of them should be deemed as principle and they should be independently punished for the harm done.[7]

Professor Ketevan Mchedlishvili is also in favor of considering negligent participants as principles: "everyone who has violated a norm of foresight and has thus caused criminal result should be recognized as principle. The negligent co-principle or accomplice is a dogmatic nonsense, because people may not act jointly for the achievement of the common goal if they are not aware of this goal and do not seek it.[8]

Professor Merab Turava believes that negligent participant in another's crime can be deemded as a principle offender: "negligent participant in criminal law legally constitutes a negligent principle, because in this case, the person who has persuaded the other negligently and made him commit the crime has violated a norm of foresight causing specific result".[9]

With regard to this issue, it must be said that the problems are not connected to the cases in which several people jointly violate the norms of foresight and each of them directly causes the harm. The problem is the cases when one of the participants is a factual aider or instigator and another is factual principle. Part of the Georgian scholars believe that such cases should not be punished, while the others believe that they should be classified as parallel principles.[10]

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3 For the detailed examination of this issue see, *Gamkrelidze O.*, Problems of Criminal Law, T. II, Tbilisi, 2010, 261-292 (in Georgian).

4 Ibid.

5 *Tsereteli T.*, Problems of Criminal Law, T. II, Tbilisi, 2007, 38-45 (in Georgian).

6 Ibid, 42.

7 *Gamkrelidze O.,* Problems of Criminal Law, T. II, Tbilisi, 2010, 319 (in Georgian).

8 *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime, Tbilisi, 2011, 197 (in Georgian).

9 *Turava M.*, Criminal Law, General Part, 9th ed., 2013, 249 (in Georgian).

10 For example, when a passenger pushes the driver to speed up, ending up in fatal consequence, M. Turava classifies such case as parallel perpetration, while K. Mchedlishvili Hadrich believes that such case is not

In his work "problem of criminal unjust and the ground of liability for complicity in crime" professor Otar Gamkrelidze overviewed one of the cases from court caselaw where one of the hunter told the other hunter that there was a bear on the other side of the river. Both of them seized guns and shot in the direction of the moving object, which was in fact a human being shot by a bullet. The investigation could not conclude which hunter was the owner of the fatal bullet and thus was directly responsible for the result. The trial court has convicted both hunters for negligent homicide, while the superior court has reversed the judgment and acquitted both persons. The court noted that when we are dealing with a negligent homicide, criminal liability shall be attributed only to the person who has directly caused the result and this could not be proven in the given case.[11]

Professor Otar Gamkrelidze believes that this was the right decision. Which means that he is not in favor of application of the concept of "parallel principle" in such cases.[12]

The legal provisions formulated in 1999 criminal code exclude the negligent participation. The art. 22 stipulates that a complicity is an intentional participation of two ore more persons in an intentional crime. Thus the law requires the existence of double intent: an accomplice participates intentionally in the crime intentionally committed by the principle.

The legislative formula of art. 22 has left open the possibility of complicity by *dolus eventualis*.

Majority of scholars in Soviet criminal law and among them Tinatin Tsereteli were in favor of the opinion that complicity is possible by way of *dolus eventualis*.[13] Professor Otar Gamkrelidze, which is against such position believes that complicity is possible only with direct intent. In support of his position, he has brought many arguments. In the first place, he emphasized that it is impossible to think about complicity with *dolus eventualis* in crimes, which can be committed only with direct intent.[14] The author believes that if we admit the possibility of complicity with *dolus eventualis*, we should also admit the possibility attempt with *dolus eventualis* to which he is categorically opposed.[15] The author also believes that the recognition of complicity by *dolus eventualis* should logically lead us to the admission of reckless complicity.[16]

In the opinion of Otar Gamkrelidze, complicity with *dolus eventualis* contradicts with the concept of joint wrong (unrecht-in german), which according to him constitutes the foundation of complicity. The author believes that it is important to identify an objective and non personal element

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punishable (See *Turava M.,* Criminal Law, General Part, 9th ed., 2013, 249 (in Georgian). *Mchedlishvili-Hadrich K.,* Criminal Law, General Part, Specific Forms of Execution of the Crime*,* Tbilisi, 2011, 213 (in Georgian).

11 *Gamkrelidze O.,* Problems of Criminal Law*,* T. II, Tbilisi, 2010, 316 (in Georgian).

12 See ibid. Tinatin Tsereteli examines similar cases with the difference that in this case the court could identify the owner of the fatal bullet. Tinatin Tsereteli believes that both persons should be found as principle offenders of negligent crime. *Tsereteli T.,* Problems of Criminal Law*,* T. II, Tbilisi, 2007, 42 (in Georgian).

13 *Tsereteli T*., Problems in Criminal Llaw, T. II, Tbilisi, 2007, 152 (in Georgian).

14 *Gamkrelidze O.,* Problems of Criminal Law*,* T. II, Tbilisi, 2010, 324 (in Georgian).

15 In contemporary criminal law of Georgia, attempt with dolus eventualis is disputed issue. Professor Merab Turava endorses such theory. See *Turava M.,* Criminal law, General Part, 9th ed., 2013, 136 (in Georgian).

16 Ibid.

in the subjective aspect of crime, which will unite the conduct of two persons and turn them into complicity.[17] Professor Gamkrelidze believes that such element is purpose. He states following: " The purpose of achieving the result described in corpus delicti is a founding element of subjective side of criminal wrong. Thus it is common for every participant, irrespective of personal capabilities".[18]

The opinion of Professor Gamkrelidze, according to which complicity is possibly only with direct intent is not uniformly supported in Georgian legal literature. Part of the Georgian authors do not agree,[19] while the others admit only the possibility of excess of the principle with *dolus eventualis*.[20]

The other question is how Georgian authors understand the complicity with *dolus eventualis*. In her work, professor Tinatin Tsereteli discusses an example, which according to her points to *dolus eventualis*: "Voronin did not want to anger his friend Glazgov and gave him his revolver while knowing that Glazov was intending to kill Danilov. Voronin did not want to kill Danilov. On the contrary, he wanted to dissuade Glazgov to commit the crime, however could not manage it and thus gave him the gun for the murder". Tinatin Tsereteli concludes that in such case we have *dolus eventualis*.[21] However, Otar Gamkrelidze disagrees with this conclusion: "if the accomplice is aware of the criminal purpose of the principle and objectively assists the principle in the accomplishment of this goal, than this criminal purpose is also attributed to the accomplice".[22]

A similar opinion was expressed by Prof. Elene Gventsadze who believes that the concept of intent has different features in case of complicity. Namely, the volitional and intellectual aspects of the accomplices are directed not to the result of the crime but to the conduct of the principle. The accomplice is familiar with the criminal goal of the principle and intentionally contributes to the achievement of this goal.[23] Such approach is not justified. We shall discuss that issue below.

In Georgian criminal literature, we also encounter a discussion on the issue of possibility of assistance by neutral conduct, such as selling a knife to the person who later commits murder with this knife, or taxi driver bringing the person to the scene of the crime, etc.[24] Prof. Ketevan Mchedlishvili Hadrich, after overviewing German criminal law theories on this issue supports the dominating view

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17 Ibid, 331.

18 Ibid, 387-389.

19 See *Turava M.,* Criminal law, General Part, 9th ed., 2013, 334 (in Georgian).

20 See *Nachkebia G., Dvalidze I.,* General Part of Criminal Law, Manual, Tbilisi, 2007, 198 (in Georgian).

21 See *Tsereteli T.,* Problems of Criminal Law, T. II, Tbilisi, 2007, 200 (in Georgian).

22 *Gamkrelidze O.,* Problems of Criminal Law, T. II, Tbilisi, 2010, 392 (in Georgian). Contrary to this allegation, in another place, Professor Otar Gamkrelidze points to the following: "Intentional participation means intention not towards the conduct but intentional attitude towards the results.". See ibid, 313. In the opinion of Professor Ketevan Mchedlishvili Hadrich, similar case points not to the *dolus eventualis* but the direct intent of the second degree, because the accomplice is aware of the inevitability of the conduct committed by the principle offender" See *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime, Tbilisi, 2011, 237 (in Georgian).

23 *Gventsadze E.,* Subjective Side of Complicity in Crime, Tbilisi, 2012, 149 (in Georgian).

24 See *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime, Tbilisi, 2011, 239 (in Georgian).

according to which in order to punish a person for such assistance, the helper should express solidarity and step on the side of the principle offender. At the same time, she notes that part of the German authors apply subjective criteria for the qualification of assistance with neutral conduct. Namely, this is the case, when the person is certain (second degree intention) that he is contributing to the implementation of the crime. Thus if the person is not particularly certain how his contribution shall be used and only admits such possibility, such cases should not be qualified for complicity.[25]

We should separately note the issue of excess of the principle. According to art. 26 of the criminal code, the excess of the principle is the commission by the principle of such conduct which was not covered by the intent of the co-principle or accomplice. Second part of the article clarifies that accomplice or co-principle shall not be liable for the excess of the principle. In Georgian criminal literature, the issue of the access of the principle to which the accomplice is connected by *Dolus eventualis* is disputable. Part of the authors are in favor[26] and others are against the punishment of such cases.[27]

5. Question of Intention and Negligence in Case of Complicity in American Criminal Law

In American criminal law, the caselaw as well as doctrine is controversial in relation to the mens rea of complicity. We can clearly identify two differing views: 1. For the accomplice it is enough to know that he is assisting or inciting a principle in the commission of the crime 2. That the accomplice has the intent towards the commission or facilitation of the principle offence.[28]

In the middle of last century, this issues were subject of animated discussion during the preparatory works for drafting model penal code in US.[29] Part of the authors insisted that any other standard beyond criminal intent of the accomplice would dangerously extend the scope of liability while the opponents affirmed that the limitation of complicity by intent would produce gaps in the criminal law. Namely would leave unpunished the instigator and aider who were acting knowingly but without intent. Thus, final version of the MPC rejects the knowledge standard and states that the accomplice should have a goal to contribute or facilitate the offence.[30] The commentary of the MPC rejects complicity in cases where "[a] lessor rents with knowledge that the premises will be used to establish a bordello. A vendor sells with knowledge that the subject of the sale will be used in the

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25 Ibid.

26 *Turava M.,* Criminal law, General Part, 9th ed., 2013, 344 (in Georgian).

27 *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime*,* Tbilisi, 2011, 250 (in Georgian).

28 *Courteau C.,* The Mental Element Required for Accomplice Liability: A Topic Note, Louisiana Law Review, Vol. 59, 328.

29 Ibid, 329.

30 Model Penal Code (1962) § 2.06. one of the defects of the knowledge standard is also believed to be the fact that in purposeful offences knowledge standard does not enable the conviction of the accomplice (which was aware of the purpose) with lesser degree of culpability than purpose. See *Dubber M., Hörnle T.,* Criminal Law, A Comparative Approach, Oxford University Press, 2014, 324.

commission of the crime. A doctor counsels against an abortion during the third trimester but, at the patient's insistence, refers her to a competent abortionist". [31] At the same time MPC has adopted following formulation: "when causing particular result is an element of the offence, as accomplice shall be deemed a person with enough mental element towards this result, which is sufficient for the commission of this crime".[32]

US federal code, chapter 2 states that " Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.". [33] The code is silent with regard to the subjective side of complicity and the court caselaw is also controversial. Some federal courts support knowledge standard, while the others endorse "intent standard".

In Backun v. United States the seller sold stolen item at a low price knowing that the buyer would transport these items to another state to find a better market. The seller was found guilty of Federal Law on stolen goods (18 U.S.C.A. @145), which criminalized transportation of goods above value 5000 USD from state to state knowing that it is stolen.[34] The court stated that because it is a moral obligation of every human being to prevent the commission of grave crime, the sale of item with the knowledge of criminal intent of the buyer is sufficient for the liability of the accomplice and that the seller cannot wash hand or ignore the purpose for which the purchase was made if he was notified about that purpose.[35]

A different stand was taken in the case "United States v. Peoni. In this case, the judge learned hand stated following "It will be observed that all these definitions have nothing whatever to do with the probability that the forbidden result would follow upon the accessory's conduct; and that they all demand that he in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed. All the words used even the most colorless, "abet" carry an implication of purposive attitude towards it."[36]

The caselaw of state courts is also divergent: Part of the states recognize complicity with the knowledge of the criminal purpose of the perpetrator, while the others maintain another approach. This is visible from following cases:

In People v. Beeman, the defendant was convicted of complicity in robbing his sister in law. He has communicated information to the perpetrators about whereabouts of the residence of the victim knowing their purpose. California Supreme Court has reversed this judgement and stated that the helper should act in knowledge of criminal purpose of the perpetrator and act in furtherance of its commission.[37]

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31 Model Penal Code § 2.06 commentary (1985), par. 315.

32 Commentary to the MPC points that this provision enables knowing participation in negligent crimes.

33 18. U.S.C. & 2, <https://www.law.cornell.edu/uscode/text/18/2> [30.10.2020].

34 Backun v. United States, 112 F.2d 635, 4th Cir. 1940, <https://law.justia.com/cases/federal/appellate-courts/F2/112/635/1498899/> [30.10.2020].

35 Ibid.

36 Ibid.

37 People v. Beeman, №22525, Supreme Court of California, February 6, 1984, <https://law.justia.com/cases/california/supreme-court/3d/35/547.html> [30.10.2020].

In People v. Germany, the defendant has landed gun to the principle, who used it to commit murder. The California appellate court found that assistance with the knowledge of the perpetrator's criminal purpose is sufficient for imposing liability for complicity.[38]

In line with the caselaw, the legal doctrine is also controversial. Part of the authors endorse knowledge standard and others endorse intent standard.[39] The supporters of the intent standard emphasize the principle of personal culpability.[40] In addition, they believe that the intent standard ensures that the accomplice has a stake in the principle's conduct and makes it as his own. [41] Sheriff Girgis believes that because in American criminal law, objective connection of the accomplice with the main offence may be minimal (causation is not required), [42] this should be compensated by high level of subjective connection, which can only be intent. As to the supporters of knowledge standard, they focus on the need of the prevention of the crime.[43]

Some writers believe that knowledge standard makes accomplices liability too broad and endangers lawful business,[44] while the intent standard makes it too narrow.[45] Thus some authors try to find middle way between purpose and knowledge.

For example, Guidion Yaffe thinks that line between punishable and non punishable complicity should be found in the different forms of intention. He believes that the intention disposes the accomplice in two directions 1. Take appropriate measures for the assistance of the principle 2. not to reconsider assistance in the light of the fact that the aid will be used for the commission of the crime. Yaffe believes that from this two elements the existance of the second one is sufficient for complicity. He believes that this is the minimal standard of intent for complicity. [46]

Sheriff Girgis believes that what matters is not the mental attitude of the accomplice towards the conduct of the principle, but towards his intent. Namely, the accomplice should aim to ensure that the

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38 People *v.* Germany, 42 Cal. App. 3d 414, <https://law.justia.com/cases/california/court-of-appeal/3d/42/414.html> [30.10.2020].

39 *Courteau C*., The Mental Element Required for Accomplice Liability, Luiziana Law Review, Vol. 59, 1998, 328.

40 *Rogers A.*, Accomplice Liability for Unintentional Crimes: Remaining within the Constraints of Intent, 31 Loy. L.A. L. Rev. 1351, 1998, 1351.

41 Ibid.

42 See *Tsikarishvili K.,* Causation During Complicity in Georgian and Anglo-American Criminal Law, "Journal of Law", №1, 2016, 314 (in Georgian).

43 *Courteau C.,* The Mental Element Required for Accomplice Liability: A Topic Note, Louisiana Law Review, Vol. 59, 325-329 See *Westerfield L.,* The Mens Rea Requirement of Accomplice Liability in American Criminal Law - Knowledge or Intent, Miss. L. J., 1980, 25.

44 According to Gwidion Yaffe, if we were afraid of liability for what others might do because of our conduct, this would very much limit our everyday activities. See *Yaffe G.,* Intending to Aid, Law and Philos, Vol. 33, 1-40, 2014, 15.

45 For example, the knowledge standard would enable the conviction of a person who gives money to the penhandler with the knowledge that this money shall be used for the purchase of drugs, while with intent standard we shall not be able to convict the driver who takes robbers to the scene of the crime. *Yaffe G.,* Intending to Aid, Law and Philos, Vol. 33, 1-40, 2014, 10.

46 Ibid, 13.

principle procures or maintains his own intent to commit crime. At the same time, the accomplice should not expect that the crime shall be thwarted.[47]

Professor Alexander Sarch believest that the complicity comes in degrees, which are dependent on the level of condoning of the crime by the accomplice. Condoning the crime does not necessarily mean wishing it or being in its favor. Condoning the crime may mean also tolerance to the crime. In order to measure the level of condoning, the author proposes following test: the person shall be deemed as full accomplice if his negative attitude towards the crime committed by the principle is so minimal that if he were in a position to dominate the principle, he would allow him commit the crime (authorization test). According to the scholar, traditional forms of mens rea – intention and negligence and accomplice's contribution to the crime are the indicators of level of condoning.[48] Thus the question of who will be full or lesser accomplice should be decided case by case.[49]

Professor Luis Westerfield proposed that the knowledge standard should be used only in case if the accomplice knowingly and substantially contributes to the commission of the offence.[50]

Several US states have adopted so called reckless facilitation statutes, according to which assistance (without intent) to the principle with the knowledge he intends to commit the crime shall be a felony of lesser degree and punished less severely than the participation in the same crime[51] Professor Lafave believes that this approach enables to punish less culpable accomplice with lesser sentence.[52]

As to the question of reckless/negligent participation, this problem is approached differently in different states. Namely, the caselaw of several courts admits such possibility, while others exclude. In the case of State v. Etzweiler,[53] New Hampshire court has established that Etsweiler, which landed money to a drunk co-worker, resulting in car accident and loss of human life, could not be held liable for the result which was caused by negligence. New Hampshare State legislation accomplice's liability ought not to extend beyond the criminal purposes that he or she shares.[54] " State must establish that the accomplice's acts were designed to aid the primary actor in committing negligent homicide, yet under the negligent homicide statute, the primary actor must be unaware of the risk of death that his conduct

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47 *Girgis S.,* The Mens Rea of Accomplice Liability: Supporting Intentions, 123 Yale L. J. 460, 474-476.

48 *Sarch A.,* Condoning the Crime: The Elusive Mens Rea for Complicity, 47 Loy. U. Chi. L. J. 131, 2015, 155, 172.

49 For example, the driver who brought the robbers to the scene of the crime and which profits from the crime proceeds represents a full accomplice, while the driver who is not entirely certain that his passengers are going to commit robbery, but nonetheless is reckless to this fact represents an accomplice of lower degree, *Sarch A.,* Condoning the Crime: The Elusive Mens Rea for Complicity, 47 Loy. U. Chi. L. J. 131, 2015, 176.

50 *Westerfield L.*, The Mens Rea Requirement *of* Accomplice Liability *In* American. Criminal Law-Knowledge or Intent, 51 Miss. LJ. 177, 177-79, 1980, 30.

51 See e.g. Criminal Code of North Dacota, chapter 12.1, <https://www.legis.nd.gov/cencode/t12-1.html> [30.10.2020], NY criminal code, section 114, <http://ypdcrime.com/penal.law/article115.htm> [30.10. 2020].

52 *Wayne R., Lafave W., Austin W.,* Criminal Law, 2rd ed., 1986, 584.

53 State v. Etzweiler 480 A.2d 870, 1984, <https://casetext.com/case/state-v-etzweiler> [30.10.2020].

54 Ibid.

created, and the court could not see how an accomplice could intentionally aid the primary actor in a crime that the primary actor was unaware that he was committing.".[55]

In a similar case of United States v. Brown, federal appellate court convicted defendant for as direct perpetrator of negligent crime in bypassing the institution of complicity.[56]

In difference with the New Hampshire, Colorado state courts recognize complicity by negligence. In the case of People v. Wheeler, Colorad State Court stated following: "Therefore, for a person to be guilty of criminally negligent homicide through a theory of complicity, he need not know that death will result from the principal's conduct because the principal need not know that. However, the complicitor must be aware that the principal is engaging in conduct that grossly deviates from the standard of reasonable care and poses a substantial and unjustifiable risk of death to another. In addition, he must aid or abet the principal in that conduct and, finally, death must result from that conduct.".[57]

Similar issue was handled by the court in the case of People v. Abott[58] which involved two racing drivers, one of which hit a car and caused death of all passengers. The driver of the second car was found guilty in negligent homicide. The court concluded that he intentionally assisted in the commission of reckless crime, which caused death. The court held that in order for a person to be found accomplice in a reckless crime 1. he should have the same mens rea which is required by law for the commission of this crime 2. should intentionally facilitate the commission of the offence.[59]

Some courts admit participation in the reckless crimes and not in the negligent crimes[60]

With regard to the complicity in negligent crime there are differing views in the legal doctrine as well:

The first category of statutes contains language that predicates accomplice liability solely on the intent to aid in the commission of a specific offense. The second category of statutes are those similar to the first category, but it further provides that for result-oriented crimes, an "accomplice in the conduct causing such result" is culpable if he acts with the requisite mens rea for that offense. Third category requires that the accomplice should intentionally aid the principal's conduct and have the mens rea required by the underlying crime. Based on this, Audrey Rogers believes that first and second category legislation admit participation in negligent offence. [61]

Stanford Kadish believes that criminal law penalizes negligent causing of harm, thus the complicity should not be an exception[62] Kadish believes that not only knowing assistance in negligent

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55 Ibid.

56 United States v. Brown, 22 M.J. 448, 449, C.M.A.196, cited from: *Rogers A.*, Accomplice Liability for Unintentional Crimes: Remaining Within the Constraints of Intent, 31 Loy. L.A. L. Rev. 1351, 1998, 1370.

57 People v. Wheeler, 772 P.2d 101, 1989, <https://law.justia.com/cases/colorado/supreme-court/1989/87sa379-0.html> [30.10.2020].

58 People v. Abott, 445 N.Y.S.2d 244, N.Y. App. Div. 1981, < https://casetext.com/case/people-v-abbott-17> [30.10.2020].

59 Ibid.

60 *Rogers A.*, Accomplice Liability for Unintentional Crimes*:* Remaining within the Constraints of Intent, 31 Loy. L.A. L. Rev. 1351, 1998, 1385.

61 Ibid, 1364-1365.

62 *Kadish S.,* Reckless Complicity, Journal of Criminal Law and Criminology, Vol. 87, №2, 369.

crime (such as car owner landing key to a drunk driver), but also reckless assistance in intentional crime (such as mother leaving daughter to violent boyfriend, or police officer negligently leaving gun in a criminally dangerous neighborhood)[63]

On the other hand, according to the Kadish, the intention of the accomplice means intention not to the result of the crime but to the conduct of the crime:

"The intention requirement, however, does not preclude holding a person for complicity in a crime for which recklessness or negligence suffices for liability, so long as the secondary actor intended to help or persuade the primary actor to do the reckless or negligent act. If person does an act that recklessly causes the death of another, he is liable for manslaughter as a principal offender. That he did not intend the death is irrelevant. Likewise, when another person intentionally helps or influences the principal to do a reckless or negligent act, he shares the criminal liability of the principal. Thus, one who knows a boiler is defective, but nonetheless encourages another to fire it, is an accomplice to the crime of manslaughter if the boiler explodes and kills someone".[64]

According to Kadish, those who recklessly assist others in the commission of intentional crimes are not less culpable than those who recklessly assist others in the commission of reckless crimes.[65]

As to the crimes, which can be committed only by specific intent (such as theft), Kadish believes that a separate legal construct should be created for such crimes and reduced sentences may be introduced.[66]

On this question an interesting view was proposed by prof. Grace Mueller. He believes that because the requirement of causation is waived in case of complicity, subjective element should be given more weight, thus, the accomplice should have same mental requirement to the main crime as the principle offender. In case of contrary, the accomplice shall be liable with a lower standard of subjective element than required for principle offender. Thus, accomplices in intentional crime should act intentionally and in negligent crimes negligently.[67]

Candace Courteau believes that recognition of negligent complicity shall have preventive effect, because the owner of the care will think twice before landing key to the drunk driver.[68]

In difference, Scott and Lafave disagree the possibility of negligent complicity. They believe that negligent complicity shall dangerously broaden the scope of criminal liability and create the risk of punishment of remote and irrelevant links to the crime.[69]

Some American authors believe that in case of negligent participation in negligent crime, a person may be found guilty directly as principle, bypassing complicity.[70]

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63 Ibid, 383.

64 *Kadish S. H.,* Complicity, Cause and Blame, Study in the Interpretation Doctrine, California Law Review, Vol. 73, Issue 2, 1985, 76.

65 Ibid.

66 *Kadish S.,* Reckless Complicity, Journal of Criminal Law and Criminology, Vol. 87, №2, 389.

67 *Mueller G.,* Mens Rea of Accomplice Liability, 61 S. Cal. L. Rev. 2169, 1987-1988, 2190.

68 *Courteau C.,* The Mental Element Required for Accomplice Liability: A Topic Note, Louisiana Law Review, Vol. 59, 345.

69 *LaFave W., Scott A.*, Criminal Law, 2rd ed., 1986, 584-586.

The issue of excess of the principle should be separately dealt with. If the principle offender deviates the common plan and commits a substantially different crime, the aider and abetter shall not be responsible only for the agreed crime, but also for any other crime which is a natural and probable consequence of the crime agreed. Thus for the accomplice, *dolus eventualis* and even conscious negligence suffices.

For example in State v. Foster the defendant and the principal confronted the victim, whom they suspected had raped the defendant's girlfriend. The defendant beat the victim and then left the principal with a knife to guard the victim while the defendant retrieved his girlfriend to identify the victim as the rapist. While the defendant was away, the victim charged at the principal, who then fatally stabbed the victim. The court convicted defendant for complicity to murder.[71]

According to Stanford Kadish, the doctrine of natural and probable consequences is defective in a way that in enables to convict the accomplice with a lesser degree of culpability than required for the commission of the main crime. This means that accomplice may be convicted for murder despite the fact that he had no intention to kill.[72]

6. Analysis

In this part, we believe it is appropriate to compare with each other the approaches of Georgian and American criminal law in the light of the abovementioned cases and express opinion on the problematic issues.

6.1. Intention and Complicity

In Georgian and American criminal law we see different approaches with regard to the content of intention during complicity. Professor Elene Gventsadze believes that in complicity the intention is directed not towards the result of the crime, but towards the conduct of the principle.[73] Similar opinion was expressed by Prof. Stanford Kadish in American Criminal Law.[74] Prof. Otar Gamkrelidze believes that if the accomplice helps the principle with the knowledge of his criminal purpose, this means that he joins the principle in the accomplishment of this purpose.[75] I believe that such understanding of intend does not fit with the legislative definition formulated in art. 9 of the criminal code. In this article different degrees of mens rea depend on the mental attitude of the offender to the result of the crime. Different forms of intention and negligence are determined by the willingness to bring about the result and awareness of its probability.

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70 *Courteau C.,* The Mental Element Required for Accomplice Liability: A Topic Note, Louisiana Law Review, Vol. 59, 345.

71 See State v. Foster, 522 A.2d 277, 283, Conn. 1987.

72 *Kadish S.,* Reckless Complicity, Journal of Criminal Law and Criminology, Vol. 87, №2, 375

73 *Gventsadze E.,* Subjective Side of Complicity in Crime, Tbilisi, 2012, 149 (in Georgian).

74 *Kadish S.,* Reckless Complicity, Journal of Criminal Law and Criminology, Vol. 87, №2, 347.

75 Ibid.

Taking into account the abovementioned example of Voronin and Glazgov, where Voronin did not want to anger his friend Glazgov and gave him his gun to commit murder, the view of Otar Gamkrelidze that this case corroborates direct intent is not convincing. We may change the following case in a way that we have a conscious negligence with respect to the fatal result. For example, let's assume that Voronin thinks that the distance between him and Danilov is 250 meters and he thinks it is almost impossible to kill someone from this distance. At the same time, Voronin knows that Glazgov is a bad shooter. Thus he hopes that the bullet shot by Danilov will not reach target. In such case we shall not have *dolus eventualis* with regard to the result of the crime but a conscious negligence.

On the other hand, the existence of different forms of negligence and intention does not only point to the degree of culpability but also to the degree of objective danger posed by the crime to the society.

In case of the first degree intention, the conduct of the defendant is more dangerous than in case of indirect intention (*dolus eventualis*). In such case, the defendant aims to achieve the criminal result and consciously choosing best means for the achievement of such results, later adjusting the means to the goal. Thus, when the principle acts with the intention of the first degree, his conduct is more dangerous and the same should be said about the accomplice. If the accomplice has first degree intention towards the goal of the crime, than he shall provide to the principle offender the most effective means for the commission of this crime.[76] If the accomplice has *dolus eventualis* towards the goal, than he will be reckless while choosing the means. If the accomplice has conscious negligence towards the goal, it is clear that the accomplice will chose the most ineffective means, in order to prevent the occurrence of the result. Thus, the effectiveness of the criminal aid depends on the degree of mens rea. With the higher degree of mens rea, provided means will be more effective.

The first case which was brought at the beginning of this article constitutes a clear example of conscious negligence toward the result and does not constitute a punishable complicity.

Presumably, in American criminal law this case will be solved differently by different jurisdictions. The courts which endorse the knowledge standard shall qualify this case as complicity in difference with the courts which endorse the intent standard.

This case shall probably successfully pass Guidion Yaffe's test, because the accomplice knows that his contribution shall be used for the commission of the crime. This case shall not probably pass Sheriff Girgis test, because the accomplice hopes for failure of the crime. However, as to Alexandre Sarch test, which ties complicity to the degree of condoning the crime, this case shall probably qualify as incomplete complicity, because the accomplice has lesser degree of culpability towards the result.

The second example which was brought above constitutes an example of complicity by *dolus eventualis*. In American criminal law *dolus eventualis* and conscious negligence are covered by "recklessness". Thus the American courts which admit complicity by recklessness, will probably punish the defendant for complicity in this case.

The given case will presumably pass Guidion Yaffe, Sheriff Girgis and Alexander Sarch tests and qualify for complicity. As to the Georgian authors, they shall probably have different views

[76] *Gamkrelidze O.,* Problems of Criminal Law, T. II, Tbilisi, 2010, 313 (in Georgian).

concerning this issue. The authors, which are in favor of complicity by *dolus eventualis* will probably classify this case as intentional complicity in difference with those who recognize only with direct intent.

Georgian criminal law should clearly delineate between punishable and non-punishable complicity and this line should be found in the different forms of intention. Thus, we do not agree with the opinions of American authors, who are seeking to draw this borderline beyond intention and negligence. We believe that we should qualify as punishable complicity only those cases, where the principle has first or second degree of intention towards the result and this is known to the accomplice. Such approach better corresponds with the common use of the word assistance. It is difficult to imagine to assist someone to achieve a result that he/she is not interested in or does not foresee it as inevitable. The aider may act with first or second degree intention towards the result, which means that he may desire the result actively. If the aider is hoping that the result will not happen, this will not constitute complicity. As to the instigator, he/she may act only with direct intent because it is impossible to convince someone with *dolus eventualis*.[77]

Thus, using this test, we should exclude liability for complicity in the first and second cases. To put it simply, reckless helper and reckless principle cannot form complicity. As a minimum, principle should be acting with knowledge or intention.

6.2. Assistance with so Called "Neutral Conduct"

The third case considered above constitutes an example of assistance with neutral conduct. According to the approach proposed by Otar Gamkrelidze and Elene Gventsadze, this case shall probably qualified as assistance with direct intent. As to prof. Ketevan Mchedlishvili, in accordance with the formula proposed by her, the accomplice should reveal solidarity towards the principle offender and this case shall presumably not classify as punishable complicity.

As to the American authors, it is difficult to evaluate whether this case will pass Guidion Yaffe's or Sherif Girgis Test. However, according to the test of condoning the crime, this shall be counted as imperfect complicity. American courts which share knowledge standard will probably qualify this case as complicity in difference with the court who focus on the intent standard.

In accordance with the legislation of the states, which endorse knowing facilitation, this case shall qualify as separate crime, which is punishable by reduced sentence compared to the crime committed by the principle.

American authors often point out that knowing facilitation shall be burdensome for everyday busyness. This assumption is not entirely ungrounded. Although in practice, the cases are rare in which the provider of common goods or services knows for certain that his goods or services will be used for criminal purpose, thus we think it is more important to solve moral and legal dilemma which is raised by this question. Namely, should we punish the seller of the match, which knows that his client is going to burn the city with it. Solidarity test, which was proposed by Ketevan Mchedlisvhili

[77] *Girgis S.*, The Mens Rea of Accomplice Liability: Supporting Intentions, 123 Yale L. J., 2013, 470-472.

does not provide any clear criteria. The seller which sells the goods, as a rule does reveal any solidarity towards the client. He is only interested to sell the goods. At the same time, selling the goods is his legal obligation and if refuses to do it, he will face problems with the law as well as with criminal world. Despite that, we believe that the cases of so called neutral conduct do not constitute any special category and they should be subjected to the general rule discussed above: namely, if the accomplice knows that the principle offender is acting with first or second degree intention, than the accomplice should also be criminally liable.

It is noteworthy that the criminal code of Georgia contains articles criminalizing specific cases so called knowing assistance such as art. 223 such as art. 223^4 (funding an illegal formation i.e. collection and delivery funds and other property with the knowledge that they shall be used or may be used for the activity of illegal formation. A similar crime is envisaged by art. 331^1 (funding of terrorism) and 321^1 (funding of crime directed against constitutional order) of the criminal code of Georgia. We believe that the text of these articles require modification, namely if the funder knows that his funds will be used for the commission of the crime, than we should qualify this case as complicity, but if the funder only assumes this possibility, than this is assistance with *dolus eventualis* which does not constitute a punishable complicity. However, this may be criminalized by application of special articles. Thus we believe that the words "shall be used" should be extracted from this articles and only the words "may be used" should remain.

Part of the American authors limit knowing assistance only to cases where the accomplice has substantial role in the commission of the crime. This approach deserves consideration. However, the question is what is substantial participation. Presumably, in the third case, the sale of knife shall not be considered as substantial assistance. However, if this is the only shop where the knife can be bought during this time of the day, than we have different situation and this assistance may become substantial.

6.3. Negligent Assistance in Intentional Crimes

The fourth case cited above constitutes negligent assistance in intentional crime. The criminal code of Georgia excludes negligent participation in intentional crime. Professor Merab Turava believes that this can be qualified as direct offending, if the proper conditions are present,[78] however, even with this approach the given may not be qualified as crime, because a negligent theft does not exist. The given case shall probably be left unpunished according to the doctrine as well as the case-law of the United Stated. Stanford Kadish believes that the law may separately envisage the possibility of punishing negligent participation in intentional crime.

Criminal code of Georgia contains norms, which criminalize specific case of negligent participation. Namely this is art. 238 which makes punishable the negligent storage of firearms, which has created condition for its use by other person resulting in the death or any other grave harm.[79] This means that the negligent participation in intentional crime is punishable only in cases stipulated by the law.

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[78] *Tskitishvili T.*, Offences Endangering Life and Health, Tbilisi, 2015, 311 (in Georgian).

[79] Professor Irakli Dvalidze disagrees with the opinion that this article covers the commission of intentional offence by weapon. He believes that we do not have objective imputation in this case. See, *Dvalidze I.,*

6.4. Instigation in Negligent Crime

The fifth case cited above constitutes a negligent instigation in negligent crime. With respect to this case, US doctrine as well as the caselaw is controversial. Part of the courts qualify it as complicity while the others leave this case unpunished. Stanford Kadish believes that the instigation of the person towards the violation of the rules of conduct in reality constitutes intentional participation because the intention refers to the attitude of the person towards the conduct of the principle offender and not towards the result.[80] The instigator intentionally pushes the principle offender towards the violation of the norms of foresight. Part of the Georgian authors believe that this case should not be punished, while the others think that this is the case of direct offending.[81]

We believe that the second approach is not justified because Georgian criminal code is familiar only with three type of principle offender: direct principle, indirect principle and co-principle. Presumably the authors of the view mentioned above focus on the figure of the direct principle. However, according to art. 22 of Georgian criminal code, direct principle is a person who has directly committed the crime. Thus, Georgian criminal code differentiates direct principle from indirect and co- principle exactly by way of this objective element. Thus, the approach, according to which the persons acting intentionally, considered as accomplices (if we assume that there was an intentional instigation to murder) will turn into direct principles in case of negligent participation is unfounded.[82] Based on the above mentioned, the law does not enable the punishment of the offender in the fifth case, neither in the status of the principle offender nor accomplice.

6.5. Excess of the Principle Offender

The sixth case constitutes a specific case of the excess of the principle offender for which Georgian criminal code excludes the liability of the accomplice. However, the instigator may be liable for the assistance in the attempted theft, because in the given case the principle offender has committed the attempted theft. As to the American criminal law, some of the states endorse the doctrine of natural and probable consequences according to which accomplice is guilty of natural and probable consequences of the crime agreed with the principle. Thus, in this case, the accomplice can also be acting with *dolus eventualis* or conscious negligence or even unconscious negligence as to the results of the unplanned crime.

Some American authors severely criticize natural and probable consequence doctrine. According to Stanford Kadish this doctrine enables us to punish the accomplice which is acting with

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Objective Imputation of the Crime and Careless Storage of Weapon in Georgian Criminal Law, "Journal of Law", №1, 2017.

80 Ibid.

81 Professor Turava believes that this is a case of parallel perpetration, while Mchedlishvili Hadrich believes that this case is not punishable (See *Turava M.,* Criminal law, General Part, 9th ed., 2013, 249, *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime*,* Tbilisi, 2011, 213 (in Georgian).

82 *Turava M.,* Criminal law, General Part, 9th ed., 2013, 249, *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime*,* Tbilisi, 2011, 213 (in Georgian).

lesser degree of culpability for the same crime as principle offender. Thus, the accomplice may be charged for the murder even though he/she has no intent to kill.

The question of the excess of the principle offender to which the accomplice is connected by *dolus eventualis* is disputable in Georgian legal literature. Part of the scholars are in favor[83] of this question while the others are against.[84]

Thus with respect of the excess of the principle offender, Georgian law is much stricter and introduces higher standard than American counterpart. In Georgian law, the excess of the principle offender can be punished as a minimum upon *dolus eventualis*, while in American law recklessness and negligence suffices. We believe that the question of the excess of the principle offender should be solved in the same framework as in the other issues of complicity. Namely if the accomplice is not aware that the accomplice has intention to commit different crime, than he should not be charged with the excess of the principle offender.

7. Conclusion

The present article corroborates that in Georgian as well in American criminal law there are a number of key aspects which are still subject to dispute and require a solid theoretical solution.

The principle of legality which is one of the fundamental principles of substantive criminal law implies the prohibition of indefinite nature of criminal norms.[85] Thus, the line between the punishable and non punishable complicity should be clear.

Georgian criminal law, this line is drawn with the concept of intent, because according to art. 23 of the Georgian criminal code, complicity is intentional participation in intentional crimes. However, the code does not specify which form of intention is sufficient for accomplice's liability. In American criminal law, this scope is much broader because legal doctrine as well as legislation and caselaw of some states admit complicity by recklessness and negligence. In Georgian criminal law there is a dispute on possibility of participation by *dolus eventualis*. We conclude that we should punish only such cases of complicity where the principle offender is acting with first or second degree of intention and this is known to the accomplice. In such case, the accomplice can also have *dolus eventualis* with respect to the result. The questions of so called neutral conduct and excess of the accomplice should be solved based on these general rule, namely, the assistance with the neutral conduct can be punishable if it corresponds to the proposed formula of subjective aspect of the complicity. The excess of the principle, e.g. the deviation of common plan does not constitute punishable complicity.

In Georgian as well as in American criminal law a disputable question is the liability for negligent complicity. Many American authors as well as case law in the US admits negligent

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83 According to art. 22 of the criminal code of Georgia " A principal is a person who immediately commits or has immediately participated in the commission of a crime together with another person (joint principal), also a person who has committed a crime through another person who, under this Code, shall not be criminally liable due to his/her age, insanity or other circumstances.

84 *Turava M.,* Criminal law, General Part, 9th ed., 2013, 344 (in Georgian).

85 *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime*,* Tbilisi, 2011, 250 (in Georgian).

participation, however, in Georgian criminal law, while the legislation excludes negligent participation, several authors believe that these cases can be punished as direct perpetration of the crime. This approach is not justified because Georgian criminal code defines principle (perpetrator) as direct executor of corpus delicti, which does not take place in case of factual instigation or factual assistance. On the other hand, Georgian criminal code separately envisages specific cases of participation with negligence or *dolus eventualis* and the list of these crimes can be broadened based on criminal policy considerations.

Bibliography:

1. Criminal Code of Georgia, LHG, 41(48), 09/10/2009.
2. Criminal Code of North Dacota, <https://www.legis.nd.gov/cencode/t12-1.html> [30.10.2020].
3. New York State Penal Law, <http://ypdcrime.com/penal.law/article115.htm> [30.10.2020].
4. U.S.C. & 2, <https://www.law.cornell.edu/uscode/text/18/2> [30.10.2020].
5. Model Penal Code, 1962.
6. *Dubber M., Hörnle T.,* Criminal Law, A Comparative Approach, Oxford University Press, 2014, 324.
7. *Courteau C.,* The Mental Element Required for Accomplice Liability: A Topic Note, Louisiana Law Review, Vol. 59, 325-329.
8. *Gamkrelidze O.,* Problems of Criminal Law, T. II, Tbilisi., 2010, 261-292, 313, 316, 324-325, 331, 387-389, 392 (in Georgian).
9. *Girgis S.*, The Mens Rea of Accomplice Liability: Supporting Intentions, 123 Yale L. J. 460, 474-476.
10. *Gventsadze E.,* Subjective Side of Complicity in Crime, Tbilisi, 2012, 149 (in Georgian).
11. *LaFave W., Scott A.,* Criminal Law, 2rd ed., 1986, 584-586.
12. *Mchedlishvili-Hadrich K.,* Criminal law, General Part, Specific Forms of Execution of the Crime, Tbilisi, 2011, 197, 213, 237, 239, 250, (in Georgian).
13. *Mueller G.,* Mens Rea of Accomplice Liability, 61 S. Cal. L. Rev. 2169, 1987-1988.
14. *Nachkebia G., Dvalidze I.,* General Part of Criminal Law, Manual, Tbilisi, 2007, 198 (in Georgian).
15. *Rogers A.*, Accomplice Liability for Unintentional Crimes: Remaining within the Constraints of Intent, 31 Loy. L.A. L. Rev. 1351 (1998), 1351, 1352-1355.
16. *Sarch A.,* Condoning the Crime: The Elusive Mens Rea for Complicity, 47 Loy. U. Chi. L. J. 131 (2015), 155, 172.
17. *Tsikarishvili K., Dolus eventualis* in contemporary West European and American Criminal Law, Journal of "Justice and Law", №3, 2008, 35, (in Georgian).
18. *Tsikarishvili K.,* Causation during Complicity in Georgian and Anglo-American Criminal Law, "Journal of Law", №1, 2016, 314 (in Georgian).
19. *Tsereteli T.*, Problems in Criminal Law, T. II, Tbilisi, 2007, 38-45, 152, 200 (in Georgian).
20. *Turava M.,* Criminal Law, General Part, 9th ed., 2013, 136, 249, 334, 344 (in Georgian).
21. *Yaffe G.,* Intending to Aid. Law and Philos, Vol. 33, 2014, 10, 13, 15.
22. *Westerfield L.*, The Mens Rea Requirement of Accomplice Liability in American. Criminal Law-Knowledge or Intent, 51 Miss. LJ. 1980, 25.
23. *Wayne R., Lafave W., Austin W.,* Criminal Law, 2rd ed., 1986, 584.
24. Backun v. United States, 112 F.2d 635, 4th Cir. 1940.

25. People v. Beeman, Crim. №22525, Supreme Court of California, February 6, 1984.
26. People *v.* Germany, 42 Cal. App. 3d 414.
27. People v. Abott, 445 N.Y.S.2d 244, N.Y. App. Div. 1981.
28. People v. Wheeler, 772 P.2d 101, 1989.
29. State v. Foster, 522 A.2d 277, 283, Conn. 1987.
30. State v. Etzweiler 480 A.2d 870, 1984, <https://casetext.com/case/state-v-etzweiler> [30.10.2020].
31. United States v. Brown, 22 M.J. 448, 449, C.M.A.196.