



Research Article

LIABILITY FOR PREPARATION TO COMMIT A CRIME IN THE CRIMINAL LEGISLATION OF FOREIGN COUNTRIES (COMPARATIVE LEGAL ANALYSIS)

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ABSTRACT

The article highlights the issues related to inchoate crimes, preparing for a crime, the basis of liability and punishment for it on the example of foreign countries and national legislation. The author analyzed the issue of liability for preparation of a crime from a comparative legal point of view based on the criminal law of France, the Netherlands, the FRG, Great Britain, and the USA. Based on the study of the criminal legislation of these countries, the author draws a conclusion that in terms of liability for inchoate crimes, there is no criminal liability for preparation for a crime and certain forms of preparation for a crime are considered attempts to commit a crime.

KEYWORDS

Liability, punishment, incomplete crime, preparation to commit a crime, criminal attempt, conspiracy, criminal conspiracy, criminal solicitation.

INTRODUCTION

In the world, there is no uniform experience of criminal liability and sentencing for the stages (preparation) of committing a crime. However, by focusing on the diversity of characteristics in national aspects in this

regard, it is possible to identify the main features common to many countries. In the criminal legislation of most foreign countries, the concept of stages of commission of a crime is not used at all, instead,



criminal liability is established for inchoate (incomplete) crimes. The peculiarity of liability for this crime in the theory of criminal law of foreign countries is that criminal liability for preparation for the crime is not established. The definition of the crime of attempt, on the other hand, is interpreted wide to include actions of preparation for the crime.

In the French Penal Code, liability for inchoate crimes is provided in the “General Provisions” chapter of the “Legislative Part” book. Although criminal culpability is not established for preparation of a crime, conspiracy to commit a crime is a crime with a separate independent content this Code. According to Article 450-1 of the Criminal Code, involvement in a group or collusion to plan the commission of one or more crimes or a misdemeanor punishable by a five-year jail sentence gives rise to criminal culpability. In French Penal Code, it is said that a person who is preparing to commit a serious crime will be released from criminal liability if they stop after receiving legal warnings.

According to the Dutch Penal Code, liability for preparation of serious crimes is punishable by a prison sentence of eight years or more. The sentence or punishment for planning a serious crime should not be longer than half of the maximum punishment specified in the Special Part of the Penal Code for the primary offense. The Netherlands' Ministry of Justice established the Child Protection Organization, which has the authority to guarantee the parole release of minors who have committed crimes (Penal Code, Section 8 77hh). In addition to the main and additional punishments, coercive measures, which include detention in educational institutions, supervision over children, the seizure of illegally earned money, compensation for damage and restriction of freedom, may also be used against juveniles.

The stages of committing a crime are split into three categories, according to an examination of the Criminal Code of the Federal Republic of Germany: preparation for a crime, attempted crime, and completed crime. The code does not provide for criminal liability for criminal intent and preparation for crime. As an exception, preparation for certain types of crimes is punishable. Including preparation of high treasonous undertaking (§83), preparation for divulging state secrets (§96 first paragraph), preparation for forming an armed group - operating criminal trading platforms on the internet (§127), preparation for forming criminal organizations (§129), preparing counterfeiting of money or official stamps (149§), incitement to crime of aggression (80§), etc. We believe it is incorrect to classify some crimes as completed, such as organizing an association or being present when a crime is committed. Since this results in more severe punishments for crimes that have already been committed than for those that have yet to be committed.

An analysis of UK criminal legislation allows us to divide incomplete crimes into three groups: attempted crime, criminal conspiracy and criminal solicitation. Criminal solicitation is a verbal or written incitement of another person to commit a crime (which should also include the conditions for the unfulfilled criminal solicitation). If the solicited/instigated person has committed a crime, the criminal solicitor shall be punished as an accomplice. Criminal solicitation (instigating to commission of a crime) must have objective and subjective elements. The punishment imposed for criminal solicitation with a low level of social danger may not exceed the punishment imposed for the completed crime.

A criminal conspiracy is defined by common law as an agreement between two or more people to to commit

an unlawful act or lawful act by unlawful means. Depending on the circumstances, the court may decide to punish this offense with either incarceration, a fine, or both. The crime is deemed finished if the conspiracy or agreement is reached. It doesn't matter if the criminal conspiracy or agreement is never put into practice .

In the Anglo-Saxon legal system, criminal conspiracy is a crime between criminal solicitation to commit a crime and criminal attempt. Most of these types of crimes begin with aiding another person to commit a crime, and if the person consents, it can turn into a criminal conspiracy and then into an attempt. Attempt leads to the completed crime.

Based on the aforementioned, it was determined that there is no criminal liability for preparation for a crime under UK law. However, some legal agreements define criminal responsibility for specific types of crime preparation. Furthermore, it is left to the discretion of the court to draw the distinction between preparation for a crime and attempt to commit a crime. In this matter, the fact that the courts are given broad powers and individual approach to each case is a positive aspect of the issue, but the diverse interpretations of cases that are not explicitly covered by the law are problematic.

US criminal law is almost identical to UK criminal law, except for the crimes of criminal solicitation, criminal conspiracy and attempted murder. The US Model Criminal Code and a number of states (New York, Kentucky) have sections or chapters dealing with initial criminal activity in their criminal statutes.

Article 5.02 of the US Model Penal Code defines criminal solicitation as follows: “A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands,

encourages or requests another person to engage in specific conduct that would constitute such crime or an attempt to commit such crime or would establish his complicity in its commission or attempted commission”. It should be said that the American legal system does not have a unified view of the criminal solicitation. For example, in some states, the act is a criminal offense, while in others, liability is not established. In most cases, criminal solicitation is regarded as disturbing public order, threatening public welfare, and obstructing the administration of justice is a criminal offense. For example, under California criminal code, bribery, kidnapping, burglary, grand larceny, nighttime burglary (burglary) are punishable by up to one year in prison or a \$10,000 fine.

The crucial point is that criminal liability is also established for criminal solicitation (Tennessee, Kentucky, New York). Under the Model Penal Code of United States of America, criminal solicitation is punishable as a completed crime. In Kentucky, Criminal code imposes a lesser sentence for criminal solicitation, in comparison to a felony. Generally, an accomplice is acquitted if he has voluntarily, fully refrained from committing the crime and prevented the commission of the crime (New York).

According to the Model Penal Code of United States of America “A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

(a) agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such a crime or an attempt or solicitation to commit such a crime; or

(b) agrees to aid such other person or persons in the planning or commission of such a crime or of an attempt or solicitation to commit such a crime” .



It should be noted that in the American legal system, a number of theories have been developed in order to distinguish between preparation for a crime and attempt. These ideas lead to the conclusion that a person can be held accountable in the USA not only from the stage of preparation for a crime but also from the stage of manifesting intent. Because there is no definite standard by which an act qualifies as an attempt at a crime, the courts categorize the same illegal behavior in various ways. In particular, ambushing someone may qualify as an attempt to commit a crime in some circumstances, while in others, no guilt is shown at all. The majority of the time, attempted murder is considered a felony under federal criminal law .

According to us, it's critical to distinguish between an attempt and preparation for a crime based on both the acts taken and how closely related they are to the actual crime. Therefore, determining whether an act constitutes an attempt to commit a crime should be based on the likelihood that the perpetrator's efforts would result in the completion of the crime without the intervention of another person. If not, the action must be regarded as a preparation for the crime.

Considering the aforementioned, we can accordingly note that as a characteristic feature of the laws of some European countries on the establishment of liability for inchoate crimes, there is no criminal liability for preparation for a crime and certain forms of preparation for a crime are considered attempts to commit a crime.

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