

LEGAL DESCRIPTION OF VOLUNTARY RETURN FROM CRIME IN THE CRIMINAL LEGISLATION OF CIS AND NON-CIS STATES: DIFFERENT AND SIMILAR ASPECTS

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Abstract

Under article 26 of the Criminal Code, if a person voluntarily ceases preparations for a crime or actions directly aimed at committing it, realizing that the crime may be brought to an end and that criminal consequences may result, this is regarded as a voluntary refusal to commit the crime. Such action indicates the prevention of possible consequences of a criminal act. The provision on voluntary refusal is an important expression of the humanistic principle of criminal law. Despite the fact that the act (action or inaction) was initially socially dangerous, unlawful and punishable, the refusal of criminal intent relieves a person from criminal responsibility.

The institution of voluntary repudiation in criminal law has several key aspects. First, it serves as an important legal mechanism that distinguishes between criminal behavior and non-criminal behavior, releasing a person from liability without additional conditions in case of refusal. Secondly, an opportunity is provided for a person who has initiated a crime or is preparing to commit a crime to stop acting and thereby nullify the legal consequences of his or her previous actions[1]. Third, voluntary refusal is an independent legal institution and, although it is placed in the chapter on incomplete crimesp[2], it is not considered as a set of stages of criminal activity, such as preparation and attempt[3]. Fourthly, this institution reflects the criminal law assessment of the positive behavior of a person who has renounced a criminal act.

When analyzing the norms on voluntary renunciation of crime in the criminal codes of the CIS member states (the Russian Federation[4], Kazakhstan[5], Kyrgyzstan[6], Tajikistan[7], Belarus[8], Azerbaijan[9], Armenia[10], Ukraine[11] and Georgia[12]), the following common features were revealed.

First, most of these states include the rule on voluntary repudiation in the chapters on incomplete crimes, emphasizing its close connection with the legal mechanisms governing such crimes (Russia[4], Kazakhstan[5], Kyrgyzstan[6], Tajikistan[7], Belarus[8], Azerbaijan[9], Armenia[10], Ukraine[11] and Georgia[12]).

Second, the legislation of different countries clearly defines the stages at which voluntary renunciation of a crime is possible: it may be the stage of preparation for a crime and actions (or inaction) directly aimed at its commission (Russia[4], Kazakhstan[5], Kyrgyzstan[6],

Tajikistan[7], Belarus[8], Azerbaijan[9], Ukraine[11] and Moldova[13]), or the stages of preparation and attempted crime

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(Armenia). In some jurisdictions (e.g. Georgia), the stage of voluntary abandonment is not precisely defined, while Turkmenistan[14] has a general provision for voluntary abandonment of an unfinished crime.

Thirdly, objective signs of voluntary refusal are the voluntary and final decision of a person to stop criminal actions, despite the realization of the possibility of bringing them to an end. In case of voluntary refusal, a person is exempted from criminal liability, however, if there are other corpus delicti in his actions, he may be held liable for them (Russia[4], Kazakhstan[5], Kyrgyzstan[6], Tajikistan[7], Azerbaijan[9], Armenia[10], Ukraine[11], Belarus[8], Georgia[12], Moldova[13], Turkmenistan[14]).

Fourth, it has been established that a person who has been an accomplice to a crime may also be exempted from liability if he or she takes all necessary measures to prevent the crime (e.g., in the laws of Russia[4], Moldova[13], Tajikistan[7] and Turkmenistan[14]).

It is also worth noting the following differences in the legislation of different countries on the voluntary renunciation of a crime:

First, the Criminal Codes of Moldova (Art. 56) and Turkmenistan (Art. 69) consider voluntary renunciation of a crime as one of the grounds for exemption from criminal liability. A person who voluntarily renounces a crime is exempted from punishment without the need for additional conditions.

Second, the norms regulating the voluntary refusal of participants in a crime differ. For example, in the Criminal Code of Ukraine (Art. 31) and Georgia, as well as in the legislation of Uzbekistan, these issues are addressed in articles devoted to the responsibility of perpetrators and participants in the crime (Art. 25). This allows for a more detailed regulation of the legal consequences of the voluntary refusal of each of the participants in the crime.

Thirdly, the legislation of some countries provides conditions under which the organizer or witness is not subject to criminal liability if they prevented the commission of a crime. In Belarus, the organizer or witness is exempted from liability if they prevented the crime. In Russia, Kazakhstan, Azerbaijan, Armenia, Ukraine, Moldova, Tajikistan and Turkmenistan, a similar exemption is provided if they timely reported the threat to the authorities or took other measures to prevent the crime. Kyrgyzstan further specifies that exemption from liability is possible if the person took all necessary measures to prevent the crime and its consequences did not occur.

In addition, the Criminal Code of Georgia (art. 21, para. 3) states that an organizer, agent or assistant shall not be liable if they persuaded other participants to abandon the crime, reported it to the authorities or prevented its commission by other means.

Fourthly, if the actions of the organizer or witness did not lead to the prevention of the crime, the measures taken by them may be considered as mitigating circumstances in the imposition of punishment. This provision is contained in the legislation of Russia, Kazakhstan, Azerbaijan, Armenia, Belarus, Georgia, Tajikistan and Turkmenistan.

Fifth, the exemption from liability of an assistant depends on a number of conditions. In Kazakhstan, Azerbaijan and Belarus, an assistant is exempted from liability if he or she refuses assistance before the completion of the offense. In Kyrgyzstan, exemption is possible if the helper fails to provide the promised weapons or other means to commit the crime or removes obstacles to its commission. Georgia also states that an aider may be exempted if he or she has withdrawn his or her actions prior to the commencement of the offense or has returned the means to commit the offense.

Sixth, the legislation regulates the liability of the perpetrator in case of voluntary refusal of one of the participants in the crime. In Ukraine (Art. 31, para. 3) and Kyrgyzstan (Art. 38, para. 5), if one of the participants in the crime refuses, the other perpetrators are liable for preparation or attempt, depending on the stage of the unfinished crime.

Seventh, if the person did not bring the crime to an end, other participants may still be responsible for preparing or participating in the attempt. The Criminal Code of Ukraine (Art. 31) states that if the perpetrator voluntarily refuses, other participants may be held responsible for the attempt or other actions related to the crime.

Eighth, the Criminal Code of Georgia provides that a person who, for reasons beyond his control, failed to induce other persons to commit a crime (e.g., an agent) shall be held liable for preparation of a crime (Art. 25, para. 2). Thus, even if a person's actions did not lead to the completion of the crime, he or she may be held liable for the relevant stage of criminal activity. As a result of the analysis, the following conclusions can be drawn:

First, in the current legislation of the Republic of Uzbekistan, the norm on voluntary renunciation of a crime is included in the chapter on incomplete crimes. This emphasizes that voluntary renunciation is part of the category of incomplete crimes and can only take place in cases where the crime is not completed.

According to the Criminal Code of Uzbekistan, voluntary refusal can be realized at the stages of preparation for a crime or attempt to commit it. Therefore, when formulating norms on voluntary refusal, special attention should be paid to these stages.

In our opinion, it is advisable to separate the voluntary refusal of participants of a crime into a separate norm, with a clear division by types of participants. The current description of the norm on voluntary refusal complicates its practical application, because, despite the differentiation of participants by function and level of public danger, the current legislation only in general terms indicates that participants are exempt from liability if they have taken all necessary measures to prevent the crime. However, the question of what measures should be taken, at what moment and what will be the responsibility of the participants when the

consequences occur is not regulated in the law. The Plenum of the Court also does not give explanations on this issue. Based on foreign experience, we propose to regulate these issues at the legislative level.

Although the theory of criminal law has formed the concepts of failed participation (imperfect actions, organization, assistance), these issues are not reflected in the law. There are also no provisions regulating the responsibility of other participants in case of voluntary refusal of the perpetrator from the crime, as well as the responsibility of the perpetrator in case of voluntary refusal of other participants. It would be advisable for the norms based on the analysis of foreign practice to be reflected in the legislation of Uzbekistan.

It is therefore proposed that Article 26 of the Penal Code be amended to read as follows:

"A person who has stopped actions on preparation or attempt on a crime, realizing that there is a real possibility to bring it to the end, voluntarily and on his own motive prevents committing a crime or its consequences, shall be considered as having voluntarily refused from committing a crime. Voluntary renunciation of a crime shall be recognized if the person consciously prevented the occurrence of criminal consequences."

Voluntary refusal of participants of a crime should depend on the form of their participation (simple or complex complicity) and the stage of committing the crime (whether the realization of the objective side of the crime has begun). In this case, it is important to establish whether the person started the actions that constitute the objective side of the crime and whether these actions caused the onset of criminal consequences.

If accomplices, who refused from a crime, took measures aimed at prevention of actions of other accomplices or consequences of their actions, their actions shall be recognized as voluntary refusal. A co-perpetrator shall be deemed to have voluntarily renounced if, realizing the possibility of bringing the crime to an end, he prevents criminal actions or their consequences, does not allow the participation of persons under the age of criminal responsibility, persons with mental incapacity, or by other means prevents the occurrence of criminal consequences.

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