

THE NOTION OF ATTEMPT IN THE ROMANIAN CRIMINAL LAW

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***Abstract:** The proposed project explores and analyzes the concept of "attempt" within the general criminal law, with the objective of developing a comprehensive understanding of this phenomenon. In a complex legal context, the research paper focuses on the legislative, jurisprudential and ethical aspects associated with criminal attempts. In the introduction, the topic choosing is justified and the purpose and objectives of the project are established. Throughout the research paper, the constitutive elements of the attempts are highlighted, including the differences with respect to the consummated crimes, as well as the causes and reasons influencing their appearance. The legal procedures, ethical and legal aspects are examined, including the debates on the culpability and punishment in the case of attempts. A comparative jurisdictional section provides an insight into the diversity of the legal practices in dealing with criminal attempts.*

***Keywords:** attempt, criminal, law, Romania.*

Introduction

Within the complex legal landscape of criminal law, the concept of "attempt" is an essential element with profound implications on how society and the judicial system perceive and deal with crimes in progress. The attempt, defined as the criminal act that does not reach the stage of complete consummation, adds a layer of complexity to the legal interpretation and associated punishments. As defined by the Criminal Code, the attempt consists in "the execution of the intent to commit the criminal offence, which was however interrupted or did not produce its effect" (Art. 32 of the Romanian Criminal Code). Therefore, the attempt, marked by an incomplete development or by the absence of the final result, represents an unusual type of the criminal offence, placed between the phases of preparation and consummation of the criminal act. It is an intermediate stage between the preparatory acts and the complete achievement of the criminal offence.

The distinction between the attempt and the preparatory acts of a criminal offence is based, mainly, on the fact that the attempt already involves the commission of certain acts of execution of the crime, marking a transition to the consummated criminal act. However, this delimitation becomes difficult to achieve, especially in the context of the preparatory acts that are immediately adjacent to the socially dangerous stage of carrying out the crime. These preparatory acts often have an univocal nature and induce a state of obvious danger to the protected social values, which complicates the clear distinction between the two phases of the criminal process.

I. Forms of attempt

The classification of the attempts in criminal law represents a complex analysis of the types and degrees of development of the criminal acts not fully consummated. This categorization can be generalized in two essential dimensions: the actual attempt, characterized by the incomplete development of the crime, and the preparatory acts, which precede this phase and are adjacent to the beginning of the execution. Within the attempts, we can also distinguish subcategories depending on the degree of advancement in the commission of the crime or according to the results achieved until the intervention of the authorities. This classification provides a more detailed perspective on the diversity of the criminal attempts, contributing to a deeper understanding of this crucial aspect of the legal system.

a. Interrupted attempt:

”The interrupted attempt (unfinished, imperfect, incomplete) is a form of the attempt that consists in the execution of the intent to commit the crime, execution that is interrupted before the consummation of the crime” (Streteanu et al., 2014: 215).

The interrupted attempt, also called unfinished, imperfect or incomplete, represents a particular form of the criminal attempts. This form involves initiating the execution of the intent to commit a crime, but the process is interrupted before the crime is fully consummated. It is characterized by the initiation of the acts aimed at committing the crime, but with the occurrence of some factors that prevent the complete achievement of the criminal act. This type of the attempts provides an insight into the moment when the intervention or unforeseen circumstances influence the course of the events, thus generating an interrupted attempt.

b. Completed or perfect attempt:

The completed or perfect attempt is another distinct form of the attempts as foreseen in the criminal law. This form is characterized by the fact that the criminal offender intends to commit a crime, begins to perform the necessary acts, and the process reaches a stage where the crime could have been completely consummated. However, the intervention of external circumstances, including the actions or forces of opposition, prevents the completion of the criminal process. In essence, the completed attempt indicates a significant closeness to the complete achievement of the crime, being interrupted at a subsequent time, but before its final consummation. The uninterrupted attempt is committed with intent and is only found in the result crimes (Streteanu et al., 2014: 216).

c. Absolutely improper attempt:

The absurd attempt represents a non-criminalized type of the attempts provided in the criminal law, manifested by an attempt to commit a crime, although the method of its execution is so unfeasible or absurd that it would not lead to the actual commission of the act. In this situation, the execution can be interrupted or can take place without producing effects, and the impossibility of consummating the crime becomes the result of the ineffective or impractical way in which the attempted execution was conceived. It is a particular form of attempt where the criminal plan is so unnatural or improbable that it cannot be rationally carried out.

d. Impossible criminal attempts

In general, there are certain criminal offences for which an attempt is not possible because they involve a specific element of danger or damage to social values that cannot be reduced to a failed attempt. Here are some examples of criminal offences where, in some jurisdictions, the attempt may be considered impossible or may have limited application:

In general, the crimes of omission, which consist of the failure to perform a legal obligation or duty, are considered to be actual acts, and the concept of attempt may not apply in the same way as to crimes of commission. This is because the attempt traditionally involves an active attempt to commit a crime, and crimes of omission derive precisely from the failure to fulfil a duty. Instant crimes are characterized by their immediate consummation, without a period of development or attempt to commit them. This type of crime takes place within a moment and is consumed on the spot, without offering the possibility of an actual attempt. Therefore, for instant crimes, the concept of attempt is often inapplicable because they are completely and immediately committed at the time the respective actions take place.

In general, jeopardy crimes involve the creation of a risk or danger to the legal assets protected by law, and not necessarily the production of an actual result or damage. However, the applicability of the concept of attempt in the case of these crimes may vary according to the specific jurisprudence and legislation of each country. In contrast to criminal intent, where there is a conscious will to commit the criminal act, in the case of criminal negligence, the focus is on the lack of attention or caution that led to negative consequences. Because attempt usually involves a deliberate and intentional action, applying the concept of attempt in the case of criminal negligence can be problematic and is not commonly used in this category of criminal offences. In general, in the case of *praeter intentionem* (exceeded intent) crimes, the applicability of the concept of attempt can be influenced by how this category of crimes is defined in the respective legal system. In many jurisdictions, where *praeter intentionem* crimes involve a grading of the will over the intent, we cannot speak of a possible attempt because the culpability that encumbers the original intent does not allow a deliberation prior to the moment of committing the crime with the exceeded intent. It is important to note that these aspects may vary according to the specific legislation of each jurisdiction and the specific interpretations of these concepts in different legal systems.

II. Attempt sanctioning

The sanctioning of the attempt refers to the infliction of criminal punishments or penalties for the attempt to commit a criminal offence, even if the crime was not fully consummated. In many legal systems, the attempt is dealt as a distinct crime and is specifically punished, but to a lesser extent than the actual consummation of the crime. This reflects the principle that the act of attempting to commit a crime should be sanctioned, even if the end result was not achieved.

Limited criminalization law refers to the situations in which an offence is limitedly or partially criminalized. For example, a law might criminalize a particular act only if certain elements or circumstances are met. In such cases, the attempt could be sanctioned appropriately, given the limited criminalization of the crime (Puşcaşu, 2024:291). As set out in Art. 33 paragraph (1) of the Criminal Code: "The attempt is punishable only when the law expressly provides it".

Considering that in the special part of the Criminal Code or in the special laws with criminal provisions it is only mentioned that the attempt is punishable, the determination of the sanctioning system is carried out by applying the provisions of the general part of the code. According to Article 33 of the Criminal Code, which regulates the sanctioning system of the attempt, it is established that it is punished with the penalty provided by law for the crime consummated, and the limits of this penalty are reduced by half. This approach reflects the legal principle that the attempt to commit a crime entails a sanction, but it is proportionately less than that imposed for the crime committed in its entirety (Streteanu et al., 2014:221). The general principles of sanctioning the attempt in Romania can be summarized as follows:

1. Lesser criminal sanctions: In general, the penalties for the attempt are less than those for the fully consummated criminal offence. This reflects the idea that the attempt represents a lower degree of social danger than the actual crime committed.
2. Degree of culpability: In determining the sanctions, courts take into account the degree of culpability of the person who attempted to commit the crime, as well as the specific circumstances of the attempts.
3. Individualization of penalties: The sanctions for attempt are individualized depending on the circumstances of each case, and judges have flexibility in imposing the punishments, taking into account factors such as the intent of the offender, the degree of social danger and the potential consequences.

II.1. Attempt impunity cases

Attempt impunity is a complex matter in the legal system and can be influenced by many factors, including legal principles, specific circumstances of the case and the criminal policies of a jurisprudence. In general, in criminal law, the attempt may not be punished in certain cases, and this may be justified by considerations of criminal policies or by fundamental legal principles.

1. *Desistance: is a legal concept that refers to relinquishing or abandoning the intent to commit a crime while attempting to commit it. It is a situation in which the offender voluntarily and sincerely renounces to continue the criminal act. Desistance highlights the importance of understanding that crimes are not only about committing illegal acts, but also about the individual's ability to voluntarily and sincerely withdraw from illegal situations before they are fully consummated. It is important to consult the specific legislation of each jurisprudence to understand how desistance is dealt with in the context of local criminal law.*
2. *Preventing the outcome from occurring:*

In criminal law, the hindering of the outcome from occurring by the offender can be interpreted as a form of attempts impunity. This aspect refers to situations in which, after initiating an attempt to commit a crime, the offender subsequently acts to prevent the consummation of the act. It is important to note that this form of attempts impunity may vary depending on the jurisprudence and specific interpretations of the law in each country or jurisdiction. Consulting specific criminal law is crucial to understanding how such matters are dealt with within a particular legal system.

II.2. Case study

Case: Attempted Aggravated Theft in accordance with the Romanian legislation

Description: Andrei, a 22-year-old young man, is a university student in a small town in Romania. Finding himself struggling with financial difficulties, Andrei decides to commit a theft in an electronics store near the university campus. Andrei plans his theft for several days, researching the store's routine and finding a way to enter without being detected. On the night when he decides to act, he sneaks into the store by breaking a back window. While being inside, the store's alarms go off due to a motion detector and Andrei is caught red-handed by the police.

Legal consequences:

1. *The indictment: Andrei is arrested and charged with attempted aggravated theft according to the Romanian Criminal Code, which considers aggravated theft a serious crime.*
2. *Judicial proceeding: During his trial, Andrei admits that he tried to steal from the store and explains his financial motivation. His attorney tries to argue mitigating circumstances, such as Andrei's lack of criminal record and young age.*
3. *The sentencing: The court finds Andrei guilty of attempted aggravated theft, and the punishment is established in accordance with the provisions of Romanian Criminal Code.*
4. *The punishment: According to the Romanian Criminal Code, the attempted aggravated theft can be punished with imprisonment from 6 months to 5 years. The court will take into consideration the individual circumstances of the case in determining the final punishment.*
5. *Further consequences: In addition to the imprisonment punishment, Andrei may have difficulties in finding a job or enrolling in other educational institutions due to his criminal record.*

Andrei's hypothetical case highlights the serious consequences of attempted crimes and the importance of obeying the law. In any legal system, attempting to commit a crime is treated seriously and can have long-term repercussions on the life of the individual involved. It is essential to understand that the acts have consequences and that breaking the law can bring serious harm to both the individual as well as to the society as a whole.

Conclusions

In conclusion, the topic of attempts in criminal law represents a complex and diversified field, addressing various aspects of the criminal process. The attempt reflects the act of trying to commit a crime, even if the final result is not achieved, and is governed by principles such as degree of culpability, social danger and proportionality in imposing the sanctions. By analyzing subtopics such as hindering the outcome from occurring and desistance, a complex overview emerges on how the legal system approaches the situations in which the offenders act to prevent the consummation of the act. In the context of this topic, the general principles of criminal law, such as intent and social danger, combine to create a comprehensive framework for assessing the attempts and their associated sanctions. The assessment of the individual circumstances and the fair application of the law in these situations are critical aspects in ensuring the fairness and effectiveness of the legal system in the management of criminal attempts.

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