

Attempt: signs and types
Intento: signos y tipos

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Fecha de recibido: 2020-11-30
Fecha de aceptado para publicación: 2021-02-01
Fecha de publicación: 2021-03-25





Abstract

The objective of this study was to analyze what was tempted by direct criminal science. A basic investigation is a dialectical approach to the dissemination of legal phenomena and processes, going through general scientific methods (systematic and logical methods, analysis and synthesis) and specific scientific methods. The results will show that the attempted crime was part of the objective side of a certain criminal corpus. The beginning of the attempt may coincide as the beginning of the constitutive act of the crime. Furthermore, an attempt is classified by the implementation of the intention as completed and not completed. And, finally, a special kind of attempt is a "futile attempt." An unsuccessful attempt must be subject to responsibility and qualification, be as a common attempt.

Keywords: incipient crime, attempt, futile attempt, preparation for or crime.

Resumen

El objetivo de este estudio fue analizar qué fue inducido por la ciencia criminal directa. Una investigación básica es un acercamiento dialéctico a la difusión de fenómenos y procesos jurídicos, pasando por métodos científicos generales (métodos sistemáticos y lógicos, análisis y síntesis) y métodos científicos específicos. Los resultados mostrarán que la tentativa de delito fue parte del lado objetivo de un determinado cuerpo criminal. El inicio del intento puede coincidir con el inicio del acto constitutivo del delito. Además, un intento se clasifica según la implementación de la intención como completado y no completado. Y, finalmente, un tipo especial de intento es un "intento inútil". Un intento fallido debe estar sujeto a responsabilidad y calificación, como un intento común.

Palabras clave: crime incipiente, tentativa, tentativa fútil, preparación para el crimen.



Introduction

The mechanism of criminal behavior includes a conditional series of qualitatively different stages. However, one stage of the crime, namely the attempt, is mandatory and is present in the mechanism of all crimes.

The attempted crime has always been the subject of study in the science of criminal law, and the development of a universal approach to its qualifications is considered highly relevant (Aishwarya Padmanabhan Position to Attempt to commit a Crime under the Indian Penal Code (IPC).. The Indian Police Journal. Vol. 58. # 2. 2011). A sufficient number of studies are aimed at studying the general characteristics of the assassination attempt (Edwin Keed 1954). Scientists are trying to find universal approaches to distinguishing between crime preparation and attempted crime (Holl 1940, Thurman 1930). However, at this stage, this problem has not yet been resolved.

The science also considers the completed and uncompleted attempts, their punishment (Husak 1997). Impossible attempts also draw attention of scientists (Westen 2008), and are within the framework of scientific discourse.

Attempt to commit a crime is conduct that was committed in order to carry out a criminal intent, but did not lead to the desired result due to an external impediment (Kiralfy 1992, Pitetskiy 1991). Attempt to commit a crime is punishable when the perpetrator is guaranteed criminal execution. In other words, a person who intends to commit a criminal act first plots it in his mind and, when he is able to make a definite decision, prepares it for the crime, after making the necessary preparations, performs a physical behavior until achieve a result. It is clear that thinking about a crime and preparing for it is not a crime (Reshetnikov 2007). Attempts to commit a crime are not punishable by all, but can only be punished for serious crimes. In addition, the crime that leads to the result can be prosecuted and punished (Serge Bezugly, 2019).

With all the variety of approaches to the study of attempted crime, it should be noted that there are few developments regarding the signs of the attempt, as well as its types.

It is important to indicate that the attempt is one of the most difficult topics in studying the stages of a crime. Based on this, an analysis of the attempt, its signs and types seem relevant.

Methods

The research was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical

methods, analysis and synthesis) and specific scientific methods. The latter include formal-legal, linguistic-legal, which were collectively used to study the signs of attempted crime in order to highlight general characteristics that make it possible to define a specific act as an attempt. An analysis of the scientific literature allows us to conclude that there are general ideas about the signs of an attempt, however, their content is diverse, which is due to the specifics of this stage. Comparison of works on the attempt and its types shows a lack of consensus on issues of defining its boundaries.

Discussion and results

The criminal activity of a person develops according to a conditional algorithm from the early stages (the emergence of an idea) to the last stage (the result). The process of adaptive behavior associated with the achievement of a chosen goal may include the following steps: the emergence of an idea; elaboration; decision (intention); training; attempt (in case of its termination before the end of the act); completion of the intended action, which could or could not lead to the desired consequences (committed crime) (Holl 1940).

The steps presented are an idealized model of the commission of a crime. However, not all of the steps presented may be present in the crime. It should be noted that the first three stages cannot be considered by legal science at all, but relate to the field of psychology. If we consider the mechanism of committing a crime, we can single out one stage that is present in all intentional crimes (if the crime was not interrupted at the stage of preparation) - attempt on the crime. All intentional crimes go through this stage. Its development in time can take place instantly or stretch over relatively large periods of time.

It should be recognized that attempts (attempts to commit a crime) are crimes in any mature legal system (Yaffe 2015), although they have been known to the legislator and law enforcer for a long time (Kiralfy 1992). This is due to the very essence of the attempted stage, as well as general ideas about the mechanism of criminal behavior (Smith 1957).

It is difficult enough to predict absolutely successful behavior that will inevitably lead to the desired result. In most cases, a person calculates almost all possible risks, builds, and adjusts plans that will allow to level the consequences of the arising negative circumstances. However, it is impossible to foresee absolutely all circumstances that may arise in the future.

Considering the attempted crime, it is hard to dispute that the attempted crime is a problem as



fascinating as difficult (Holl 1940). The difficulty in studying the attempt is due to a number of reasons.

First, the attempted crime is an intermediate stage between preparation and the finished crime, and this makes it necessary to determine the boundaries between preparation and attempt, between the attempt and the finished crime. So, a person aims a gun on a victim, is this an attempt or just preparation? Or, if a person seizes property and only leaves the scene of the crime, is this only an attempted theft or an already completed crime?

Secondly, the attempt is very often similar to other offenses. It may actually contain an independent composition, but legally remain an attempt. So, if a shot is taken and causes harm to health only, then what kind of crime is committed? On objective grounds, this situation is suitable for both willful damage to health and attempted murder.

The problem of investigating an attempt is also complicated by the fact that it can take different forms (depending on the method of crime, signs of an act, construction of consequences, etc.), and this depends on each specific crime. Moreover, crimes are so radically different and varied that in no case can one characterize the behavior representing the attempt without specifying what the crime will be. (Thurman 1930).

For the correct qualification of attempted crime, one should consider in more detail its signs. In general, the attempted crime is characterized by common signs of the institution of an uncompleted crime.

An attempt should always be expressed in an act, which may take the form of both action and inaction. It is important that this act forms part of the objective side of the specific *corpus delicti*. Until the start of the execution of the objective side, there can only be a preparation stage.

In this context, it is possible to define several rules for qualifying an assassination attempt for *corpus delicti* that require the onset of consequences, as well as crimes that do not require specific consequences and are completed when the act is fully implemented.

The beginning of the attempt is characterized by the beginning of the objective side. In terms of the doctrine of the *corpus delicti*, it is wrong to determine the beginning of the attempt as just the beginning of the act constituting the crime. The attempt takes place from the beginning of the execution of the method of crime (ensuring the secrecy of the seizure of property), from the moment of using the means or instruments of committing the crime (threat with a weapon, the beginning of housebreaking).

The stage of attempt ends when all the signs of a specific *corpus delicti* carried out by the guilty are present. If we talk about crimes which consequences are a constructive sign, then the

attempt can exist only until the onset of the consequences described in the specific legal prohibition. The onset of other, less serious consequences, however, they should not be subject to independent qualifications. In turn, they can indicate the direction of the intent of the guilty.

Crimes not involving specific consequences are ended when the act is completed. Attempt in these crimes can take place only with partial fulfillment of the act. It should be noted that most criminal acts consist of several acts and movements. In this case, the attempted stage can be distinguished as independent, having legal significance. For example, the guilty is trying to abduct a person, but the victim is resisting and escaping. In this situation, the objective side is already developing, but is not completed.

In the presence of already completed *corpus delicti*, the stage of the attempt is assimilated and has no legal significance. To preserve its legal consequences, it is necessary that the attempt was interrupted due to circumstances beyond the control of the person, and the crime should not be brought to an end. This feature allows imparting an attempt on legal significance.

The subjective side of the attempt can be expressed only in direct and specific intent. During an attempt, a person must be aware of the social danger of his actions (inaction), anticipate the possibility or inevitability of the onset of socially dangerous consequences (criminal result), and also wish for their onset.

Concretization of intent is of great importance in the qualification of an attempt. This is due to the fact that the attempt may have consequences that are different from the consequences of the crime committed by the perpetrator, which makes it necessary to choose one of the competing norms.

The theory of criminal law considers a special goal to be the necessary sign of the subjective side of the attempt - to commit a crime (Thurman 1930).

We believe that special goals, except those provided by the *corpus delicti*, should not be considered within the scope of the attempt. The intent of the person already covers the commission of a crime and the onset of consequences (criminal result).

During an attempt, a person always cannot fully realize his criminal plan. The result does not occur due to a large number of reasons. For example, the lack of proper preparation, the guilty is accidentally caught during committing a crime, as well as many other circumstances. A person who commits a crime always imagines the necessary set of required actions that can lead to the onset of a criminal result. In this regard, the classification of attempted crimes is distinguished in the theory of criminal law.



An attempt can be classified by the degree of implementation of intent as completed and uncompleted.

An attempt is recognized to be completed in those cases when a person committed all the actions, in his opinion, necessary for the criminal result, however, the crime was not completed due to circumstances beyond the control of the person. An attempt will be incomplete if the subject does not manage to carry out all the actions that, in his opinion, are necessary for the commission of the completed crime. At the moment, there are three approaches to classifying the attempt as completed and uncompleted:

1. An objective approach, which considers the completeness of the actions necessary for the onset of a criminal result;
2. A subjective approach, which consists in assessing by the guilty the completeness of the actions performed;
3. An objective-subjective approach, which involves a combination of actions actually performed and the guilty's attitude to their sufficiency for a criminal result (Westen 2008).

The latter approach fully satisfies the demands of the theory, avoids objective imputation, giving a proper assessment of the subject's idea of the general mechanism of his crime. All people have different cognitive, intellectual abilities, so qualification should consider it.

The classification of the assassination according to the implementation degree of intent has its positive and negative qualities. As a theoretical development, it seems to be positive, it makes it possible to specify the degree of realization of intent in a particular stage of the crime, and this leads to an individual determination of the degree of danger of the perfect. In turn, such a division will create an unnecessary burden on the law enforcement officer, forcing to prove the completeness or incompleteness of the attempt. We believe that in any developed legal system, the court has sufficient legal inventory of tools to fully individualize the responsibility of the person who committed the attempt.

The theory of criminal law distinguishes a special type of attempt - "futile attempt". Futile attempt is divided into several types.

Attempt on a futile object. A person is mistaken in the significant properties of the object or subject of a crime, without which it is impossible to commit a completed crime (takes a dead person for a living person, takes an aspirin for a drug).

Attempt with futile means. A person is mistaken in the suitability of tools or means of committing a crime, believing that their use will lead to a criminal result, however, they are not able to cause a criminal result (broken, uncharged weapon).

The nature of an unsuitable assassination attempt is identical to the nature of any other attempted crime, it also represents a deliberate execution of a crime, incomplete criminal result, conceived by the subject, for circumstances beyond his control (Kuznetsova 2003).

An attempt on a futile object assumes that the guilty person seeks to inflict harm on protected public relations, and this is prevented only by the lack of the necessary properties of the object.

Speaking about the attempt with unsuitable means, it should be noted that they may be completely unsuitable for committing a crime (use of occult items) or may be unsuitable in a specific situation (misfire). The theory of criminal law suggests to consider the person's idea of what methods of committing a crime are used (Yaffe 2015). It is noted that if a person knows about the unsuitability of his method, he will not use it. But if he uses it, then this speaks of his own ignorance.

It should be noted that means may be unsuitable at this time. So, when attempting to kill with an uncharged gun or poisoning with a non-toxic substance, there are no objective grounds for a socially dangerous act (action or inaction), that is, an act that creates a real threat of causing substantial harm to the object of encroachment, in connection with which such actions should not entail criminal liability (Yaffe 2015). It is difficult to agree with this statement. In our opinion, this indicates a lack of preparation by the person, which causes uncompleted crime. The guilty who commits a crime thinks that both weapons and poison can lead to death.

We believe that a futile attempt should be subject to liability and qualification as well as the common attempt. The subject takes all possible means, in his opinion, for the onset of the criminal result, and this indicates that the person wants to commit a crime. But this is not possible due to circumstances beyond his control. The only question that may arise in this assassination attempt is whether these means can be harmful. The difficulty here lies in the fact that the possibility of, for example, killing by magic has not been scientifically proven. On the one hand, a person performs everything that he considers necessary. On the other hand, such a tool objectively cannot cause harm. We believe that in such circumstances it is impossible to hold a person accountable since the chosen means in its essence cannot lead to the end of the crime.

Of course, all the relations that arise and exist at various stages of resolving legally significant cases related to attempted crime, in order to prevent corruption of the functioning of entities, cannot be framed by a strict outline of the procedural legal restrictions of various levels (Makogon et al. 2019,



Makogon, et al. 2018), the legal procedural form as a whole (Makogon, et al. 2019).

Summary

Attempt is a mandatory stage in the commission of a crime. Its definition is of the greatest difficulty both theoretically and in practical terms. This is due to the central place of the attempt in the mechanism of committing a crime, as well as the similarity of the attempt with some corpus delicti. This forces us to look for the boundaries between preparation and attempt, between attempt and completed crime, to resolve issues of competition of norms.

Attempted crime is an act that forms part of the objective side of a specific corpus delicti. The beginning of the attempt may coincide with the beginning of the act constituting a crime. It can be present from the beginning of the execution of the method of crime, as well as from the moment of application of the means or instruments of the crime. In order to preserve its legal consequences, the attempt should end with the interruption of criminal activity due to circumstances beyond the control of the person, and the crime should not be completed. The subjective signs of an attempt are characterized only by direct specific intent.

An attempt is classified by the degree of implementation of intent as completed and uncompleted. An attempt is recognized to be completed in those cases when a person committed all the actions, in his opinion, necessary for the criminal result, however, the crime was not completed due to circumstances beyond the control of the person. An attempt will be incomplete if the subject does not manage to carry out all the actions that, in his opinion, are necessary for the commission of the completed crime. In practical terms, it is impractical to distinguish the attempts according to the degree of intent, since this can create an unnecessary burden on the judiciary.

A special type of an attempt is a "futile attempt". An unsuccessful attempt must be subject to liability and qualification as well as a common attempt. However, there should be no liability in the case of choosing a method that cannot under any circumstances lead to the commission of a crime.

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