CRIMINAL ACTS PREPARATORY TREATAMENT IN COMPARATIVE LAW

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Abstract
Acts preparatory treatment shows a very high importance. Romanian Penal Code adopted system unpunished preparatory acts, but there are times when preparatory acts are similar attempt or offense consumed when they present a danger to society mare. Legal regulation preparatory acts is preventive in relation to more serious offenses and multiple would be committed. Author aims to make a foray into time on the treatment of criminal preparatory acts.

Keywords: *legal treatment, preparatory acts, preparatory acts punishing*

Introduction

Preparatory acts usually are not charged other than possibly as an independent crime (which is the solution to Romanian law), consideration of this issue is of great scientific and practical interest.

It's known that old French law did not distinguish between the act Junior and enforcement act serious offenses (atrocious) such as crimes against the monarchy, parricide, poisoning. Jousse shows that if the monarch is punishable, acts committed against criminal thoughts and proved by witnesses or the offender's recognition.

For less serious offenses (simple) distinguish between proximus and conatus conatus remotus and acts more gentle closer than offense punishable consumed and not punishing the most remote at all. In France, doctrine and jurisprudence, in a spirit of schools punishing criminal acts preparatory class tend to interpret doubtful cases in favor of the delinquents sometimes, for example, qualify as acts committed by these preparatory acts, even if the acts were actually performed.

Donnedieu de Vabres, in Traité de droit criminel[1], noted in turn that there are two tendencies in the interpretation of the document preparation, an objective trend that justifies criminalizing preparatory act only within the state of the external manifestation was creating a threat to social values and the second was a subjective tendency considers the outward manifestation as a symptom of criminal personality, in this vision does not interest but determining the degree of social unrest was manifested in early danger of executing the offender, it must be punished as severely as would be consumed offense

Pradel[2] also emphasize the objective weight of distinguishing, in some cases, if we face a preparatory act or an act of execution. For instance, the thief caught in the door when you call the victim's home to check whether it is home or not, commits an act of preparation (scot) or executing an act of the theft (punishable)? Salvage, p.35, the author argues that the central problem is to determine how the external manifestation is necessary to attract criminal liability. Soyer, in the same news shows that the key problem is to determine the minimum beyond which crime crackdown should intervene.

In one case (Sconfield) the offender was convicted of attempted arson because he brought a candle and matches in his own house with the intention of fire, the court discussed this opportunity

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[1] Donnedieu de Vabres, in *Traité de droit criminel*, Edit. Sirey, Paris, 1947, p.128-129.

[2] Jean Pradel, Droit penal general,Cujas, Paris, 1991, p.121.

where you can go to punish past acts consumption, not to give a general solution to this issue. In a design inspired by the German doctrine of the last century is considered that only the actual consumption of the act would involve a disorder of the rule of law and justifies the criminal liability of the perpetrator. This vision is part of an expected limitation of extreme liberal view of state intervention in the relations with citizens only to situations where such intervention would be rendered absolutely necessary by fundamental social values that were actually harmed or jeopardized.

Such a solution was not accepted by any modern legislation but sustaining that past experience and requirements that a claim of rational criminal policy sanctioning the acts of execution interrupted early or did not produce any effect, because these acts can include the germ of the result. He reasoned that it would be dangerous for the criminal law to punish only the consummated crime unprotected citizens leaving the threat of serious and imminent danger, but even such a definition excludes the criminalization and punishment of preparatory acts. Criminal law should intervene even before consumption when there is a concrete danger that time of the act to achieve the result that the legislature wants to prevent (Saleilles).

In such a view is considered necessary that social values should be protected not only after they have been made a touch and to avoid repetition of such attacks, but even before the consummation of the offense, when it profiled only possibility of such hazardous results (damage potential) and to avoid turning this possibility into reality. Such facts lead to a social alarm and disorder as high as fait (Kohler). From another perspective it was argued that the modern state must punish not only immoral act reflecting an offense will result caused a relevant criminal violation of the precept that the actual act but did not reach the drinking scene, because in this case but otherwise the rule violated the precept was made. If, for instance, the precept of the rule relating to the fait accompli of murder is "not kill" if the act preparatory to murder rule violated the precept is "not trying to kill."

Subjective theories (especially the positivist school) have proposed mandatory punishment of preparatory acts and all crimes as acts preparatory revealing the intent to commit criminal offense also makes clear the dangerous person regardless of offense (unlimited criminalization of acts preparatory solution) This position was developed by the Italian positivist school (Ferri, Garofallo). In any event outside its design faces an offense dangerous revealing the author (action was considered a symptom of individual hazards) would be justified to make any distinction between those acts and committing the offense. Moreover, the risk of the individual relevant issues of fact are identical with itself and insusceptible of graduations and quantitative assessments would not legitimize the existence of different limits of punishment for past acts of crime consumed relative to consumption. This solution was justified and other arguments, supporting it, the cell, the mere manifestation directed towards producing results include in it a threat to reach the goal of the act or the willingness to consume in such acts pose a threat already evident in such a time representing a rebellion against the collective will of the individual.

Such a design feature of the willingness of the criminal law (as opposed to the outcome of the criminal law) was rightly criticized because it undermines individual liberties and guarantees attempting therefore legal security of citizens. Although subjective theories were advocated unlimited criminalization of preparatory acts, in fact most authors have located the positions of these theories have acknowledged that criminalization could not be extended to crimes and light (so unlimited criminalization sentence and turned to accept the solution here limited criminalization of preparatory acts). On the way to punish preparatory acts, subjective theories parificării penalty system occurred on the ground that it presents the danger that the perpetrator is the same person whether it just be prepared or executed offense that led to the production performance results.

Criminalization of acts preparatory thesis argues the need to criminalize these acts taking into account the social danger they posed. Preparatory acts, it is argued in this opinion, creates conditions conducive to the perpetration ¬ laid down by the criminal law and thus should be included causal

history of socially dangerous resultment, although this result did not occur, creating a state of danger to the social value against which the act was to move ready. Criminalization and punishment of preparatory acts are therefore necessary, in the same design, just to prevent the perpetration and prepared to defend the social threat. In the criminalization thesis took shape, however, two views: one that supports the need to criminalize preparatory acts limitless, whatever the offense is ready, and another partisan of the idea of limited incrimination. According to this latter opinion, while recognizing that the preparatory acts therefore presents a danger and that in principle could be criminalized, it is considered however that such criminalization is required only for serious crimes because such crimes only harmful acts shall prepared[3] characteristic of the seriousness of the offense.

The legislature could consider that any manifestation directed towards producing an outcome of illicit acts by enrolling in all contributory to the results present the same danger as the result itself and as such production would always be criminalized even if not completed, but was interrupted or not and had its effect. Another solution would be that of the external manifestations of the perpetrator directed to the consummation of the infringement to be distinguished from those which are only preparing those committing the action is the actual execution of the crime. On the way to punish preparatory acts (if unlimited or limited shall sentence criminalization of preparatory acts) to be the solution proposed parificării prosecute acts of punishment that is prepared in the same range of punishment as a penalty offense diversification solution that is consumed or prosecute acts of preparation in lower limits of punishment for the crime than those consumed.

Authors were ranked objective theories have not considered it necessary to punish acts of training while not posing a danger to society is too far removed from the time of consumption, on the other hand, they do not enroll any causal history of crime consumed (non-accusing solution acts of preparation). Exceptionally was admitted even by those authors, that documents may be sanctioned training especially for extremely serious crimes like being treason, piracy and other overhead.

It is also accepted idea that the preparatory acts would be punishable as a crime in itself. Romanian legislature ranked objective theory, considering that you would not be justified criminalization of acts preparatory to the crime. This solution was motivated by the argument that the acts of preparedness, objective, produce no social unrest, it does not violate the law are usually equivocal, there is no doubt that the author will continue to persevere in operation offense, it is in society's interest perpetrator to leave open the path of recovery and abandonment of criminal decision, on the other hand, preparatory acts are far from time consummation.

Unpunishment thesis argues, conversely, that the preparatory acts must not be criminalized because they remain outside the act and does not form the actual causal history of criminal outcome. The main argument of the thesis that the criminalization of preparatory acts is not indicated, however, is that they generally ambiguous character in the sense that it shows clearly what the author wants them, so that it could be argued that he quit at any time to commit the crime. Finally, it was alleged that the preparatory acts not only produce an actual injury, but the state does not create any danger for the social office to which they are moving, so if you would criminalize such acts were reach and thus reduced unnecessary penalties. In theory, even if one accepts objectives exceptionally punishment in some cases, preparatory acts, limits are always lower than the penalty for the consummated crime system (diversification).

Some limited criminal codes criminalize preparatory acts, eg the Bulgarian Criminal Code, the Hungarian Criminal Code, and other countries criminalize them indefinitely. Russian Criminal Code provides in art. 30 preparatory acts that fall under criminal law only when used to commit a serious or particularly serious crimes and only if the execution was not carried through the fault of the offender. Non-accusing rule is enshrined in the preparation of acts of criminal law, but she knows some mitigation, as in our law, like most European systems devote two situations in which these acts come to be criminalized[4].

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[3] Giusepeppe Bettiol,Diritto penale, parte generale, Padova, 1973, p.322.

[4] George Antoniu , Attempt, Pub. Daco-Română, 1997, p.186.

The two situations where we encounter preparatory act is treated as attempted, and the second assumption is that preparatory acts are treated as independent offenses. According to the provision of art. 173 par. 2 Penal Code., It is considered tentative and production or acquisition of means or instruments and take measures to commit very serious crimes against state security, and according to the first paragraph of that provision attempt to these crimes are punished. Exceptionally Romanian penal law to be upheld the criminalization of preparatory acts as autonomous crimes (eg possession of weapons and ammunition, explosive substances, possession of instruments for counterfeiting securities, possession of tools for fishing) by expanding the concept of act of execution and the acts which by their nature are acts of preparation (procurement, production means or instruments and take measures to commit a crime) when committed in connection with serious crimes, treason by helping the enemy, treason transmission of intelligence, espionage, fascist propaganda, illegal deprivation of liberty (173 par.2 Penal Code., art.189 al. Penal latter.) as well as some crimes specified in the code (Air art.1072 ff) or civil navigation Decree (D 443/1972), Art. Al.ult 123. .

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