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Квалификация неоконченной преступной деятельности

Усенко Анатолий Сергеевич

преподаватель кафедры криминалистики

Кубанский государственный аграрный университет им. И. Т. Трубилина

г. Краснодар, Россия

SPIN-код: 9594-2433

<http://orcid.org/0000-0002-8332-9340>

Аннотация

В статье поднимается вопрос квалификации неоконченной преступной деятельности. Преступное действие всегда представляет собой акт, обладающий определенным временным промежутком. В нормах особенной части уголовного кодекса Российской Федерации предусматривается наказание за совершение окончательного преступления – деяния, которое содержит все признаки состава преступления. Но общественную опасность может также предоставлять неоконченное деяние преступников, ввиду чего уголовным законодательством закрепляется ответственность за приготовление к тяжкому и особо тяжкому преступлению и за покушение на преступление. Отмечается, что покушение на преступление является второй разновидностью неоконченных преступлений: «умышленные действия (бездействие) лица, непосредственно направленные на совершение преступления, если при этом преступление не было доведено до конца по не зависящим от этого лица обстоятельствам».

Ключевые слова: неоконченное преступление, квалификация, окончательное преступление

Qualification of unfinished criminal activity

Usenko Anatoliy Sergeevich

graduate student of the department of criminology

Kuban State Agrarian University

Krasnodar, Russia

SPIN-код: 9594-2433

<http://orcid.org/0000-0002-8332-9340>

Abstract

The article raises the issue of qualification of unfinished criminal activity. A criminal act is always an act that has a certain time interval. The norms of the special part of the Criminal Code of the Russian Federation provide for punishment for the commission of a completed crime - an act that contains all the signs of a crime. But the unfinished act of criminals can also provide public danger, which is why the criminal law establishes responsibility for preparing for a serious and especially serious crime and for attempting a crime. It is noted that an attempt to commit a crime is the second type of unfinished crimes: "deliberate actions (inaction) of a person directly aimed at committing a crime, if the crime was not completed due to circumstances beyond the control of this person."

Keywords: unfinished crime, qualification, completed crime

A criminal act is always an act that has a certain time interval. The norms of the special part of the Criminal Code of the Russian Federation provide for punishment for the commission of a completed crime - an act that contains all the signs of a crime (Article 8 of the Criminal Code of the Russian Federation).

But the unfinished act of criminals can also provide public danger, which is why the criminal law establishes responsibility for preparing for a serious and especially serious crime and for attempting a crime.

The qualification of the completed crime is made on the basis of the provisions of the special part of the Criminal Code of the Russian Federation. At the same time, the attempt and preparation are evaluated under the same article, however, with an emphasis on parts 1 and 3 of Art. 30 of the Criminal Code of the Russian Federation.

In criminal law, preparation means the creation of conditions for the commission of a crime, if it was not completed due to circumstances beyond the control of the person. However, the creation of conditions for the commission of a crime by the guilty person makes it possible to

classify acts as preparations for a crime.

Thus, the creation of favorable conditions in a number of cases was criminalized by the legislator as an independent crime (this can be attributed to the provisions of Article 211 of the Criminal Code of the Russian Federation “capture of a vessel”).

Undoubtedly, the formation of conditions for the commission of criminal activity should receive a criminal-legal assessment as a completed crime. The list of types of actions for preparing for a crime is open (part 1 of article 30 of the Criminal Code of the Russian Federation).

When preparing for a crime, the legal qualification of the deed, in some cases, is predetermined by the criminal law. So, a direct indication is contained in part 5 of Art. 34, part 6 of Art. 35 of the Criminal Code of the Russian Federation.

An attempt is understood as an intentional act aimed at committing a crime, if, at the same time, it was not brought to its commission due to circumstances beyond the control of the person.

For the legal qualification of an attempted crime, consideration of only the beginning of the commission of an intentional crime will be insufficient, since an attempt can cover both the initial and subsequent moments of criminal activity, up to the onset of a socially dangerous consequence.

Note that the latter can be separated from the initial action of the person, for example, the initial moment of prolonged torture of the victim, which does not end in death only because of the timely provision of medical care.

It should be noted that not bringing a crime to its commission is not a basis for a criminal legal assessment of an action or inaction as an unfinished crime.

According to the domestic criminal law, the fact why the crime was not brought to the end was also significant. Thus, the Criminal Code of the Russian Federation understands an unfinished crime as not bringing the crime to its completion, which occurred due to factors external to the guilty person that prevented the completion of the crime.

On this basis, an unfinished crime is distinguished from a voluntary refusal to commit a crime that occurs when a person realizes the possibility of bringing the crime to completion (part 1 of article 31 of the Criminal Code of the Russian Federation), therefore, according to circumstances depending on him.

If it is a deliberate crime, it is possible to go through certain stages of the implementation of the criminal intent, while it may not be fully implemented.

These stages include:

- formation of intent;
- detection of intent;
- preparation to commit a crime;
- attempt;
- the end of the criminal act.

Note that their criminal legal significance has a different meaning. So, for example, the formation and detection of intent is a completely criminally neutral component.

Preparation for the commission of a crime seems to be partly

neutral, since only preparation for a particularly grave and serious crime is criminally punishable.

It should be noted that these stages are typical for intentional crimes, and not for an independent crime, in which, for example, the detection of intent constitutes the content of the objective side.

If we talk about a criminal act in a strict interpretation, then, according to criminal law, we single out the possible stages of committing an intentional crime:

- preparation for a particularly grave and serious crime;
- attempt;
- completed crime.

Of course, all stages of committing an intentional criminal act are not always necessary. However, not all stages may be possible. In this sense, the conditioning meaning is the structure of the objective side. For example, it is impossible to attempt and cook in Art. 125 of the Criminal Code of the Russian Federation, 162 of the Criminal Code of the Russian Federation. For both types of unfinished crime, incompleteness is common.

We also note that an unfinished crime from the subjective side is indicated only when an attempted murder is mentioned, however, this provision in the future extended to attempt and preparation for any crime.

An unfinished crime as a whole is defined as a termination by a person of preparation for a particularly grave and grave crime or an attempt to commit it, an attempt due to circumstances beyond the control of the person.

According to the criminal-legal qualification of a crime, it is necessary to establish what completed crime the person is planning to commit. In accordance with Part 1 of Art. 29 of the Criminal Code of the Russian Federation "The crime is over if the committed act contains all the signs of a crime."

Since the actual delimitation of a completed crime from an unfinished one is not made according to all the signs of the *corpus delicti*, but only on the objective side, then the establishment of the moment of the end of the crime will be different.

For a truncated composition, it will be sufficient only to carry out an action or inaction, i.e. deeds. So, regardless of the commission of the planned crime, the completed crime will be the creation of a stable armed group.

With regard to the material elements of the crime, it is necessary that the consequences prescribed by law occur. At the same time, they can not only be indicated in the criminal law, but can also follow from its meaning. Consider the material composition on the example of theft.

Thus, from the verdict No. 1-165/2017 dated October 17, 2017 in case No. 1-165/2017, it is seen that the defendant could not fail to bring his criminal intent to the end and dispose of the stolen goods and materials due to circumstances beyond his control, since he actions were stopped by S., however, the direct fact of the order is the moment of the end of the theft [1, 2].

Continuing crimes, as a type of criminal act with a formal composition, are completed from the moment the objective side is implemented in the form of cessation of the crime. Continuing crimes are

considered completed when the criminal act is carried out.

Preparation for a criminal act is the initial stage of a criminal punishable intentional crime, understood in Part 1 of Art. 30 of the Criminal Code of the Russian Federation as "the discovery, manufacture or adaptation of a person ... was not completed due to circumstances beyond the control of this person."

As a result, such an action is outside the objective side of the completed *corpus delicti*. The general part contains the objective side of the preparation for a crime and is associated informationally with the provisions of the Special.

When studying the materials of investigative and judicial practice that are associated with bringing to criminal responsibility for preparing to commit a crime, we note that such cases are quite rare, due to the ineffective work of persons carrying out operational-search activities carried out to prevent criminal activity.

Attempt to commit a crime is the second type of unfinished crimes: "deliberate actions (inaction) of a person directly aimed at committing a crime, if the crime was not brought to an end due to circumstances beyond the control of this person". When attempting a crime, one should only talk about the realization of a part of the objective side of the completed *corpus delicti*. The objective side of the attempt, in contrast to the preparation for a crime, is described not only in the general, but also in the special part of the Criminal Code of the Russian Federation [3].

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But in reality, this may not be the case.

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In the science of criminal law, there is a position that in case of crimes with a material corpus delicti, a criminal result does not occur. But in reality, this may not be the case. Similarly with the preparation

for a crime, the qualification of an attempted crime, in accordance with the criminal law, the qualification of an attempted crime is regulated by the provisions of Art. 29 of the Criminal Code of the Russian Federation with reference to Art. thirty.

As we indicated earlier, an attempted crime is divided into completed and unfinished. In accordance with the position on the voluntary refusal to commit a crime, this classification is of no small importance.

A number of authors also highlight the term "unfit attempt". Moreover, the study of such issues should be carried out within the framework of legal qualification when the subject is deluded about the actual circumstance of the criminal act being committed.

Note that, according to part 3. Art. 29 of the Criminal Code of the Russian Federation "Criminal liability for an unfinished crime occurs under the article of the Criminal Code of the Russian Federation, which provides for liability for a completed crime, with reference to Art. 30 of this Code". In our opinion, this legislative interpretation needs to be clarified by supplementing it not only with an article, but also with a paragraph, part of an article of the Special Part of the Criminal Legislation.

This addition is conditioned by the fact that a number of articles of the Criminal Code of the Russian Federation, which provides for the onset of criminal liability for the corresponding criminal act, consist structurally of paragraphs and parts. In addition, the phrase "criminal liability occurs" should be changed to "qualifies".

In our opinion, the legal regulation of an unfinished crime is

endowed with significant reserves. Among the legislative omissions, we note:

- Firstly, the lack of a clear regulation of the type of fixing of signs in various provisions of the criminal law (for example, in Parts 1 and 2 of Article 30 of the Criminal Code of the Russian Federation, signs of preparation are indicated);
 - secondly, a large legislative workload (a large number of preparatory actions for a crime);
 - vagueness in indication of essential features;
 - lack of concretization of the provisions of the legal qualification of an unfinished criminal act.

Thus, in our opinion, it is necessary to state the norms of Article 30 of the Criminal Code of the Russian Federation in a new edition: “p. 3 attempted crime is an act (action, inaction) carried out with direct intent, when a person performs part of the objective side of the crime, which was not brought to an end due to circumstances beyond the control of this person. item 3. 1. an attempted crime is qualified in accordance with the rules of paragraph 3 of Art. 30 and under the article of the Special Part of this Code, which provides for criminal liability for a completed crime.

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