

# Comparative Legal Analysis of Criminal Liability for Inchoate Crimes in the Criminal Legislation of the Republic of Uzbekistan and Cis Countries

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**Kamalova Dildora Gayratovna**

Dean of Criminal Justice Faculty of Tashkent State University of Law, Doctor of Philosophy in Law, Associate Professor

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## Abstract:

At the current stage of development, it is important to study the world experience, comparative analysis of the legislation of foreign countries, and at the same time, to apply the rules recognized with International law to the legislation. However, it is wrong to think that direct copying of the experience of the advanced countries of the world will make possible to solve the problem of criminal responsibility for completed and inchoate crimes. In our opinion, responsibility for crimes committed in the criminal legislation of foreign countries has developed over a long period of time and gradually improved. Therefore, there is no universal foreign experience on criminal responsibility and sentencing for the stages of crime. Undoubtedly, it is also useful to study the current situation in the practice of applying the laws of foreign countries. It is for this reason that the researcher made a comparative analysis of the criminal codes of the members of the Commonwealth of Independent States, whose legal systems and sources are similar to the laws of Uzbekistan, also proposals and recommendations have been developed.

**Keywords:** completed crime, inchoate crime, preparation for a crime, attempt to commit a crime, criminal responsibility, punishment, intent, serious crimes, and felony.

## INTRODUCTION

The main task of the Criminal law is to protect the individual, rights and freedoms, the interests of society and the state from criminal aggression. A person who commits a crime intends to have a criminal consequence by performing certain actions in order to fulfill his criminal purpose. However, in some cases, the intended result may not occur as a result of these actions. Although in such cases certain social relations were not affected, no direct damage was caused, the act of a

person has the character of social danger. Therefore, the criminal law establishes criminal responsibility for the crime.

Chapter 6 of the current Criminal Code is called “Inchoate crimes” and describes the rules of preparation for a crime, attempted crime and voluntary return from crime. The concept of inchoate crimes is presented in the “Legal Meaning of Terms” section of the Criminal Code, and an inchoate crime is defined as a crime that has not been completed due to reasons beyond the control of the individual or due to voluntary return from committing the crime [1]. Note that the legislator did not define the concept of inchoate crimes. Perhaps, inchoate crimes are divided into the following types: preparation and attempt to commit a crime as an unfinished incomplete crime, and voluntary return from committing an incomplete crime, depending on the circumstances of the person. Therefore, in the doctrine, this issue is approached differently.

It is for this purpose that it is important to study the world experience, comparative analysis of the legislation of foreign countries and, at the same time, to apply the rules recognized with International law to the legislation. However, it is wrong to think that direct copying of the experience of the advanced countries of the world will make possible to solve the problem of criminal responsibility for completed and inchoate crimes. In our opinion, responsibility for crimes committed in the criminal legislation of foreign countries has developed over a long period of time and gradually improved. Therefore, there is no universal foreign experience on criminal responsibility and sentencing for the stages of crime. Undoubtedly, it is also useful to study the current situation in the practice of applying the laws of foreign countries. It is for this reason that the researcher made a comparative analysis of the criminal codes of the members of the Commonwealth of Independent States, whose legal systems and sources are similar to the laws of Uzbekistan also proposals and recommendations have been developed.

## **MATERIAL AND METHOD**

Research methods such as analysis and synthesis, deduction and induction, comparative-legal analysis have been applied in the research.

On this topic, the current criminal codes of the CIS member states and the Criminal Code of the Republic of Uzbekistan have been analyzed.

## **RESEARCH RESULTS**

Completed and inchoate crime, preparation for crime, attempt to commit crime of CIS member states, including Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation (RF), Tajikistan, Turkmenistan, Uzbekistan, Ukraine, and Georgia on the basis of analysis of legal description, responsibility and sentencing issues, differences and similarities of these institutions with the legislation of Uzbekistan have been determined.

First of all, let's note similar issues in the legislation of these countries.

Firstly, the criminal legislation of most of the CIS countries has a separate chapter that regulates the institutions of preparation for crime and attempted crime: “Inchoate crime” (Azerbaijan [2], RF [3], and Georgia [4]), “Completed and inchoate crime” (Kyrgyzstan [5], Armenia [6], and Tajikistan [7]). In some countries, there is no separate chapter, but these institutions are represented in the chapters of “Criminal offense” or “Crime” or “Crime and its types” (Kazakhstan [8], Kyrgyzstan [9], Belarus [10], Moldova [11], Turkmenistan [12]). A peculiarity of the Criminal Code of Ukraine [13] and Kyrgyzstan is that the term “stages of committing a crime” (“stages”) is applied in the title of the chapters, but its definition is not stated in any article.

Secondly, the definition of the concept of a completed crime is defined in a separate article, and similarly to the Uzbek legislation, it is determined that it contains all the elements of the crime (Criminal Codes of the RF, Kazakhstan, Kyrgyzstan, Azerbaijan, Armenia, Ukraine, Tajikistan,

Turkmenistan). As an exception, it is possible to cite the Republic of Belarus, Georgia, and Moldova, where there is no definition of the concept.

Thirdly, similar to the Uzbek legislation, the definition of the concept of inchoate crime is not provided, and it is indicated that inchoate crime is preparation for a crime and an attempt to commit a crime (Criminal Codes of RF, Kyrgyzstan, Azerbaijan, Armenia, Ukraine, Turkmenistan). However, there is no rule that states voluntary return from a crime as an inchoate crime, as in the Republic of Uzbekistan. Although in most countries the voluntary return from crime has resulted in the crimes that have not been completed.

In addition, in all CIS countries, it is necessary to refer to the rule of preparation for a crime or attempt to commit a crime, as appropriate, when determining responsibility for an inchoate crime.

Fourthly, similar to the Republic of Uzbekistan and all CIS countries, attempted crime is defined as an act (act or inaction) aimed directly at committing a crime, which is carried out intentionally and is not brought to an end due to circumstances beyond the control of the person (will).

Fifthly, it is established by law that the most severe penalty in the penal system (for instance, life imprisonment, capital punishment) should not be applied for an inchoate crime (RF, Kazakhstan, Kyrgyzstan, Azerbaijan, Armenia, Georgia, Moldova, Tajikistan). Only Ukraine and Belarus are determined not to apply this provision to certain articles of the Criminal Code.

Sixthly, in the courts of the CIS countries, the circumstances to be taken into account when sentencing for criminal preparation and attempted crime are listed in the law, including the reasons for not completing the crime, the level of criminal intent, the nature and level of the crime committed by the perpetrator.

Seventhly, It is established that a lighter punishment is imposed for an attempt on a crime than a completed crime, that is, the term or amount of the punishment (main punishment) imposed for an attempt on a crime does not exceed three quarters of the heavier punishment provided for in the Special Part of the Criminal Code (Kazakhstan, Kyrgyzstan, RF, Azerbaijan, Armenia, Moldova, Tajikistan, Turkmenistan). According to the Criminal Code of Moldova, the above provision does not apply to recidivists (Part 3 of Article 81). In the Criminal Code of Ukraine, this period is even lighter – two-thirds (Part 3 of Article 68). As an exception, in the Criminal Code of Belarus and Georgia, there is no provision for reducing the term or amount of punishment for attempted murder.

**Based on the studied sources, the following differences were identified.**

Firstly, "the pursuit, preparation or adaptation of the means of crime or weapons by a person, the search for participants in a crime, conspiracy to commit a crime, or the intentional creation of other conditions for the commission of a crime is not completed due to circumstances beyond the control of the person, the act is considered preparation for a crime", the definition is the same in all CIS countries. Only in the Criminal Code of Georgia (Article 18), it is described as the intentional creation of conditions for committing a crime, and the subjective sign that it was not brought to an end due to circumstances beyond the control of the person is not indicated.

Secondly, based on the classification of crimes, it is determined that preparation for certain types of crimes is the origin of responsibility: serious crimes or felony (Kyrgyzstan, Azerbaijan, RF, Tajikistan); severe, extremely severe, finally extremely severe (Moldova, Turkmenistan); serious, extreme or preparation for terrorism (Kazakhstan); list of serious, extremely serious and crimes listed in articles of Criminal Codes (Georgia).

It is also established that responsibility for preparation for the following crimes does not arise: crimes punishable by imprisonment for up to two years or a lighter punishment (Ukraine); crimes of low social danger (Belarus). As an exception, it is possible to cite the Republic of Armenia, which, like Uzbekistan, is responsible for the preparation of all types of crimes.

Thirdly, the legal rule stipulates that the term or amount of the punishment imposed for preparation for the crime should not exceed half of the heavier punishment provided for the completed crime in the Special Part of the Criminal Code (RF, Kazakhstan, Kyrgyzstan, Azerbaijan, Armenia, Ukraine, Moldova, Tajikistan, Turkmenistan). In addition, according to the Criminal Code of Moldova, the above provision does not apply to recidivists (Article 81). Also, the minimum term of the punishment imposed in the Criminal Code of Kyrgyzstan (Art. 75) is specifically defined not to be less than the minimum term of this punishment. As an exception, in the Criminal Code of Belarus and Georgia, there is no provision for reducing the term or amount of punishment for preparation of a crime.

Fourthly, it is implied that it can only be done through criminal intention.: preparation for a crime and attempt to commit a crime (Part 1 of Article 24 of the Criminal Code of Kazakhstan) (Article 34 of the Criminal Code of Armenia); attempt to commit a crime (Part 1 of Article 37 of the Criminal Code of Kyrgyzstan), Ukraine (Part 1 of Article 15 of the Criminal Code of Ukraine).

Fifthly, a specific aspect of the Criminal Code of Ukraine is that it defines the completed and inchoate crimes of attempted murder. According to it, although the person has performed all the actions that he considers necessary to complete the crime, but the criminal act is not completed due to reasons beyond the will of the person, it is considered a completed murder. If a person, for reasons beyond his control, did not perform all the actions he considered necessary to complete the criminal act, it is considered a completed murder (Article 15).

Sixthly, in our view, the answer to the issue raised by scientists in the theory – the basis of responsibility for an inchoate crime, is explained in the criminal law of Belarus. According to it, the basis of criminal responsibility is the commission of an act prohibited by the Criminal Code in the following form: completed crime, preparation for a crime, attempted crime, commission of a crime with participation (Article 10).

Seventhly, a peculiarity of the Georgian Criminal Code is that it does not provide responsibility for the preparation or attempt to commit a crime by improper means. According to it, a person shall not be held responsibility for preparation for a crime and attempt to commit a crime if, due to his ignorance or other personal defect, illegal consequences did not occur with the help of the means used in the commission of the crime (Article 20).

## CONCLUSION

Based on the above analysis, in our opinion, it is appropriate to improve the legal rules related to preparation for crime and attempted crime in the current criminal legislation.

In our opinion, the Concept[14] of improving the criminal and criminal-procedural legislation of the Republic of Uzbekistan defines as an important task of developing the following concepts: inchoate crime, participation in crime and several institutions of crime by clarifying their criteria and characteristics, as well as eliminating the existing conflicts between them.

First of all, it is expedient to state in the law that preparation for a crime and attempt to commit a crime are done with the criminal intention.

The definition of the concept of inchoate crime should not be given in the Eighth Section of the Criminal Code, it should be described in the chapter “Inchoate Crimes” according to relevance. This, in turn, serves to ensure consistency and traceability between legal rules.

Taking into account that preparation for a crime and an attempt to commit a crime are two independent stages of an intentional crime, it is appropriate to define these concepts in separate articles.

When studying the criminal laws of foreign countries, preparing for a crime have been defined in separate articles in Armenia (Article 35), Belarus (Article 13), Georgia (Article 18), Lithuania

(Article 21), Moldova (Article 26), Azerbaijan (Article 28), Turkmenistan (Article 13), Kyrgyzstan (Article 38), and Ukraine (Article 14).

The next issue is the socially dangerous nature of crime preparation and the decriminalization of preparation for certain types of crimes based on the legislation of foreign countries.

This proposal is based on the low level of social danger of preparing for crimes with a low social danger, for instance in (Belarus (Article 13), Georgia (Article 18), Lithuania (Article 21), Moldova (Article 26), Azerbaijan (Article 28), Russia (Article 30), Tajikistan (Article 32), Turkmenistan (Article 13), Kyrgyzstan (Article 38), Kazakhstan (Article 24), Ukraine (Article 14) is introduced based on experience and the content of the principle of justice.

In addition, when analyzing the articles of the Special Part of the Criminal Code of Uzbekistan according to the level of social danger of crimes, it was found that 248 of the total 556 types of crimes fall into crimes of low social danger. While the listed crimes are committed only with the criminal intent. In addition, a number of encouraging legal rules, exempting a person from criminal responsibility, are provided for crimes of low social danger, completed in the Criminal Code (Article 66, Article 661). The level of social danger of preparation for crimes with a low social danger is in some cases lower compared to these crimes and even equal to an administrative law breakings.

Our research has been confirmed with questionnaire: In particular, to the question “Do you think there is a need to liberalize criminal responsibility for preparation for crime?”, 43% of respondents said that “responsibility should only be established for preparation for crimes that do not have a great social danger and are not very serious”, 36% of respondents said that “it is necessary to establish responsibility for preparing for felonies”, 31% of respondents said that “it is necessary to establish criminal responsibility for preparation for certain types of crimes”.

In addition, based on the analysis of the above approaches, the following conclusion can be reached: considering that preparation for a crime does not have high social danger, social relations protected by the criminal law have not been harmed, no criminal result has occurred, and the act has not been completed, a special rule should be introduced regarding the fact that preparation for a crime with a low social danger does not cause criminal responsibility and no punishment should be applied to this type of crime.

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