

THE ABANDONMENT DEFENSE

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Abstract: *In this article, the author analysed the role, significance and need for the correct determination of the motive for the pre-crime abandonment based on the analysis of a judgment, and also developed scientific conclusions on this issue.*

Key words: *voluntary renunciation, motivation, volunteering, finality, preparation for crime, criminal attempt, rape, forceful sexual intercourse in unnatural form*

INTRODUCTION

The adoption of the Criminal Code of the Republic of Uzbekistan in 1994 (1994) marked a new stage in the development of the criminal law, which establishes responsibility for the stages of crime. The legislature, after analyzing law enforcement practices, has seriously revised its criminal law provisions. Thus, a new chapter entitled "Incomplete Crimes" was added to the Code. It is noteworthy that for the first time in criminal law the concept of "incomplete crimes" was used. Article 25 of the Criminal Code is called preparation for a crime and attempt to commit a crime, and Article 26 of the Criminal Code is entitled "voluntary return from the commission of a crime", which includes the concept of voluntary return from a crime, its signs and legal consequences.

It is crucially and globally important to apply properly criminal law norms in regard inchoate crimes, differentiation of sentencing for preparation of an offence and criminal attempt, individualizing punishment of convicts, properly identify the features of pre-crime abandonment, differ it from inchoate offence and finally rewarding active and good behavior which is aimed at deterring a crime. These, above all, should be addressed scientifically and indicated as a potential for an upcoming research agendas.

Pre-crime abandonment the termination-faced preparatory actions or the crime execution termination is recognized if person understands opportunity to end crime, and also prevents the criminal result by knowing the possibility of his approach.

Pre-crime abandonment excludes the criminal responsibility [1].

Research methods. The research used methods such as historical, system-structural, comparative-legal, logical, concrete sociological, comprehensive research of scientific sources, induction and deduction, interpretation of legislation, observation and law enforcement practice.

The purpose of the research is to determine the characteristics of the pre-crime abandonment, analyze the subjective side of the voluntary return and identify the influence of the motive.

The tasks of the research are to make a legal analysis of the pre-crime abandonment, to classify them by the expression of their criminal characteristics, to identify the characteristics and distinctive features from inchoate offence, make proposals to improve the legislation Republic of Uzbekistan.

RESULTS AND ITS DISCUSSION

Approximately one half of American jurisdictions now recognize the abandonment defense. Basically, abandonment is only allowed when it is voluntary and occurs before commission of the intended crime. A voluntary abandonment is one that is motivated by a change of heart, timidity, or lack of perseverance; renunciation is not voluntary if motivated by circumstances that increase the probability of apprehension or that make the performance of the attempted crime more difficult. Jurisdictions are currently divided in their common law approaches to whether abandonment constitutes a defense to attempted crimes. Some reasons for recognizing the abandonment defense are: (1) the abandoning person was not trying to violate substantive rules; (2) abandonment negates the dangerousness of the attempt; (3) abandoners are not culpable; (4) availability of the defense encourages attempters to abandon; and (5) abandonment negates the criminal intent of the attempter. Reasons for not recognizing the defense are: (1) attempts cause harm to society; (2) punishing attempts deters the commission of completed crimes; (3) attempters are dangerous persons; (4) attempts are dangerous acts in and of themselves; (5) attempt law authorizes police to intervene in the attempted commission of the crime; and (6) attempt liability is needed to uphold the substantive rules. Attempt liability is justified as a means of punishing those who manifest a continuing intent to violate society's substantive rules. But when the defendant has corrected his behavior by voluntarily abandoning his efforts to infringe the authoritative force of those rules, it is desirable to curb punishment of the actor and curtail imposition of full liability for the attempt [2; - pp.441]

According to the legislation of Uzbekistan abandonment defense excludes the criminal responsibility. And the main function for lawyer to identify features of pre-crime abandonment and differ it from preparation for crime and criminal attempt.

Pre-crime abandonment differs from other inchoate crimes by its specific features.

In order to recognize a person's act as a voluntary return from the commission of a crime, it is necessary to have a number of objective and subjective criminal characteristics.

In particular, the final decision of stopping agency, voluntary, stability, and timely implementation of voluntary return Among these signs, the question of what should be the motive for voluntary return from a crime is important. This is because the concepts of “completing an action or withdrawing it with the understanding that a consequence may occur” used in pre-crime abandonment are interpreted differently, and there are certain difficulties in this regard. The following describe the judgment of the court, of the crime, based on the analysis of the signs of pre-crime abandonment to find the appropriate answer.

Accused B. On February 10, 2018, between 4:40 pm and 4:55 pm, tries to penetrate the victim, born on May 1, 2009 coming from Nurafshan Street, knowing that she was under the age of fourteen, by cycling a bicycle in order to satisfy his sexual need in an unnatural way. After that, the accused B. took the victim Z. to the corner of the house at 1st corridor, 9th floor of the house 3-A, Sebzor juncture of the Almazar district, pushed her against the wall and tried to take off his clothes. At the time, when the victim Z. shouted “my father is a policeman”, the accused B. heard these words and hidden from the crime scene fearing of the consequences of his actions.

In order to qualify for this offense, it must be established that the actions of accused B. include an inchoate crime (preparation for a crime or criminal attempt) or signs of voluntary refusal of crime.

According to the Article 25 of the Criminal Code Republic of Uzbekistan Criminal Attempt is socially dangerous (causes or a real threat of damage to social relations, protected by the Criminal Code), illegal (prohibited by the Criminal Code), punishable (shall be punished in accordance with articles 54, 58 of the Criminal Code), guilty (conscious volitional activity entity) act [3; -pp. 1730].

It should be said that the timely implementation of the pre-crime abandonment of crime should be carried out until the end of the act in the case of formal crimes, until the result of the criminal act in the case of material crimes.

Professor Fletcher states the other crimes objection clearly: In most systems it would be of no avail for a thief to argue that he returned the goods that he stole, or for someone who illegally possessed narcotics at one point of time to argue that he had thrown them away and therefore was no longer guilty. The offenses of larceny and possession are complete in themselves and a

subsequent change of heart is irrelevant to liability. If acts of repentance do not cancel liability for these offenses, why should an abandonment of an attempt constitute a reason for not convicting of the completed crime of attempt? [4]

To this end, it is assumed that the time of legal completion of the crime. For example, a delay in the commission of a crime or a temporary cessation of the commission for the continuation of a crime shall not be considered a voluntary abandonment from the commission of a crime.

It cannot be considered voluntary if a person resigns from committing a crime because of the fact that he faces obstacles that cannot be overcome at the time of committing a crime, or because he does not have the necessary technical means to continue the crime, or because of other circumstances that prevent him from committing a crime. After all, the perpetrator is reluctant to commit a crime because of the existence of certain circumstances that prevent him from completing the crime he started in this case.

Professor Kelman introduces the expression "time-framing" with reference to "the way we view disruptive incidents" In his terminology, we use a "narrow" time frame when we focus on the "criminal incident" (that is, the crime) and a "broad" time frame when we focus as well on conduct or events that follow commission of the crime [5]

In our opinion, subjective signs play a special role in voluntary abandonment crime, and voluntary return from crimes committed with the right intention is possible. A.S.Kayumov does not disclaim that it is possible to voluntarily return from even the most intentional crimes, and gives the following example.. The person sets fire to the building, knowing that there are people in the building. The mental attitude of the individual towards the destruction of property is expressed by the right intent, and against the death of people through indirect intent. Because people have a chance to escape the fire In this case, if the person voluntarily withdraws the firing, voluntarily abandonment from the crime of intentional destruction of property, which was committed with direct intent, and premeditated murder, which was committed with indirect intent' [6; -pp.23].

In our view, voluntary return from the commission of a crime exists only in crimes committed with the direct intention. Because it is impossible to create conditions for a crime without the desire to face a socially dangerous outcome. It is also possible to voluntarily return from the stage of preparation for a crime and criminal attempt, and these stages are committed only by the direct intent. In the example above, the crimes were committed intentionally (direct intent). Because the person is causing the fire knowing that there are people in the building, the survival of the people by accident is not covered by the person's criminal intent.

In the pre-crime abandonment from the commission of a crime, the motive is a necessary sign of the subjective side. In the criminal codes of foreign countries, the motive for voluntary

return from the commission of a crime is particularly important (pity for the victim, remorse for his actions). In the Criminal Code of the Republic of Uzbekistan, voluntary return from a crime is not associated with a specific motive.

The motive of voluntary abandonment may be different and it is not exempt from criminal responsibility of the person (for instance, the person's pity for the victim, fear of exposing the crime, fear of criminal liability and punishment, embarrassment, thinking about the fate of children, advice from relatives and friends) Motive is the cause of arousal, inclination, desire, desire to commit or not to commit a crime. Through the motive, it is possible to determine whether the return from the crime was indeed "voluntary" or "compulsory".

As a motivation for voluntary return from crime, it can cause pity for the victim. The feeling of pity for the victim can arise as a result of external influences: the injury of the victim, his request, his expression on the face. In practice, the victim's pleas, the blood stains on his face, the tears may be the motive for a voluntary return from the crime. Also, in some cases, the defendant's fear of arrest, fear of being punished, may be the motive for a voluntary return from the crime. The victim may recognize the offender, report the crime to the law enforcement authorities, and voluntarily return as a result of fear that other persons may have seen him or her at the time of the crime.

According to Kayumov, "the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan on the recognition of the subject as a voluntary return from the crime in case of termination of the crime due to fear of arrest and a sense of criminal liability at the time of the crime should be clarified. In particular, an act shall not be considered a voluntary return from the commission of a crime in cases where there is a real risk or inevitability of arrest by law enforcement agencies or other persons. Voluntary return from the crime is considered if the person has a feeling of fear of criminal liability and punishment for the socially dangerous act committed. [7; -pp.27]. In our view, in both cases it should be recognized as a voluntary withdrawal from the crime. Because any motive can motivate a voluntary return from a crime, prevent the continuation of criminal activity. The key point is that pre-crime abandonment from committing a crime must be inevitable and voluntary.

In addition, the need to overcome or prevent the obstacles that arise during the commission of a crime can also be the motivation for a voluntary return from committing a crime. If there is no possibility of overcoming obstacles, it is not considered a voluntary return from the crime. For example, in the case of rape - the inability to break the victim's resistance; in the case of theft - the impossibility of opening a safe by means of a crime; in the crime of burglary committed when

entering a home - assuming that the door is not locked, not wanting to break down the door when he knows the door is locked, and refusing to commit the crime.

The fact that the continuation of the criminal act may harm the interests of the guilty person may also be a motive for voluntary return from the commission of the crime. In particular, a person who attempts to rape a victim violates the victim's resistance by physically abusing him or her, but after the victim says he or she has AIDS, the subject voluntarily returns from the crime for fear of infecting him or her. According to other authors, "this situation is not considered a pre-crime abandonment, because the person is considered to have returned compulsorily due to the circumstances of the crime [8; -p.29] .

Pre-crime abandonment from a person under the influence of the external environment will be affected and motivated differently. Although the initiative to pre-crime abandonment from a crime is expressed by a relative, acquaintance, or law enforcement officer, the decision to discontinue or terminate a crime must be made by the individual based on his or her will. It is important that the person realizes that there is an opportunity to end the crime. It does not matter if there is a possibility of completing the criminal aggression. Hence, it should be paid to the subjective side of the crime.

Some authors argued about the features of pre-criminal abandonment. "Renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct,
[a] which increase the probability of detection or apprehension or
[b] which make more difficult the accomplishment of the criminal purpose.

Renunciation is not complete if it is motivated by a decision:

[a] to postpone the criminal conduct until a more advantageous time or

[b] to transfer the criminal effort to another but similar objective or victim [9; -pp.403]

Based on the above definition, in our view, it is appropriate to state Article 26 of the Criminal Code Republic of Uzbekistan as follows. A person shall be deemed to have voluntarily renounced from the commission of a crime if he realizes that it is possible to continue the criminal activity he has begun, and if he ceases to continue or end the crime on the basis of a firm, voluntary and any motive.

The decision of the Plenum of the Supreme Court also clarified this issue. In particular, paragraph 9 of Resolution No. 13 of the Plenum of the Supreme Court of the Republic of Uzbekistan of October 29, 2010 "On Judicial Proceedings in Cases of Rape and Unnatural Satisfaction of Sexual Needs" states: the courts should distinguish pre-crime abandonment from inchoate crime (Article 26 of the Criminal Code).

If a person voluntarily and unequivocally renounces rape or unnatural sexual gratification in an opportunity to complete a criminal act, regardless of the reasons for the confession, the act he actually committed is a criminal offense. for example, harassment, bodily harm, destruction or damage to property, etc.).

The definition uses the notion of "disregard from reasons of renunciation", which implies that voluntary withdrawal from sexual intercourse and unnatural sexual gratification can be based on a variety of motives.

Analyzing the verdict on the basis of the above considerations, the defendant B. Realizing that the crime of rape could be brought to an end, he voluntarily stopped, having such an opportunity. Apparently, he was not forced to stop the crime. Accused B. He did not try to commit any act of aggression or to end the crime. In this case, defendant B. came to a firm decision and completely refused to continue the criminal act. As a result, no criminal consequences were reported. It should be noted, the rule of law is crucial for the effective and efficient work of government to ensure the legitimate interests of the individual, society and the state [10, 146]

Therefore, B. He was found not guilty of committing a crime under Article 25,118, Part 4 and Article 119, Part 4 of the Criminal Code of the Republic of Uzbekistan and it was considered as pre-crime abandonment. In our opinion, the court passed a fair verdict and used the signs of voluntary withdrawal from the crime. In this regard we should mention that, to identify pre-crime abandonment lawyer plays crucial role, especially lawyer in the evidentiary process, special attention has been paid by the lawyer to the improvement of the mechanism of collecting evidence and adding it to the criminal case file [11; - 2162].

CONCLUSION

As a result of research on the topic the abandonment defense the following theoretical and scientific-practical conclusions were reached:

It is appropriate to state the first part of Article 26 Criminal Code Republic of Uzbekistan as follows.

A person shall be deemed to have voluntarily renounced from the commission of a crime if he realizes that it is possible to continue the criminal activity he has begun, and if he ceases to continue or end the crime on the basis of a firm, voluntary and any motive.

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