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TÍTULO: Un intento de cometer un crimen bajo el código penal de los países de la Comunidad de Estados Independientes (CEI).

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RESUMEN: El presente artículo trata sobre los textos de leyes penales de los países de la CEI (Comunidad de Estados Independientes) sobre el tema de la regulación de la provisión del intento de delito. Se analiza la especificidad de describir las características objetivas y subjetivas inherentes al intento de delito. Este estudio reveló las características inherentes de las leyes penales específicas y la descripción de los signos de intento de delito. Se determinó que la legislación penal de los países de la CEI contiene un intento de asesinato, que se divide en finalizado e inacabado, y existe un reglamento para la penalización parcial del intento de delito.

PALABRAS CLAVES: crimen inacabado, intento de delito, intento completado, intento incompleto, lado objetivo.

TITLE: An attempt to commit a crime under criminal code of the Commonwealth of Independent States (CIS) countries.

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ABSTRACT: The present article deals with texts of criminal laws of the Commonwealth of Independent States (CIS) countries on the subject of provision regulation of the attempted crime. The specificity of describing objective and subjective characteristics inherent in the attempted crime is analyzed. This study revealed the inherent features of specific criminal laws and description of signs of attempted crime. It was determined that criminal legislation of the CIS countries contains an assassination attempt, which divides into completed and unfinished, and there is a regulation for partial criminalization of the attempted crime.

KEY WORDS: unfinished crime, attempted crime, completed attempt, incomplete attempt, objective side.

INTRODUCTION.

The study of unfinished crime is highly important for the science of criminal law (Bezugly, et al. 2018), and in particular, the study of the attempted crime makes it possible to determine the facets of the criminal and non-criminal behavior, and to individualize responsibility. The description of objective and subjective signs directly affects the practice of law enforcement.

Literature uses the term attempt, which means a clear action in relation to the completion of a crime, and a specific intention to commit a crime (Kadnikov, 2013). In its essence, the attempted crime is an attempt to commit a crime or to achieve the offensive of a criminal result, but the attempt is different when the criminal result is not achieved. In this regard, it is reasonably considered that the attempts to commit a crime should not be punished, or should be punished much more leniently (Czabanski, 2008).

In science, the study of the attempts to commit a crime (attempted crime) is conducted in several directions. Assaults on certain crimes are analyzed, as well as the reasons for failure in completing the crime (Farrell, 2016). The nature of completed and unfinished attempts (full or partial attempts) is being studied (Burkhardt, 1986).

There are not many studies devoted to the actual attempted crime, and most of them contain data on particular cases of the attempt.

Sufficient diversity in approaches to the study of attempted crime does not eliminate the difficulties of determining its objective and subjective characteristics. All of the above lead to a conclusion that a theoretical study of the attempted crime is necessary.

DEVELOPMENT.

Methodology.

The present study was based on a dialectical approach to the disclosure of the legal phenomena and processes by using general scientific (system, logical, analysis and synthesis) and private scientific methods. Among the latter are: formal legal, linguistic legal, and comparative legal, which were collectively used to study the texts of the criminal laws of 11 post-Soviet countries, in order to identify the characteristics of reflection in the norms of the criminal law of signs of attempted crime. The choice of this group is determined by common historical background of criminal law growth within the USSR, and the equal period of post-Soviet development. This, on one hands, allows us to predict

the existence of common features of fixing assassination as a type of unfinished crime, and on the other hand, the diversity in formulation of certain provisions relating to completeness of objective and subjective indications of an attempted crime, and the allocation of a complete and incomplete assassination.

Results and Discussion.

A study of the criminal laws of CIS countries allows us to conclude that each Criminal Code contains rules that regulate the concept of attempted crime. It should be noted that the term "attempt to commit a crime" is absent. A sufficient variety of formulations and descriptions leads to the conclusion about different completeness of both objective and subjective characteristics inherent in the attempted crime.

Traditionally, assassination is an act directly aimed to committing a crime that interrupted due to circumstances independent of the person (the person's will).

Initially, it is necessary to dwell on the regulation of objective signs that allow one to recognize concrete actions (inaction) as an attempt on crime.

It is inferred from the texts of criminal laws that almost all codes reveal objective signs of an assassination through the concepts of action and inaction, that are directly aimed to committing a crime.

The Criminal Code of the Republic of Uzbekistan describes the attempt as "beginning of committing the intentional crime".

It should be said that the attempt is characterized by beginning the fulfillment of the objective side of a specific corpus delicti; therefore, the above methods for describing objective features fully reflect the essence of the phenomenon.

Attempting a crime is an intermediate step between preparing for a crime and the completed crime. Consequently, legislative wording should define the verge of attempted crime, and the extent to which it can reduce the possibility of improper qualification to zero. In our opinion, one should not put a sign on the semantic identity between the wording of “actions (inaction), directly aimed at the commission of a crime” and “the beginning of a crime”. In general, the first formulation implies the beginning of the fulfillment of the objective side, and the second regulates this directly.

With a more detailed understanding, it is not difficult to come to the conclusion that beginning of committing a crime, allows us to put a line between preparation and assassination as a characteristic of the assassination, but does not reflect the possible continuing nature of assassination. Also, this formulation does not allow the theoretical and practical division of assassination attempt into completed and unfinished categories.

The next objective sign of an attempted crime is the interruption of actions caused by the circumstances beyond the control of the person. This feature is mandatory when constructing the norms of an unfinished crime.

In general, according to the regulation of this feature, all criminal laws can be divided into:

- providing for circumstances independent of the culprit (Azerbaijan, Belarus, Kazakhstan, Russia, Tajikistan, Turkmenistan, Uzbekistan).
- providing for circumstances independent of the will of the perpetrator (Armenia, Kyrgyzstan, Moldova).

We believe that use of the term "will" in describing both the attempted crime and preparation for a crime is certainly useful.

In the theory of criminal law, formulations of an unfinished crime often contain the term (Kadnikov, 2013). Establishing circumstances that depend on the will of the perpetrator, or ones that do not depend on his will, allows the true application of the rule of voluntary refusal of a crime.

An attempted crime cannot exist without regarding the rules providing for the specific elements of a crime. Therefore, in order to qualify an act as an attempt, it is necessary to first establish the signs of a crime that the perpetrator attempted to commit.

The majority of criminal laws that regulate the action or inaction is directly aimed at committing a crime. However, the crime envisaged by the Special Part or the Criminal Code is not specified.

The Criminal Code of Kyrgyzstan states that an action or inaction must be directly aimed at committing a crime under the relevant article of the Special Part of Criminal Code.

We now turn to the consideration of the subjective signs of an attempted crime.

The goals and motives enshrined in the article providing for a specific crime are also constructive signs of an attempted crime. None of the criminal law in description of the attempted crime indicate the goals and motives.

Attempting a crime, like preparing for a crime, can only be intentional. The regulation of this characteristic is reduced to three ways:

1. Description of the attempted crime as intentional action (inaction). This way of describing the subjective side is predominant (the criminal codes of Azerbaijan, Belarus, Moldova, the Russian Federation, Tajikistan, Turkmenistan).
2. Description of the attempted crime as action (inaction) committed with direct intent (criminal codes of Armenia, Kazakhstan, Kyrgyzstan).
3. Description of the attempted crime as beginning of committing an intentional crime (Criminal Code of the Republic of Uzbekistan).

In the first variant of description of the subjective side of the attempted crime, this characteristic is given directly to the actions (inaction) that constitute the attempted crime.

Since actions (inaction) are part of the objective side of a specific crime, it can be concluded that an attempt is possible only in an intentional crime. With this approach, only the form of the guilt is determined, but the type of intent is not specified. Given the fact that the intent can be direct and indirect, some uncertainty arises. It should be said that all the criminal laws of CIS countries divide the intent into direct and indirect intents, with the exception of Criminal Code of the Republic of Moldova, highlighting only “crimes committed intentionally”.

It is generally accepted that unfinished crime is possible in crimes with direct intent. But the question of indirect intent has absolutely resolved the opposite - there can be no unfinished crime in composition with indirect intent. With indirect intent, it is impossible to say that the criminal activity of a person is purposeful; rather, it is probabilistic in relation to the consequences. It is not possible to reliably predict the development of a causal relationship and the possible consequences. From this, it is derived that the attempted crime can have only the direct intent.

The second approach to determining the subjective side of the attempted crime seems to be the most appropriate, since it directly fixes the guilt in form of the intent, and only directly.

The third variant of the subjective side description does not directly give a subjective description of the act that constitutes assassination, but refers us to the articles of the Special Part, which describe the intentional crimes.

After analyzing the general rule on the attempted crime, it is necessary to turn to theoretically and practically important aspect of the attempted crime, i.e. to its division into complete and unfinished ones.

It should be noted that in the Soviet period, the science of criminal law justified the possibility and expediency of such a division (Svyatokhin and Panko, 1974). Therefore, at the moment there are three approaches to the division of an attempt into a completed and unfinished one:

1. An objective approach, which takes into account the completeness of the actions performed, which are necessary for the occurrence of a criminal result.
2. Subjective approach, which aims to assess guilty completeness of the actions performed.
3. Objective-subjective approach, which involves a combination of actually performed actions and the attitude of the perpetrator to their sufficiency for the offensive of a criminal result.

Regulation of the division of an assassination attempt into complete and incomplete is included in the Criminal Code of Kyrgyzstan.

Based on the approaches to the selection of complete and incomplete attempts, it should be said that a subjective approach to the delimitation of the attempts was chosen. On the one hand, this position seems justified, since modern criminal law cannot be based on the position of objective imputation. On the other hand, taking into account only the idea of a person about the scope of actions necessary for occurrence of a criminal result cannot fully indicate their objective sufficiency in our opinion. In this regard, in science, there is a developed objective-subjective approach to the division of assassination on the finished and unfinished crime.

Of course, the division of an attempt into a complete and incomplete one can be one of the bases for individualization of responsibility and individualization of punishment. The importance of such a division is also important for establishing signs of a voluntary rejection of a crime.

An analysis of text of the criminal law of the Kyrgyz Republic led to the conclusion that although the attempted crime was divided according to the degree of intent, it did not directly affect the rules of sentencing and was not reflected in the voluntary refusal rate. Thus, when sentencing for an unfinished crime, the mentioned code contains a list of circumstances that must be taken into account. These include the degree of implementation of criminal intent and reasons for which it was not brought to the end, as well as the nature of the acts committed by the perpetrator.

An attempt at a crime represents a real danger of the onset of a criminal result. In this regard, it is recognized that the attempted crime must be fully criminalized; that is, there must be the responsibility for the attempted crime of all categories.

However, the Criminal Code of Republic of Kazakhstan regulates the partial criminalization of the attempted crime. Therefore, the responsibility comes for an attempt at a crime of moderate severity, a grave or especially grave crime, as well as for an attempt at a terrorist crime. Impunity for a minor offense is punishable, which includes deliberate acts for which the maximum penalty does not exceed two years in prison, and careless acts for which the maximum penalty does not exceed five years in prison.

We believe that through partial criminalization of the attempted crime, the humanistic orientation of criminal law is expressed.

CONCLUSIONS.

An analysis of the texts of the Criminal Codes of CIS countries made it possible to conclude that all criminal laws contain a provision on the attempted crime.

Typical for all criminal laws is the description of the objective signs of an attempt on a crime as actions (inaction), that are a part of the objective part of a specific crime. In this case, the approaches to the description of objective signs are not the same. The overwhelming majority of Criminal Codes contain the wording of “actions (inaction) directly aimed at committing a crime”. In Criminal Code of the Republic of Uzbekistan, the attempt is described as beginning of the commission of an intentional crime.

The inherent characteristic of the attempt, which is expressed in the interruption of actions, is present in all laws, but it is associated with circumstances independent of the perpetrator or circumstances free of the will of the perpetrator.

The subjective side of the attempted crime in all criminal laws is described in the form of deliberate guilt. However, in a number of codes, intent is specified as direct.

Only Criminal Code of the Kyrgyz Republic contains the division of an assassination attempt into a completed and unfinished one. But when analyzing the rules of sentencing for unfinished crime and rules on voluntary refusal, it was determined that legislative regulation of the types of attempted crime does not directly affect sentencing and establishment of voluntary refusal.

Studying texts of criminal laws revealed that most codes provide for the full criminalization of the attempted crime. Only Criminal Code of the Republic of Kazakhstan provides for the partial criminalization of the assassination.

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