



LEGAL REGULATION OF FORMS OF COMPLICITY IN THE CRIMINAL LEGISLATION OF SELECTED FOREIGN STATES: A COMPARATIVE LEGAL ANALYSIS

Inomjon Islombayevich Usmanov

The high council of judges of the republic of uzbekistan
under the judges high school

independent researchers

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Abstract. The legal regulation of complicity in crime constitutes one of the fundamental issues of contemporary criminal law. Its significance has increased considerably in the context of the growing complexity of collective, transnational and technologically facilitated criminal activity. Different legal systems have developed distinct approaches to co-perpetration, instigation, aiding and abetting, conspiracy, criminal groups and criminal associations, as well as to the liability of persons who establish, direct or participate in such structures.

This article provides a comparative legal analysis of the regulation of complicity and collective forms of criminal activity in the legislation of selected foreign states, including the United States, Spain, Portugal, India, Japan, the Republic of Korea and Türkiye. Particular attention is devoted to the functional role of each participant, the legal significance of prior agreement, the quantitative composition of criminal groups, the degree of stability and coordination among their members, and the differentiation of liability according to the nature of the contribution made by each person. The analysis demonstrates that, despite substantial differences among the examined legal systems, several common tendencies may be identified: differentiation of liability according to the participant's actual role; separate criminalization of membership in certain criminal associations; increased liability for founders, directors and leaders; recognition of conspiracy or agreement as an independent basis of liability in specified circumstances; and special legal mechanisms aimed at suppressing systematic collective criminal activity. The comparative findings indicate that foreign legislative experience should not be mechanically incorporated into national criminal legislation. Instead, legally justified and practically effective elements should be selectively adapted to the principles, structure and terminology of the national criminal-law system. Particular attention should be given to establishing clearer boundaries between ordinary complicity, complex complicity, criminal groups and criminal associations.

Keywords: complicity in crime, co-perpetration, conspiracy, aiding and abetting, instigation, criminal group, criminal association, criminal liability, comparative criminal law, collective criminal activity.

1. Introduction. The institution of complicity occupies an important place within the General Part of criminal law because the commission of an offence may involve several persons performing different functions. One person may directly execute the elements of the offence, another may induce its commission, a third may provide material or informational assistance, while another may coordinate the activities of the participants. The correct legal assessment of these different contributions is therefore essential for ensuring legality, justice and proportionate criminal responsibility.

The issue has acquired particular importance in the context of increasingly complex forms of collective and transnational criminality. Contemporary criminal activity may involve

stable relationships between participants, division of tasks, hierarchical control, financial support, technological resources and cross-border connections. Consequently, the traditional distinction between a direct offender and an accomplice must be supplemented by more precise legal criteria for identifying different forms of joint criminal conduct.

Comparative analysis of foreign legislation makes it possible to identify alternative legislative approaches and assess their suitability for national criminal law. Such research is especially important for states seeking to improve the legal regulation of complicity while simultaneously strengthening their response to serious collective criminal activity.

At the same time, the development of criminal legislation must remain subject to the principle of legality. Article 15 of the International Covenant on Civil and Political Rights establishes that no person may be held guilty of a criminal offence for an act or omission that did not constitute an offence under national or international law at the time when it was committed. The provision also prohibits the imposition of a heavier penalty than the one applicable at the time of the offence. A similar guarantee is contained in Article 7 of the European Convention on Human Rights. (1)

The principle of legality is directly relevant to complicity because the boundary between punishable participation and non-punishable association with criminal intentions must be clearly defined. Mere knowledge of an offence, acquaintance with an offender, presence at the scene or sympathy with criminal conduct cannot, by themselves, constitute complicity. Criminal responsibility requires a legally relevant contribution and the mental element prescribed by law. An important international instrument in this field is the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000. Article 2(a) defines an "organized criminal group" as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious offences in order to obtain, directly or indirectly, a financial or other material benefit. (2)

This definition contains several interconnected characteristics: a minimum number of participants, a certain degree of continuity, concerted conduct, a common criminal objective and a material or financial purpose. Thus, the concept is broader than a temporary agreement between several persons to commit one isolated offence.

Article 5 of the Convention is also directly relevant to complicity. It requires States Parties to establish, where appropriate, criminal liability for participation in an organized criminal group, participation in an agreement to commit a serious offence, intentional participation in the group's criminal activities, and organizing, directing, aiding, abetting, facilitating or counselling the commission of such offences. (3)

The Convention therefore recognizes different degrees and forms of involvement in collective criminal activity rather than limiting liability to the person who physically commits the substantive offence. Against this background, the present study examines the regulation of complicity and collective criminal activity in selected foreign jurisdictions and identifies legislative approaches that may be relevant for improving national criminal law

2. Materials and methods

The principal methodological basis of the study is the comparative legal method. The criminal legislation of selected jurisdictions representing different legal traditions and legislative models was examined in order to identify similarities and differences in the regulation of complicity.

The study covers the United States, particularly the legislation of California; Spain; Portugal; India; Japan; the Republic of Korea; and Türkiye.

The analysis focuses on:

- 1.co-perpetration and joint commission of offences;
- 2.instigation;
- 3.aiding and abetting;
- 4.conspiracy;
- 5.criminal groups and associations;
- 6.quantitative criteria;
- 7.stability and coordination among participants;
- 8.liability of founders, directors and ordinary members;
- 9.preparatory conduct connected with collective criminal activity; and
- 10.additional legal consequences associated with participation in criminal groups.

The comparison takes into account both formal legislative terminology and substantive criteria such as the number of participants, duration of cooperation, distribution of tasks, common criminal purpose, hierarchy and the actual contribution of each participant.

The purpose of the comparative method is not to establish a universally superior legislative model. Rather, it is to determine which legal mechanisms may contribute to greater clarity and consistency in the regulation of complicity within the national criminal-law system.

3. Results

3.1. The United States: Co-Participation, Conspiracy and Criminal Street Gangs

The United States does not have a single comprehensive Criminal Code applicable to all criminal offences. Criminal liability is regulated through federal legislation and the legislation of individual states. For this reason, the regulation of complicity and collective criminal activity must be considered with reference to particular jurisdictions.

California provides a useful example. California Penal Code §31 regulates persons who may be treated as principals in the commission of an offence. The provision extends beyond the person who physically commits the offence and encompasses persons whose intentional assistance, encouragement or facilitation contributes to its commission. (4) This approach demonstrates that physical execution is not the only basis for principal liability. The legal assessment also depends on the nature and significance of the person's contribution.

Conspiracy represents another important institution. California Penal Code §182 establishes liability for specified agreements between two or more persons to commit criminal offences. Consequently, the agreement itself may acquire independent criminal-law significance where the statutory requirements are satisfied. (5)

The distinction between conspiracy and co-perpetration is therefore important. Co-perpetration primarily concerns joint execution of the offence, whereas conspiracy focuses on the agreement to commit the offence and conduct undertaken pursuant to that agreement. California law also contains special provisions concerning criminal street gangs. Penal Code §186.22 establishes liability for active participation in a criminal street gang where the person knowingly promotes, furthers or assists felony conduct by gang members. Mere association with a group is therefore insufficient; active participation and the required mental element must be established. (6) Enhanced punishment may also apply where a felony is committed for the benefit of, at the direction of, or in association with a criminal street gang. This mechanism

allows the law to take into account the increased danger arising from the collective context in which the offence is committed. (6)

California law additionally addresses the financial dimension of collective criminal activity. Penal Code §186.1 recognizes forfeiture of profits derived from certain forms of criminal activity as a mechanism for suppressing the economic basis of such conduct. (7) The Californian model therefore combines general provisions concerning principals and conspiracy with special measures directed at criminal gangs and the proceeds generated by their activities.

3.2. Spain: Criminal Groups and Criminal Organizations

Spanish criminal legislation provides a particularly clear distinction between a criminal organization and a criminal group.

Article 570 bis of the Spanish Criminal Code establishes liability for persons who promote, establish, coordinate or direct a criminal organization, as well as for active participants, members and persons who financially or otherwise cooperate with it. The punishment for persons exercising control or leadership is more severe than that applicable to ordinary participants. (8)

Article 570 ter regulates criminal groups. The Code defines such a group as the union of more than two persons which, without possessing some of the characteristics required for a criminal organization, has the purpose of committing offences in concert. (9) This distinction is significant because Spanish legislation does not equate every form of collective criminal conduct with a criminal organization. A higher level of stability and coordination is required for the latter, whereas a criminal group may exist where certain structural characteristics are absent.

The Spanish model also takes into account circumstances such as a large number of members, possession of weapons or dangerous instruments, and the use of advanced technological means of communication or transportation. These circumstances may result in increased punishment. (10) Thus, the Spanish approach combines quantitative and qualitative considerations. The number of participants is relevant, but the degree of coordination, resources and capacity to commit offences are also legally significant. The distinction between founders, directors and ordinary members further demonstrates that liability is linked to the actual position and contribution of the person within the criminal structure.

3.3. Portugal: Functional Roles and Criminal Association

Portuguese criminal legislation provides a clear distinction between perpetration, co-perpetration, instigation and complicity.

Article 26 of the Portuguese Criminal Code recognizes several forms of perpetration, including direct commission, commission through another person, joint execution with another person and intentional determination of another person to commit an offence. (11)

Article 27 regulates complicity. A person who intentionally provides material or moral assistance to another person's intentional criminal act is treated as an accomplice, with the punishment subject to special mitigation. (12)

The Portuguese approach is therefore based largely on the actual contribution of the participant. A person who directly takes part in execution may be treated as a perpetrator, while a person who intentionally facilitates the offence may be classified as an accomplice.

Article 299 separately regulates criminal association. It covers persons who promote or establish a group, organization or association directed toward the commission of offences, as

well as members and supporters. More severe liability is provided for persons who lead or direct such a group. Importantly, paragraph 5 provides that a criminal group, organization or association exists where at least three persons act in concert during a certain period of time. (13) This provision is especially relevant for comparative purposes because it combines a numerical criterion with requirements concerning continuity and concerted action. Consequently, Portuguese law provides a useful example of how temporary cooperation between several persons can be distinguished from a more stable criminal association.

3.4. India: Conspiracy and Organized Crime

India provides an important contemporary example because its principal substantive criminal legislation was restructured through the Bharatiya Nyaya Sanhita, 2023, which entered into force on 1 July 2024. Section 61 regulates criminal conspiracy. An agreement between two or more persons to commit an illegal act, or to accomplish a lawful act through illegal means, may constitute criminal conspiracy subject to the statutory requirements. (14) The provision demonstrates that agreement may possess independent legal significance even before the substantive offence has been completed.

The Bharatiya Nyaya Sanhita also contains a separate provision on organized crime. Section 111 addresses serious collective criminal activity involving criminal groups or syndicates and includes various forms of participation, such as instigation, attempt, conspiracy, intentional assistance and preparation. (15)

This approach is significant because it recognizes that complex criminal activity may involve several persons performing different functions. Recruiters, intermediaries, financiers, transporters, document falsifiers and direct offenders may all contribute to the same criminal enterprise in different ways.

The Indian model therefore demonstrates the importance of assessing the actual conduct and contribution of each participant rather than relying exclusively on the identity of the person who directly performs the final criminal act.

3.5. Japan: Co-Perpetration and Systematic Criminal Activity

The Japanese Penal Code establishes a concise statutory framework for complicity. Article 60 provides that two or more persons who jointly commit a crime are each treated as principals. Article 61 regulates inducement, while Article 62 defines aiding. Article 63 provides for mitigation of punishment for an aider. (16)

The Japanese model therefore clearly distinguishes co-perpetration, inducement and assistance. At the same time, Japan has adopted a special legal framework for systematic criminal activity through the Act on Punishment of Organized Crimes and Control of Proceeds of Crime. The Act defines an association with reference to multiple persons acting continuously for a common purpose, with activities carried out according to directions and predetermined divisions of duties. (17)

This definition is important because it emphasizes continuity, command and division of functions rather than simply the number of participants.

The legislation also provides special rules concerning certain preparatory and planning activities and the proceeds of crime. (17)

The Japanese approach therefore demonstrates that effective criminal-law regulation may require mechanisms extending beyond the general provisions on complicity.

3.6. Republic of Korea: Co-Principals, Instigation and Criminal Groups



The Criminal Act of the Republic of Korea regulates complicity in Articles 30–32. Article 30 provides that where two or more persons jointly commit a crime, each is punished as a principal. Article 31 regulates instigation, while Article 32 concerns aiding and provides for mitigation of punishment in relation to the principal offender. (18)

Article 28 establishes a general rule that conspiracy or preparation is not punishable before commencement of execution unless the law provides otherwise. This illustrates the importance of a statutory basis for extending liability to preparatory conduct. (19)

Article 114 separately regulates the formation or membership of criminal groups. Under the current provision, liability arises where a group or association is formed or joined for the purpose of committing an offence punishable by death, life imprisonment or imprisonment of at least four years. (20)

The Korean model consequently distinguishes ordinary participation from membership in a criminal group and demonstrates that participation in the group itself may acquire independent legal significance.

3.7. Turkish: Functional Participation and the Three-Person Criterion

The Turkish Criminal Code provides a clear functional classification of participation. Article 37 regulates perpetration and co-perpetration, Article 38 concerns instigation, and Article 39 regulates aiding. Persons who jointly perform the conduct constituting an offence may be treated as perpetrators, whereas persons who induce or assist another person may fall within the respective categories of instigator or aider. (21)

Article 220 separately regulates the establishment of a criminal organization. A significant feature of this provision is the requirement of at least three persons for the existence of such a structure. The law also takes into account its structure, membership and means when assessing its capacity to commit the intended offences. (22)

The Turkish model therefore combines a quantitative threshold with substantive characteristics relating to the internal arrangement and criminal purpose of the group.

It also differentiates the liability of persons who establish or direct such a structure from that of ordinary members. This reflects the greater degree of influence exercised by those who create or control the criminal activity. (22)

4. Discussion

The comparative analysis demonstrates that there is no single universal model for regulating complicity. Nevertheless, several common tendencies may be identified.

First, modern criminal legislation increasingly relies on functional differentiation.

Portugal, Japan, the Republic of Korea and Türkiye distinguish perpetrators, co-perpetrators, instigators and aiders according to the nature of their contribution. (11–13, 16, 18, 21)

This approach makes it possible to determine responsibility according to what the person actually did, rather than merely according to his or her association with the other participants.

Accordingly, where several persons participate in one offence, the court should determine separately who directly performed the act, who jointly controlled its execution, who induced another person, who provided assistance and who coordinated the criminal activity.

Second, conspiracy may have independent criminal-law significance.

The legislation of California and India demonstrates that an agreement to commit a crime may itself constitute a basis for liability under specified circumstances. (5, 14)
At the same time, such an approach requires clear statutory limits. Criminal liability should not arise merely from the existence of an unexpressed criminal intention. The agreement must acquire the legally prescribed external form.

Third, foreign legislation increasingly distinguishes temporary cooperation from stable criminal associations.

Spain distinguishes between a criminal group and a criminal organization, while Portugal and Türkiye establish specific requirements for criminal associations or groups. (8–13, 22)

The comparison demonstrates that the number of participants alone is insufficient. Stability, continuity, coordination, division of functions and a common criminal purpose may also be relevant.

Fourth, the three-person criterion deserves particular attention.

Article 2(a) of the UN Convention against Transnational Organized Crime defines an organized criminal group as a structured group of three or more persons. (2)

The same minimum number is expressly found in Portuguese legislation concerning criminal association. (13)

Turkish law likewise requires at least three persons for the criminal structure regulated by Article 220. (22)

Spanish law also defines a criminal group as the union of more than two persons, which likewise corresponds to a minimum of three participants. (9)

This comparative material is important for the development of Uzbek criminal legislation, where Article 29 uses the criterion of two or more persons in defining an organized group.

The difference should not automatically be interpreted as a conflict with international law. States may establish broader domestic concepts of collective criminal activity. Nevertheless, from the standpoint of legal clarity, the question whether three persons should constitute the minimum for an organized group deserves further consideration.

Fifth, founders and leaders generally bear more severe responsibility.

Spain, Portugal and Türkiye differentiate the liability of persons who establish, direct or control criminal structures from that of ordinary members. (8, 13, 22)

Such differentiation is justified by the fact that a person exercising control over other participants can create the conditions for repeated criminal activity, distribute tasks, recruit members and provide material resources.

Sixth, special legal mechanisms increasingly accompany ordinary complicity rules.

Japan provides special rules concerning systematic criminal activity, preparatory conduct and criminal proceeds, while California uses specific mechanisms concerning criminal gangs and proceeds of crime. (7, 17)

This demonstrates that combating serious collective criminality cannot be limited exclusively to punishment of the completed substantive offence.

5. Implications for the criminal legislation of uzbekistan

The comparative findings have direct relevance to the further development of Articles 27–30 of the Criminal Code of Uzbekistan.

First, clearer criteria are needed for distinguishing the forms of complicity. The concepts of simple complicity, complex complicity, an organized group and a criminal association should not overlap in practical application.

In particular, **prior agreement alone should not be treated as sufficient evidence of an organized group**. Prior agreement may also exist in ordinary joint perpetration. A more advanced form of collective criminal activity should additionally be characterized by stability, coordination, continuity, a common criminal purpose and, where appropriate, division of functions.

Second, the quantitative criterion deserves legislative consideration.

The UN Convention, Portugal, Spain and Türkiye all demonstrate the use of a three-person threshold in the relevant concepts. (2, 9, 13, 22)

Accordingly, one possible direction for improving Article 29 would be to consider whether an organized group should be defined as an association of **three or more persons**, provided that the group also possesses the necessary qualitative characteristics.

Such an approach could produce a clearer boundary between ordinary joint perpetration by two persons and a more stable criminal structure involving three or more participants.

However, the numerical criterion should not operate independently. Three persons acting together on one occasion do not automatically constitute a structured criminal group. The law should also consider continuity, coordination, distribution of functions and the common purpose of the participants.

Third, the liability of participants should be determined according to their actual contribution.

The comparative experience of Portugal, Japan, Korea and Türkiye supports an approach under which the court separately identifies the role of each person. (11–13, 16, 18, 21)

In particular, the judicial assessment should establish:

- who directly performed the criminal act;
- who jointly participated in its execution;
- who induced another person to commit it;
- who intentionally assisted the commission;
- who coordinated or directed the activity; and
- whether the person's conduct remained within the limits of the common criminal intent.

Fourth, the distinction between complicity and subsequent conduct requires attention. Assistance rendered before or during the commission of an offence should be distinguished from conduct occurring after the offence has been completed. The latter should not automatically be treated as complicity in the original offence unless the statutory requirements are satisfied.

Fifth, if the concept of a “**criminal associate**” is introduced into Uzbek criminal legislation, it should not duplicate the existing categories of perpetrator, instigator or aider. Its purpose should be to identify a stable and intentional connection with a structured criminal activity where the person's conduct does not correspond fully to the traditional forms of complicity.

Such a provision would require precise legal boundaries to prevent unnecessary overlap with Articles 28 and 29.

6. Conclusion

The comparative analysis of the criminal legislation of the United States, Spain, Portugal, India, Japan, the Republic of Korea and Türkiye demonstrates that contemporary legal systems employ both general and special mechanisms to regulate collective criminal activity.

The first major tendency is the differentiation of participants according to their actual contribution. Perpetrators, co-perpetrators, instigators and aiders are generally distinguished on the basis of their functional role. This approach makes criminal responsibility more closely correspond to the person's actual conduct.

The second tendency is the recognition of conspiracy or agreement as an independent basis of liability in specified circumstances. The United States and India demonstrate this approach particularly clearly. At the same time, the criminalization of agreements must remain subject to the principle of legality and must not extend to mere thoughts or intentions.

The third tendency is the legal separation of temporary joint participation from stable criminal associations. Spain, Portugal and Türkiye demonstrate that continuity, coordination and internal relationships may be used to establish this distinction.

The fourth tendency is the use of a three-person threshold. The UN Convention against Transnational Organized Crime, Spain, Portugal and Türkiye all employ a minimum of three persons in the relevant concepts. (2, 9, 13, 22)

This experience is relevant to Article 29 of the Criminal Code of Uzbekistan, which currently uses the criterion of two or more persons. The possibility of moving to a three-person threshold, combined with additional qualitative criteria, merits further theoretical and legislative examination.

The fifth tendency is differentiated liability for persons who establish, direct or control criminal structures. Their greater influence over other participants and over the continuation of criminal activity provides a basis for more severe legal consequences.

The sixth tendency is the development of special mechanisms addressing not only completed offences but also preparatory conduct, criminal proceeds and the continued functioning of criminal associations.

For Uzbekistan, the most appropriate approach would therefore be **selective adaptation rather than mechanical transplantation** of foreign legislative models. Particular attention should be given to:

1. clarifying the boundaries between simple and complex complicity;
 2. establishing more precise criteria for distinguishing an organized group from ordinary joint participation;
 3. considering the three-person threshold for an organized group;
 4. defining stability, continuity, coordination and division of functions as relevant qualitative criteria;
 5. differentiating responsibility according to the actual contribution of each participant;
- and
6. clarifying the boundary between complicity and conduct occurring after the completion of an offence.

The comparative experience confirms that the effectiveness of the institution of complicity depends not on the number of statutory categories alone, but on the precision with which those categories are distinguished. A scientifically grounded modernization of Uzbek criminal legislation should therefore combine international standards, comparative experience and the specific requirements of national judicial practice.

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