

Comparative Analysis of the Criminal Legislation on a Completed and an Inchoate Crime

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Abstract: The purpose of the article is to identify the positive legislative experience of the foreign countries in the formation of constructs of a completed and an inchoate crime in a domestic criminal legislation. And in the furtherance of this goal, analysis of the provisions of the criminal legislation of a number of European countries, Australia, the USA, some CIS countries in terms of regulating liability for a completed and inchoate crime has been performed. During the research, the comparative legal method was used as the main one, as well as other methods of logical and structural analysis. As a result of the comparative analysis, the main differences in the normative regulation of a completed and inchoate crime in Russian and foreign criminal legislation have been highlighted, conclusions have been drawn about the existence of provisions that can be implemented, taking into account the Russian legal specifics in the Criminal Code of the Russian Federation. In a point of fact, it is proposed to indicate the full realization of the intent of the person committing the crime in the concept of a completed crime, to introduce a differentiated approach in determining the moment of the end of formally and materially defined crime, as well as the possibility of excluding the stage of attempt (preparation) for certain types of crimes, differentiate the measure of responsibility depending on the type of attempted crime - completed or inchoate, to consolidate the requirement to reduce the lower threshold of sanctions for an inchoate crime depending on its category, to introduce qualification rules for determining the stage of a crime in case of an actual error.

1 INTRODUCTION

A completed and inchoate crime in domestic criminal law is considered as a stage of criminal activity, and in criminal legislation it is defined in the General Part of the Criminal Code of the Russian Federation (hereinafter - the Criminal Code of the Russian Federation) in Article 29 "Completed and inchoate crime". We find a similar approach, albeit with a certain specificity, in the criminal laws of foreign states. The legal significance of identifying signs of a completed or inchoate crime in an act is incredibly large, since it allows differentiating and individualizing criminal liability, determining its measure, and in certain cases distinguishing between criminal and non-criminal acts.

Immediacy of the problem is emphasized by the attention to this institution on the part of the Supreme Court. It is difficult to find a Resolution of the Plenum of the Supreme Court of the Russian Federation for

Criminal Cases (hereinafter - PPVS), which would not consider the issues of recognizing completed this or that type of crime. At the same time, the time-varying nature of the legal positions of the Supreme Court of the Russian Federation indicates different approaches both in doctrine and in practice regarding the determination of the moment when crimes end.

For example, PPVS RF dated June 30, 2015 No. 30 "On Amending the Resolution of the Plenum of the Supreme Court of the Russian Federation dated June 15, 2006 No. 14" In Judicial Practice in Cases of Crimes Associated with Narcotic Drugs, Psychotropic, Potent and Poisonous Substances» enhanced the initial version of the resolution with the clause 13.1 on the recognition of narcotic drugs, psychotropic substances, etc. as finished sale in case of their withdrawal from illegal circulation during operational investigation, regardless of their actual receipt by the acquirer.

Court rulings has not had clear guidelines before such clarifications were accepted and, as a rule, in such cases the act was qualified as an inchoate crime.

It should be noted at the same time that the constant need for clarification of judicial practice on the recognition of crimes as completed is largely due to the imperfection of the current legislation in this part.

Questions arise here about: an obvious conflict in the provisions of Art. 8 of the Criminal Code of the Russian Federation and Art. 29, 30, 66 of the Criminal Code of the Russian Federation, and the related problem of imperfection of the very concept of a completed crime; the absence of rules for determining the elements of completed crimes formally and materially defined; differentiation of types of completed and incompleted attempts; perishability of inchoate crimes; the absence of rules for determining the stage of a crime in case of an error in fact, etc. At the same time, the reform of the current criminal legislation, manifested in the regular introduction of indiscriminate and contradictory changes in the Criminal Code of the Russian Federation [1, p. 479] did not affect this institution in any way, which hardly reflects the real need for solving the problems identified in science and practice.

Issues of completed and inchoate crime were considered by researchers in Ph.D. theses prepared and defended by applicants in the period from 2001 to 2005. These are the works of A. I. Sitnikova "Inchoate crime and its types" 2001, M. V. Grin "Inchoate crime" 2003, M. P. Redin "Crimes according to the degree of their completion in Russian law: concept, system of crimes, responsibility, the concept of improving legislation " 2005, K.T. Tedeeva "Stages of the commission of a crime and the construction of it parts" 2005, S.F. Nigmadyanova "Stages of the commission of a crime in the criminal law of Russia (1917-1926)" 2007. At the same time, the only monographic study, the result of which was the formed concept of a completed crime, for now remains a dissertation for the degree of candidate of legal sciences S. A. Ivanchina "Completed crime: law, theory, practice" defended in 2012, in which the author, in addition to theoretical constructions, managed to develop rules for the criminal-legal assessment of cases of partial realization of intent, formulate recommendations for determining the termination moment of individual crimes, present recommendations regarding the assessment of crimes as completed. Thus, at the dissertation level, the considering topic was studied nine years ago, and before that (more than fifteen years ago), only a few

works were devoted to its individual aspects. At the same time, elements of comparative analysis are present only in the works of M. V. Grin, A. I. Sitnikova, S. A. Ivanchina, but we consider them insufficient and do not answer the questions posed by us above. Based on the aforesaid we believe that a comparative legal analysis of Russian and foreign criminal legislation on a completed and inchoated crime, taking into account rapidly changing social relations, changes in criminal legislation, improvement of judicial investigative practice and the formation, in this regard, of modern legal positions, is in demand and relevant to this today.

2 MATERIALS AND METHODS.

The comparative method, (from the Latin. *Comparativus* - comparative), is one of the methods of scientific knowledge of the world. This method is used in various fields of knowledge, for example, it is especially effective in literary studies, comparative historical linguistics, philosophy. Also, comparative analysis is actively used in jurisprudence, when comparing the legislation of foreign countries, in order to identify a positive legislative experience in the formation of certain legal constructs of the domestic legal system.

In criminal law science, this method is also widely used. Almost all significant studies on criminal law have in their structure the provisions of comparative criminal law [2, 3]. That is quite understandable. Criminal law of Czarist-era was formed under the meaningful influence of French and German criminal law, and its improvement in the Soviet period, in turn, had an indelible impact on the development of criminal legislation in the Union republics and friendly countries of the socialist camp.

3 RESULTS AND DISCUSSION

Today, when designing new criminal laws, the domestic legislator is increasingly looking towards foreign law, not avoiding direct borrowing of certain norms from the criminal codes of other countries.

For example, the novelties of 2012 related to the introduction of special types of fraud into the Criminal Code of the Russian Federation by Federal Law No. 207-FZ of November 29, 2012 "On Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" (Art. Art. 159.1, 159.2, 159.3,

159.4, 159.5, 159.6 of the Criminal Code of the Russian Federation), according to experts, have a great degree of similarity with the provisions of section twenty-two "Fraud and criminal abuse of trust" in the Criminal Code of Germany [4].

With respect to our research, it is of interest how the provisions on completed and inchoate crimes are regulated in the criminal laws of foreign countries, and whether there are prerequisites for borrowing the positive experience of foreign lawmaking into Russian criminal law. For the relative representation of the comparative analysis, we will choose as a subject of study the criminal legislation of a number of European countries, countries that once had a very similar criminal law system with us (CIS countries), and also consider the provisions of the general system of law on the example of the criminal legislation of Australia and the United States.

It appears that the difference between the criminal legislation of Germany and Russia is that the concept of a completed crime is not contained in it, but only such concepts that are close to us as attempt and refusal are defined. In particular, Chapter Two of Section 2 of the Criminal Code of the Federal Republic of Germany is called "Attempt" and contains three paragraphs. So in paragraph 22 it says: "The one who, according to his idea of the act, immediately proceeds to implement the composition of the act, attempts to commit a punishable act" [5, p. 131].

As seen, the material element of the inchoate crime is indicated - the subjective idea of the person about the act, and the formal element is the beginning of the implementation of the criminal act. Thus, the German definition of an attempt only from the formal point of view corresponds to our concept of this stage of the commission of a crime.

It should be noted that the reference of the consumption of the act is contained only in paragraph 2, which defines the provisions on the duration of the criminal law [5, p. 115]. Paragraph 23, defines the punishment for attempted crimes without exception, and for misdemeanors only in cases established by law. At the same time, an attempt is punished less severely than it is provided by law, namely: life imprisonment is replaced by imprisonment for a term of at least three years; the punishment in the form of imprisonment cannot exceed three quarters of the maximum stipulated period (the same rule applies to a fine); the increased minimum term of imprisonment is reduced, that is, its lower limit can be up to a maximum of two years, six or three months or less, depending on the maximum term established in the sanctions of the article of the Criminal Code of the

Federal Republic of Germany [5, p. 149]. In case of an actual error in the object or means of committing a crime, the court may completely refuse punishment [5, p. 131]. Paragraph 24 defines the conditions for not punishing a person for refusing to complete the crime, which are generally similar to ours.

Thus, in terms of punishment for attempted crime, the Criminal Code of the Federal Republic of Germany and the Criminal Code of the Russian Federation have significant similarities in terms of formally defined maximum time periods for punishment in the form of imprisonment and the amount of a fine (three quarters) and refusal to use life imprisonment. Meanwhile, there are some differences: the requirement to reduce the lower limit of punishment and the possibility of exemption from punishment in the case of error in fact.

Austrian legislation establishes criminal liability for attempted act, in the First Section of the General Part of the Criminal Code "General Regulations" [6, p. 51]. Like the Criminal Code of the Federal Republic of Germany, Austrian criminal law does not give the concept of a completed crime, although it does mention it in paragraph 15. Herewith, an attempt is defined as "the embodiment by the performer of his decision to commit an act, or to persuade another person to commit it by means of an action preceding its direct execution." Thus, according to the Criminal Code of Austria, an attempt is only actions that are committed before the executor implements his decision to commit a crime. Here we do not see a reference to the elements of crime, but, as in the German criminal law, in the definition of an inchoate crime, there is a subjective element designated as the determination to commit a crime.

The punishability of an attempt is described in paragraphs 33 and 41 of the Fourth section of the General Part of the Criminal Code of Austria "Imposition of Punishment" [6, p. 76; 82-84], indicating that this is a particularly mitigating circumstance (clause 13, paragraph 1), which, together with other mitigating circumstances, if they prevail over aggravating circumstances, may affect the non-application of a sentence of life imprisonment and a significant reduction lower thresholds for sentences of imprisonment. Here we see a weak formalization of the punishability of an inchoate crime, which for the most is left to the mercy of the court.

The Criminal Code of Norway in Chapter 4 of Part 1 of the General Provisions, which is called "Attempt", contains three rules on the concept of an attempt, voluntary refusal and the punishability of an attempt. Paragraph 41 of the Criminal Code of

Norway establishes that an attempt is present when there is no completed crime, but an action was taken, in which the beginning of the crime was assumed [7, p. 76]. It also says that an attempt on minor crimes, which are placed in Part 3 of the Norwegian criminal law (including other crimes consisting omission of action, committed inadvertently) is not punishable [7, p. 77]. In other cases, the punishment is mitigated, may be imposed below the lower limit, or replaced with a milder form. As it seen, in Norway this point is not strictly formalized. On the other hand, the court may also apply the maximum penalty if the attempt had the consequences that were presumed guilty (paragraph 43). That is, the Norwegian legislator, unlike, for example, the Russian one, recognizes the possibility to apply the most severe punishment in the event of the actual realization of the guilty's intent in a legal inchoate crime.

In the General Provisions on Offenses (Book I) of the Criminal Code of Belgium, an independent Chapter IV "Attempted crime or misdemeanor" is also highlighted [8, p. 63-64]. In general, the norms establishing responsibility for these inchoate acts are similar to the previously described norms of the criminal laws of Germany and Austria. However, in opposition to them, but in a construct similar to Russian legislation, it is determined that an attempt is interrupted or does not achieve an effect, only due to circumstances beyond the control of the guilty party. It is considered by the court as a mitigating circumstance and formally determined (in years, months) the size of the reduction or mitigation of punishment is established [8, p. 72-75]. It is noteworthy that both the upper and lower limits of punishment are subject to reduction.

The criminal legislation of the Republic of San Marino, the oldest democracy in Europe, contains six norms located in Chapter II "Completed crime, an attempt to commit a crime and a failed crime" of Section Three of the Book of the first Special Part (Articles 24 - 29 of the Criminal Code) [9, p. ... 45-47] in one way or another related to the institution in question. In contrast to the above criminal laws, the Criminal Code of the Republic of San Marino provides a definition of a completed crime, which is considered as "when the fact of damage or creation of danger, provided for in the Law as a consequence of a completed or failed act of behavior of the performer, is established" (first paragraph of Art. 24). The forms of an unfinished crime are divided into "an attempt to commit an intentional crime" (Article 26) and "a failed intentional crime" (Article 27), which correspond to an inchoate and completed attempt. It is interesting that in case of a failed attempt, the

punishment is reduced from one to two steps, and in case of a failed crime, it can be reduced only by one step. Article 28 establishes a norm on voluntary refusal and active repentance, which differs from our understanding of this institution, since its implementation is an obstacle to the occurrence of a crime event, that is, active repentance, as well as voluntary refusal, are possible only at the stage of an inchoate crime. However, such behavior, although it excludes the application of punishment to a person, leaves it possible for the judge to apply a security measure to him. This provision is somewhat similar to our constructions of special types of active repentance according to the norms of the Special Part of the Criminal Code of the Russian Federation: "A person ... is exempt from criminal liability ... if the actions of this person do not contain a different elements of crime." In Art. 29 of the Criminal Code of the Republic of San Marino states that if the object of the crime is absent, then punishability is excluded, if "the actions committed do not contain any other type of crime" [9, p. 45-47].

The Criminal Code of France contains two general norms on an inchoate criminal offense, which indicate that the perpetrator of a criminal act may be a person who commits a crime or attempts to commit it (Articles 121-4), and "the attempt itself takes place when clearly expressed by the beginning of its execution, it was interrupted, or its consequences did not come only due to circumstances beyond the control of the will of its executor" (Art. 121-4) [10, p. 48]. Book One "General Provisions" does not contain any other provisions concerning the grounds or peculiarities of criminal liability and punishment for a completed and inchoate crime. At the same time, the Sections of Books on certain types of misconduct contain norms that determine the punishability of an attempt on misdemeanors. For example, Article 222-40 establishes that attempted misconduct under articles 222-36 to 222-39 (Division IV of Chapter II of Book II on the Illicit Drug Trade) is punishable by the same offence. The same provisions are contained in other articles (Article 223-31, 224-8, 255-11, etc.). However, in many types of misconduct, such norms are absent, which indicates the impossibility of bringing to responsibility for unfinished activities. This confirms the authors' opinion that, as in the Criminal Code of the Federal Republic of Germany, French criminal legislation establishes the punishability of attempted murder in all cases, and in misconduct only when it is expressly stated in the law [11, p. 108-116]. However, in many types of misconduct, such norms are absent, which indicates the impossibility of bringing to responsibility for

unfinished activities. This confirms the authors' opinion that, as in the Criminal Code of the Federal Republic of Germany, French criminal legislation establishes the punishability of attempted act in all cases, and in misconduct only when it is expressly stated in the law [11, p. 108-116]. On the basis of these provisions, some authors conclude that the indication that attempts are punishable by the same punishments "predetermines a different legal assessment of the act of the guilty person and the imposition of punishment on the basis of Art. 222-31 of the Criminal Code of France" [12, p. 23-26]. Meanwhile, we found no prescriptions for mitigating punishment for attempted crime or misdemeanor.

Australian criminal legislation in the rule on attempt (Art. 11.1 of the Australian Criminal Code) defines that "a person who tries to commit a crime is guilty of a criminal attempt on this crime and is subject to punishment as if this unfinished crime had been committed" [13, p. ... 77-79]. At the same time, it is clarified that the attempt is more than just preparation, but the separation of these stages is a matter of fact and is not formalized in the law. In addition, the Australian Criminal Code specifically stipulates that all the rules of qualification establishing guilt, peculiarities of responsibility and punishment for a completed crime also apply to attempted criminal act. At the same time, attempted complicity with a common criminal goal, conspiracy to commit a crime and conspiracy to commit deceit are not criminalized [13, p. 77-79].

There are no general provisions on a completed or inchoate crime in US federal law, however, there are special rules on liability for attempted specific types of crimes. For example, Section 113, Section 18, Attempted Murder or Manslaughter, establishes that any person for attempted murder is liable to imprisonment for no more than twenty years or a fine [14]. For an attempt to commit manslaughter, be imprisoned for no more than seven years, or fined [15]. At the same time, the United States provides for liability for conspiracy to commit crimes against the state. ... § 371 "Conspiracy to commit a crime or deception of the United States": "If two or more persons conspire, either to commit any crime against the United States, or to defraud the United States or its agency in any way and for any purpose, and one or several such persons commit any action to achieve the goal of the conspiracy, each should be fined under this law or imprisoned for a period of not more than five years, or both" [15]. As you can see, such a crime is similar to the preparation by conspiracy to commit a grave or especially grave crime punishable under the Criminal Code of the Russian Federation.

It should be noted that in 1962, the US Model Criminal Code was created, which contains Article 5.01 "Attempted Crime". In particular, it says that an inchoate crime (initial crime, preliminary crime) is a crime of preparing or seeking to commit another crime. The most common example of an initial offense is "attempt". It is defined as follows: "Conduct is considered criminal without actually causing harm, provided that the harm that could occur is what the law is trying to prevent." An attempt to commit a crime occurs when the criminal intends to commit a crime and takes a significant step towards completing the crime, but for reasons not intended by the criminal, the final crime does not occur as a result. An attempt to commit a specific crime is a crime that is generally considered to be of the same or lesser gravity as an attempt on a specific crime. An attempted act is a kind of inchoate crime, a crime that has not yet been fully developed. An attempted crime consists of two elements: intent and some behavior aimed at completing the crime.

State criminal law generally follows the legal construct of the Model Code. So, for example, in Part 1. "On Crimes and Punishments" of the California Penal Code (Part 1 enacted in 1872) the following provisions are established:

"Every person who tries to commit a crime but fails, is prevented or delayed in committing it, shall be punished, unless the law provides for punishment for such attempts, namely:

(a) If the attempted crime is punishable by imprisonment in a state prison or imprisonment under section 1170 subdivision (h), the perpetrator of the attempted crime shall be punished by imprisonment in a state prison or a county prison, respectively, by half the term of imprisonment established upon conviction of an attempted crime. However, if the attempted crime is willful, willful, and willful homicide as defined in section 189, the person responsible for the attempt will be punished with life imprisonment in a state prison with parole. If the attempt is any other crime for which the maximum penalty is life imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in a state prison for five, seven, or nine years. The additional time limit provided for in this section for attempted murder, willful or premeditated shall not apply, unless the fact that the attempted murder was intentional, willful and premeditated has not been charged in the indictment and found or found to be truthful by the judge. actually.

(b) If attempted crime is punishable by imprisonment in a county prison, the person guilty of the attempted murder shall be punished by

imprisonment in the county prison for a term not exceeding half the term of imprisonment provided for the conviction of the crime. attempt.

(c) If the crime committed is punishable by a fine, the offender found guilty of the attempt shall be punished with a fine not exceeding half of the largest fine that may be imposed if convicted of an attempted crime. " [16].

A feature of the formation of the criminal legislation of the CIS countries is their focus on the Russian legal system. In this regard, the criminal laws of the aforementioned CIS countries are generally similar in content to the norms of the Criminal Code on inchoate crimes.

Thus, in the Criminal Code of the Republic of Armenia, Article 33 "Completed and inchoate Crimes" literally reproduces both the title and the content of Part 1 of Art. 29 of the Criminal Code [17].

The Criminal Code of the Republic of Kazakhstan in Article 25 "Completed Criminal Offense" also contains a rule similar to the Criminal Code of the Russian Federation:

"A criminal offense shall be deemed completed if the act committed by a person contains all the signs of an offense set by the Special Part of this Code", with the only exception that indicates not of a crime, but of a criminal offense, since according to the Criminal Code of Kazakhstan "criminal offenses, depending on the degree of public danger and punishability, they are subdivided into crimes and criminal offenses" (part 1 of article 10) [18].

At the same time, even in the context of a general correlation of the norms of the criminal law on completed and inchoate crimes in the Russian criminal law and the criminal legislation of the CIS countries, it should be noted that, for example, the Criminal Code of the Republic of Belarus has its own approach to this issue. So, in part 2 of article 11 "The concept of a crime" it is determined that "a crime is recognized as completed from the moment the act was committed", and in part 3 of the same article it is specified: "A crime associated with the ensuing of the consequences specified in articles of the Special Part of this Code is recognized completed with the factual ensuing of these consequences" [19]. Thus, the Belarusian legislator has divided the provisions on the completed crime, depending on whether the consequences of the crime are or are not a mandatory or optional sign of a crime. At the same time, the term "elements of the crime" does not apply but it is used in the criminal laws of Russia, Armenia, Kazakhstan, and also Ukraine, where the provisions on the completed crime are similar to those in the listed countries [20].

4 CONCLUSIONS

Summarizing the conducted comparative analysis, it is necessary to highlight the main differences in the normative regulation of a completed and inchoate crime, in Russian and foreign criminal legislation:

- 1) the criminal legislation of the CIS countries and Ukraine is generally similar and provides for a norm on a completed crime, with the only exception that the Criminal Code of Belarus differentiates the ending of a crime depending on the material or formal structure of its composition;
- 2) in the legislation of European countries, the concept of a completed crime is mainly not applied (with the exception of the Republic of San Marino), but the types of an inchoate crime are defined. Herewith the preparation stage is not pointed out at all;
- 3) responsibility for attempted crime is provided for in all countries, but the special aspects of punishment for its commission are not established everywhere;
- 4) some laws provide clear parameters for reducing the punishment for an inchoate crime (Germany, Belgium, San Marino), and in others - the assessment of the degree of punishment is given to judges (Austria, Norway, France). The closest thing to Russian law is set the punishment for attempted crime in the FRG - no more than three-quarters of the maximum term or amount of punishment;
- 5) in the Criminal Code of the Republic of San Marino, an uncompleted attempt and a failed crime are moved apart with a differentiated measure of responsibility, as different types of attempted crime, that is, the stages of a completed and incompleted attempt are separated with a different measure of responsibility for their commission;
- 6) in a number of laws, responsibility for an attempted crime may coincide with the punishment for a completed crime (Norway, Australia);
- 7) in all criminal laws of Europe, in one form or another, the rules of qualification in case of error in fact (in the object, means, consequences) are described;
- 8) US federal criminal law does not provide for general rules on completed and inchoate crimes, but at the same time contains special rules on liability for attempted specific crimes. At the same time, in the United States, in contrast to European countries, preliminary

criminal activity is criminalized, namely, conspiracy to commit a crime.

- 9) the criminal law of individual states of the United States contains general rules on liability for an inchoate crime, with an indication of a reduction in the penalty for attempted crime by half the term or the amount of the maximum penalty provided for a specific crime. However, these rules do not apply to attempted murder, which is punishable by life in prison, but with the possibility of parole.

Summarizing the talk it should be noted the positive aspects revealed during the comparative analysis of legislation on completed and inchoate crimes, which can be implemented, taking into account the Russian legal specifics in the Criminal Code of the Russian Federation:

- indicate in the concept of a completed crime the fully realized intent of the person committing the crime;
- to provide for a differentiated approach in determining the moment of completion of formally and materially defined crimes, as well as the possibility of excluding the stage of attempt (preparation) for certain types of crimes (for example, for infringement on life special types of victims - Articles 277, 295, 217 of the Criminal Code of the Russian Federation);
- differentiate responsibility depending on the type of attempted crime - completed or inchoated;
- to consolidate the requirement to reduce the lower threshold of the sanction for an inchoate crime, depending on its category;
- introduce qualification rules for determining the stage of a crime in case of an error in fact.

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