

# Perpetration and complicity. Attempt and inchoate offences. Mitigating and aggravating circumstances

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KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (*Seminar-Workshop*)

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- Parties to criminal offences: principals and participants
- Iter criminis: inchoate crimes and attempt
- General modifying circumstances (mitigating and aggravating factors)



# Parties to crime: principals and participants

- **Art. 27(1) SpCC**
  - Perpetrators and accomplices are criminally responsible.
- **Who is a perpetrator?**
  - Objective-formal approach: person whose behavior is a direct perpetration of the defined act.
  - Objective-material approach: person who has the “fact dominion”, who decides about the fundamental aspects of the performance of the offence.



# Parties to crime: principals and participants

- **Perpetration: Art. 28 SpCC**
  - **Single perpetrator:** whoever that carries out the crime directly, immediately and by him or herself (domain of action).
  - **Co-perpetrator:** whoever that carries out the offence jointly or together with another or others (functional domain of the fact).
  - **Perpetrator through another or by-means:** whoever that carries out the crime by means of another (domain of the instrument's will).



# Parties to crime: principals and participants

- **Participants: Arts. 28 and 29 SpCC**
  - **Legal perpetrators and principle of limited accessorial responsibility of participants.**
  - **Categories of participants**
    - Art. 28(a). Inciter: whoever that directly induces another or others to commit a crime.
    - Art. 28(b). Necessary accomplice: whoever that co-operates in the commission of a crime with an act without which its execution would be impossible.
    - Art. 29. Non-necessary accomplice: whoever that co-operates to the crime with previous or simultaneous acts.



# Iter criminis: inchoate crimes and attempt

- **External phase of iter criminis**
  - **Preparatory acts**
    - General rule: impunity.
    - Exceptions: inchoate crimes (Arts. 17 and 18 SpCC), only to certain crimes.
  - **Perpetrated acts**
    - Attempt and consummation are punishable (Art. 15 SpCC)



# Iter criminis: inchoate crimes and attempt

- **Inchoate crimes**

- **Art. 17(1). Conspiracy:** when a one or more persons agree on the perpetration of the crime and decide to carry it out.
- **Art. 17(2). Proposition:** when whoever that has solved to commit a crime invites another or other persons to participate in it
- **Art. 18(1). Provocation:** when there is a direct incitation either by printing, broadcasting or any other way of similar effectiveness that facilitates publicity, or to a gathering of people, to commit a crime.
  - **Solicitation:** exhibition before a gathering of people or through mass media of ideas or doctrines which extol crimes or praise its perpetrators.
    - Only punishable when consists a direct incitation to commit a crime



# Iter criminis: inchoate crimes and attempt

- **Attempt.**

- Art. 16(1): definition of attempt. Requirements:
  - Objective element: starting of the perpetration.
  - Subjective element: will to carry out the perpetration and to perform it completely.
  - Failure of consummation due to external factors (complete and incomplete attempt).
- Art. 16(2) and 16(3): voluntary abandonment or withdrawal
- Irreal attempt/Inappropriate attempt





# Modifying circumstances. Aggravating and mitigating factors

- Accidental elements
- They imply a greater or lesser Wrongdoing or Culpability
- General modifying circumstances versus specific aggravating and mitigating factor
- Inherence rule of Art. 67 SpCC
- Rule of Communicability of Art. 65(1)(2) SpCC



# Modifying circumstances. Aggravating and mitigating factors

## Aggravating circumstances (Art. 22 SpCC)

- Treachery (alevosía)
- Abuse of superiority, disguise, taking advantage of circumstances of place, time or aid of other persons.
- Price, reward or promise
- Discrimination motives
- Cruelty
- Abuse of trust or confidence
- Abuse of public authority
- Recidivism

## Mitigating circumstances (Art. 21 SpCC)

- Situations of partial exemption of responsibility (regarding Art. 20)
- Drug addiction
- Rapture, obstinacy or another similar state of mind
- Culprit's confession to authorities
- Reparation of damage or reduction of the effects of the offence
- Extraordinary or undue delay of the judicial proceedings
- Analogous mitigation



# Modifying circumstances. Aggravating and mitigating factors

- Family relationship (Art. 23 SpCC)
- Mixed circumstance. Aggravating or mitigating factor depending on the nature motives and effects of the crime.
- Being or having been the offender's spouse or a person with a analogous relationship of affection, being an ascendant, descendant or sibling by nature or adoption of the offender or his/her spouse or cohabitant.



# Thank you / Gracias

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