

Attempted Criminal Acts and their Punishment by the Court

Nikolin Hasani

"Ismail Qemali" University of Vlorë, Albania

Abstract: Even in our country there are made a number of offenses that remain tentative. The Penal Code implies that such works can be classified likely every provided act, provided that "the person takes direct action to do it, but not complete the act due to certain circumstances independently from his will". The most frequent subject of judicial review and penal punishment are the attempts dealing with the murder or injury of a person and rarely for theft of physical property of someone else. Considerably, the attempts are provided as facts in the functional activity of civilians or in certain ranks of the hierarchy within the public administration. But in these areas the crime is concealed. Except the cases that are caught by the High State Control, the audits usually consider them "administrative infraction", escaping from prosecution and judicial investigation by individuals who commit the attempts in this area. The focus of this study is the analysis of some causes, the aspects of extension and the real punishment of "attempts".

The penal juristic concept of attempt as a crime

The criminal law as a legal science and branch of positive right is a system of legal norms through which some citizens' acts are considered as criminal acts and what kind of sanctions will be articulated to the persons who commit them. It has as the main focus the definition of criminal law and its image, the definition of its constituent elements which serve as the basis to put a person face to face with the criminal liability. The criminal law is conceptualized into two main parts: the general part and the specific one. This division characterizes all the penal code of states with legal democracy. The main part includes the dispositions that define and classify criminal acts, criminal responsibilities and the appropriate sanctions. The specific part has as the main focus the study of concrete criminal acts foreseen in the specific provisions of this section. It specifies particularly the constituent elements as well as the aggravating or the mitigating circumstances in which offenses are committed.

An attempt is a specific stage of criminal activity in which the person has decided to commit certain crime, which is closer to the full commission of crime than in other stages. As defined above, the attempt is that stage of committing the criminal act in which the provided criminal acts by an entity that carries them is concentrated directly on the commission that is to achieve a desired result, socially dangerous. But it's typical that this result is not achieved for certain reasons not depending on the person's will. Although the intended criminal conscience is not achieved, in this case there is created the risk for violating the social relationship protected by criminal law.

Attempt comes from a combination of two norms: the incriminating crime rate prescribed in the special criminal section of criminal code¹ and those purviewing of the general section which prescribed attempts concretely, although it constitutes an illegal act or is always presented in relationship with the juristic norm (*normen juris*) of the concrete criminal act it refers to. In the Penal Code of Albanian Republic the definition of attempt (*conatus delicti*) is done in its 22nd purview: "The criminal act is considered as an attempt when the person, although undertakes direct actions to realize it, the action is interrupted and is not completed due to circumstances independent of his will".

The legal theory and the specific legislation converge at the fact that considers the attempt not only as a smaller stage beside the criminal act realized, but also as a separate label of this offense. In the 14/15th purview of the new French penal code is exactly said that "attempts are those actions that are manifested by a commencement of the execution (actions taken), but they are interrupted or the consequences are missing due to circumstances independent of the person's will. The Italian Penal code in its 56/1st defines as subject: "The person that commits suitable actions, focused on achieving the crime is responsible for the crime attempted though the goal is not met or the action is not proved. Even in the Penal Code of Kosovo the definition for the attempt is given in the 20th purview: "Whoever intentionally takes direct action to commit a criminal act and the action is not realized or its intended elements are not realized, the person is considered to be the one who attempted to commit a crime".

Inter alia, the criminal acts are classified into material criminal acts and formal criminal acts. **Material criminal acts** are considered as committed when they have caused the result provided by the law. Attempts can be part of these acts.

¹ The special section of Penal Code has as function to define all the circumstances that foresee criminal responsibilities.

Formal criminal acts are those which are considered as consumed from the moment of committing the action, without necessarily any detrimental consequences. Even in these acts there exists the attempt as the preliminary stage of criminal activity, because the person performs all actions focused on its commitment. For example, someone writes an article through which he forges with the intention of violating the dignity of a public person and sends it to a newspaper. Although the person has taken all his attempts, that newspaper number cannot be published for technical reasons. In this case, the defamation remained at an attempted stage, since it wasn't fulfilled for reasons independent of the will of the person.

The attempts exist also concerning the criminal acts which are committed by inaction. For example the reanimation nurse intentionally doesn't give an injection to the patient at the appropriate moment for saving his life. But the patient is saved due to the reaction of one of his relatives who is present and urgently contacts the doctor. In this case the nurse will be responsible for attempted murder. In fact, the Penal Code states that the attempt is realized with direct actions, which does not seem to exclude inaction. That's why some judges and theoreticians think that the attempt is not possible concerning this type of criminal act which is known as "right act where no action is taken", such as the case when no medical assistance is given.

For the definition of the attempt there is a juristic condition that the criminal act is not committed for independent causes by the person's will, otherwise we wouldn't have an attempt, but a disclaimer of doing a criminal act. The attempt of doing a criminal act is not realized because of external conditions independent of the person's will. Such conditions are the actions of the "victim", the actions of other persons who try to obstacle the criminal action and every external action.

In the theory of criminal law and the judicial practice it is considered that in some criminal acts the attempt is not possible. The first group is made up by those criminal acts which are considered to have been committed if the preparatory actions are undertaken. Such acts are war crimes against humanity, genocide etc, while the second group consists of those acts which in theory are known as formal offense. Because of the latest group nature the attempt is not possible. For example it is not possible that the attempts at defamation, participation in beatings, insults and some acts in the field of traffic etc caused by negligence.

The idea of doing a crime is not punishable, however it is known as the stage of the offense, while the presentation of the idea is punishable when the person in the moment of expressing the idea has consumed the offense.

The evolution of attempt forms and low possibilities for their punishment

Besides the traditional ways of trying to kill somebody for different reasons, nowadays some more "modern" performances are increasing tremendously, scheduled to be performed by means of modern technology. Unfortunately some of these crimes against the person's life are realized (*delictum consummatum*) and have horrified the opinion in the country and abroad because of their spectacular way of execution.

But some of these attempts have failed to cause criminal consequences and for different reasons that have remained as attempts. Below we are presenting a typical case. A few months ago a former high official of State Police sends his car to a car repair service at "Ali Demi" neighborhood in Tirana. While they were repairing it, the workers found a quantity of explosive which was set to detonate the car by a remote control. They immediately called the police and the experts deactivated the explosive that was put to execute physically the driver of that car. This is a typical attempt, although in this case the persons who did this action were not found or suspected.

A lot of cases have also been confirmed in secret, when during the night someone intentionally released the bolts that hold the wheels of the car so that vehicle owner, who was known that on that day went on a trip, during the trip could go off the road and got involved in an accident, possibly fatal. Such attempts aimed at the person's life are initiated from weak motives or because of the work that that person exercises. But such dangerous cases fail to go to the trial because some of the cases are not reported at all or in other cases the investigating activities encounter insurmountable difficulties faced with identifying the author.

1. The attempts in public administrate affairs

Besides the traditional forms of going out at night to steal another's property or to pickpocket, today there is an increase in a more sophisticated form of theft and embezzlement of public property using the positions or public administration functions. But while the attempts against the life of somebody as a rule result in a criminal trial, the attempts to acquire public finances generally are hidden, except some cases that can be punished only with administrative actions. Such problematic reports of crime with their judgment are defined by the status of the person who tries to commit a criminal act. The generalizing analysis of a typology like this will be done discussing the circumstances of a concrete fact.

A few years ago the head of an academic institution through order No. 40 declared several scientific project as winner, creating their legal ability to their managers to attract financial funds for their completion. Among these he listed projects presented by M.B, direct deputy head of that institution. But a few weeks later by decision no. 6, the same holds repeals his previous "order", arguing explicitly:

"Following the complaints made concerning the instruction² No. 40, on 24.06.2004 to announce the winning projects for 2004..., cancel decision no. 2 on 24.06.2004 of the evaluation commission and return it for reconsideration because of the following reasons:

1. In the project "Shk... ar...", the activities funded by the institute and apart from our institution³ is lacked.
2. Specialists that don't have "ar..." in the study area are involved in the project
3. Specialists that are not informed that they are member of team that will implement the project."

We believe that this is a typical case of criminal act remains as an attempt, conducted in the public administration structures, the directors and senior officials of these institutions. Targeted criminal acts can be classified as fraud for profit, committed without violence because it is based on data falsification submitted through the documentation. We have explained above that the attempt is a specific stage of criminal activity when the person has decided to commit a crime, is already completing it.

In the case of attempts, the prevised action by the person who is trying to commit intends to achieve the desirable result, but this is not fulfilled because of reasons independent of the perpetrator's will. Thus the above case does not lack any element of traditional offense attempted:

1. The person named with the initials M. B., who has attempted to commit a robbery, has committed a series of direct actions for criminal fulfillment. These actions are focused on the acquisition of the amount of 600 000 lek through a scientific project forged in many elements. As also appears in decision no. 6, in the project there are involved specialists with no specialty of the project study area. Here we must also add that the project manager was not a specialist in the study area, but circumstances proved that "in the project there are involved persons who have no knowledge in implementing it", clearly speaks not only to the fact that the project has been forged, but also the existence of intent and premeditation in taking all necessary measures for the desirable result. These actions exclude the negligence.
2. The arguments presented in the decision to annul the abovementioned decision prove unequivocally that all actions are taken consciously and willfully. The subject has been sufficiently established to perform work, which proved to carry out its commitment to realize a criminal act through several acts to falsificate the datas. This indicates that the subject had anticipated the coming impact of specific criminal offense and has desired it.
3. The result does not come apart for reasons independent of the person who committed the acts. It is decision no. 6 that confirms that it was the complaints of other persons that influenced the project default and therefore the emergence of decision no. 6, has interrupted definitely crime commitment. All the facts prove that the entry has taken no action trying "to give up from the commission of the offense".⁴ All the factors that have affected that crime didn't happen are external and independent of the subject's will.

It is meaningful to stress that the project director of the case that we mentioned was the vice director of the institution, where he had been working for 20 years and it was well known that he was specialized in another field from that of the project, presented just for illegal profit. Besides direct knowledge, such a fact was made clear for the commissions' evaluation as to the person who signed the executive order no. 40 of the funds withdrawal by the project template. In the project template there were asked detailed data for the scientific profile and the qualifications of the applicant in the field of the project for which they were applying as well as the publishing activity in the project area in the last 5 years. And the data listed in that form showed that the applicant wasn't the proper specialist to win and implement that project.

² Terms "order", "decision" and "instruction" are used in the original documents.

³ In the original document it is used the proper noun of the institution, but we have changed it because we needed to treat it as a typical problem rather than a concrete case.

⁴ According to purview 24 of Penal Code of Albanian Republic "The person that voluntarily disclaim doing a criminal act though he had all the possibilities, he doesn't have penal responsibilities".

The fact that the group approved the project despite the recognition of professional data of M.B, indicates that the action can be classified as attempted cooperation. The head of institution who signed the execution order cannot be excluded because he was well informed that the specialty of his deputy, selected among other candidates. All these persons who had the right of approval have active attitude in providing a fake project. They consciously have helped to realize a criminal act, collaborating in its preparation stage. They played this role intentionally and were aware of the consequences.

We reiterate that the citizen M.B. didn't resign from the offense commission, because such an action cannot be verified. On the contrary, it was the interference of other persons that forced the head of the institution to cancel this scientific project. Analyzing the facts above, we can say that from the facts analysis, the citizen M.B. has done the maximum for committing a future crime. Considering the actions and their nature it is quite clear that their intention was the illegal appropriation of the funds. But this episode was never considered in dealing with the criminal law, though in certain circumstances both the prosecution authorities and courts of the three levels were informed. It was interpreted as a banal "administrative violation".

General conclusions

State officials, people with high positions in public administration involved in "civil servants" as well as approved even in the theoretical literature of jurisprudence, usually manage to escape prosecutions or convictions for such crimes. Their criminalization is very rare, defining them as cases of administrative offenses or being satisfied with the fact that the crime remains unfinished and the society is not violated. But the attempt is defined precisely as such.

In their daily activities the different ranks of State control reveal many cases of crimes committed or attempted, which aim the acquisition of the monetary funds or other material assets of the state. But those matters referred for prosecution or that go to trial never take the deserved punishment or are not punished at all. Many of the prosecutions are interrupted by the prosecutor because of "lack of sufficient evidence" or "short evidences of crime".

The administrative handling of the cases for attempted robbery with or without falsification mostly is done in illegal ways. The magistrate usually is pressured to resign from the office. That's why we usually hear that the head of an institution resigned irrevocably because of "family or health reasons". In fact these cases do not refer only to attempts but also flagrant commitment of thefts or embezzlement of large sums of money. But these officials become unemployed or work in another job, waiting to be rehabilitated again in the public administration instead of sending them to prosecution. This is a disturbing problem for justice and all the Albanian society that is far from winning the fight against corruption.

References

- Elezi, Ismet. *E drejta penale (Pjesa e posaçme)*. Botimet ERIK, Tiranë, 2007.
Kodi penal dhe kodi i procedurës penale të Republikës së Shqipërisë. Qendra e Publikimeve Zyrtare, Tiranë, 2005.
Merfi, Xhefri G.; Kolman, Xhuls L. *Filozofia e së drejtës*. Botimet "Lura", Tiranë, 1992.
Merryman, John H. *Tradita e së drejtës civile*. Shblu, Tiranë, 1993.