Research Article

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The Nature of Preparatory Actions and Their Role in Committing Criminal Offenses in the Republic of Albania

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Abstract

Generally, criminal offense is not consummated by being implemented as if by magic. It is undoubtedly the result of a long process of reflection, efforts, and escalated feedback. The awareness of criminal offense or the entire process in which the full realization of the it passes, is carried out in several stages. Some authors think that preliminary criminal activity is characterized by three stages while there are also other authors who accept only two stages of carrying out the preliminary criminal activity, which are; preparation and attempt to commit the criminal offense. The stages in which the criminal offense is actually carried out are, the birth of the criminal thought; the emergence of the thought; the decision to commit the criminal offense; the preparatory actions which are taken in order to successfully commit the criminal offense; the beginning of the execution of the criminal offense which can attempt to commit it "delictum consummatum", remains. Between the birth of the thought to commit a criminal offense and the completed of it, there is a series of intermediate acts. One of these phases is characterized by what are known in criminal law doctrine as preparatory actions. The meaning and nature of these acts are of theoretical and practical importance. Firstly to correctly distinguish the legal moments that follow the preparatory acts, secondly to avoid possible mistakes in the legal definition of the criminal offense and thirdly for the accurate requirement of the criminal sanction.

Keywords: *criminal law, preparatory actions, criminal code*

1. Introduction

If someone wants to understand better preparatory actions, is important to understand the way in which the organization and initiation of the criminal offense is structured (Kambovski,2010). Of course, the preparation is the first important material element, which points out the external manifestation of the subjective side, thought, reflection and psychological conclusion, combined with the will to perform actions that will produce the arrival of panified criminal consequences. The criminal offense is consumed by being carried out in different stages which are distinguished from

each other by the special characteristics and qualities that identifies them (Muçi,2007), despite the fact that the dividing lines are not easily detectable and therefore not easily understood. The commission of a criminal offense is a special form of human thoughts, expressed in the outside world, in the social reality envisaged as illegal for the social danger it presents. As a generalized category of objective reality, thought primarily aims achieving a certain result. The existence of the form of criminal thought, can be transformed into the flow of material facts which fulfill the realization of the criminal project. Normally, criminal thinking is a subjective element that starts at the stage of birth and development of a certain reflection, to continue with the performance of actions, of a more clearly material nature that aim an attempt to commit a criminal offense. After the birth of the criminal thought, the perpetrator is characterized in advance by a stage in which he accepts in his conscience and processes through his intellect all the possibilities of committing the criminal offense (Peza,Elezi,Gjika,Cela,1976). After thinking, reflecting and envisioning the possibility of committing a criminal offense, the author deems it necessary to advance his reaction with the crucial preliminary actions to bring upon the desired criminal result.

These actions are reduced to; searching, finding and securing the methods, through which the commission of the criminal offense is planned. Preparatory actions do not need to be expressed in every case. In the course of the criminal process, which leads the perpetrator from the birth of the criminal thought to the consummation of the criminal offense, the individual passes through several stages, the entirety of which in criminal law is known as "Iter criminis", in other words "the trajectory of the crime".(Meylan.1990) The preparatory act is the one that follows or accompanies the moment when the individual has made the decision to commit a criminal offense but that precedes the beginning of the execution or the transition to the performance of the final actions for the consummation of the criminal offense (https://ledroitcriminel.fr/dictionnaire/lettre_a/lettre_a_acte.htm).

The meaning of the preparatory acts is mainly made up by the doctrine, but there have not been any cases when the nature of these acts has been explained in the normative context. Specifically, the Criminal Code of the Republic of Albania 1952 provided that: "...preparation was called the creation of conditions, the search and preparation of means or tools for the commission of a serious crime" (Article 10, Albanian Criminal Code .1952), unlike the Criminal Code of the Republic of Albania 1977, which provided that: "...preparation was called the creation of conditions for the commission of a crime" (Article 11 of the Albanian Criminal Code of 1977). The Criminal Code of the Republic of Kosovo, arbitrates that: "When the law foresees punishment for the preparation of a certain criminal offense, the preparation of the criminal offense includes the supply or provision of means for the commission of the criminal offense; remove of obstacles to the commission of the criminal offense; the agreement; planning or organizing with the other person for the commission of the criminal offense as well as other actions that create the conditions for the direct commission of the criminal offense but which do not constitute the act of commission". The acts in question also imply the element of reflection within them, so they are more characteristic of acts which are consumed with forethought (dolus praemeditatis). In contrast to the Criminal Code of the Republic of Kosovo, the Criminal Code of the Republic of Kosovo is somewhat more concrete in the expression of the principle. In its article 27, the legislator sanctions that: "Anyone who intentionally prepares to commit a criminal offense will be punished only if it is expressly provided by law." In our efforts to give legal meaning to the concept of preparatory acts, we consider it important to address the special nature of these acts as well as their criminality, also during the analysis of this paper we state and elaborate that the differences are not always found in the elements of the criminal offense, but generally, in the elements of another legal-criminal category, inextricably derived from it, the criminal offense, likewise it may be the one that in the doctrine of the criminal law is called “the Figure of the Criminal Offense”. They are precisely the elements of the figyre of the criminal offense, those features which create practical opportunities for the lawyer to determine, in a theoretical and practical aspect, the difference between the criminal offenses of the same nature, (from one to the other), this process is necessary in order to qualify the legal rights of the criminal offense on a case-

by-case basis. Criminal responsibility, also in Albania, is a severe type of legal liability, from the slant of the causes it brings to the individual. This is one of the reasons, the main one, why this type of responsibility, its doctrinal nature, in legislation and also in the practical activities of the prosecution and court bodies in democratic countries, regardless of the legal family (Romano-Germanic or Common Law), is given a particular attention. It is known that the criminal responsibility is none other than that of the author of the criminal act who is subject to criminal violence for the criminal act committed by him, from one side the right of the state, through the fulfillment of the legal requirements of the substantive and procedural criminal law, to ask him to fulfill his obligation, on the other side.

2. Nature of Preparatory Actions

The actions by which the commission of the criminal offense is prepared can be expressed in different ways. Among the most prominent forms of preparatory acts are: the creation of conditions that include the supply or provision and preparation of means for committing the criminal offense, taking various measures to avoid obstacles that may arise during the execution of the offense, agreement, planning and organization of various actions with other persons for a successful realization of the criminal offense. The preparation of pre-determined evidence will also be considered to create conditions for not having criminal responsibility after committing the crime, for example; creating an alibi and finding persons and other evidence that will prove this alibi before the justice bodies (Pepi.2005). Although the nature of the actions undertaken in the preparation phase is not directed immediately at the final realization of the criminal offense, it is still typical of these actions that its aim is to build the infrastructure that will enable the continuation of other complementary actions with an objective character to complete the criminal offense. The author undertakes actions of a preparatory nature because he believes that without them, he cannot accomplish the completion of the criminal offense and than through them the execution and successful completion of the criminal offense is facilitated to the its extent (Shehu 1988). A person's decision or desire to commit a criminal offense cannot be punished by the criminal law as long as it does not appear externally. Even one's behavior cannot constitute a criminal offense, without being expressly provided for in the law as it is. In a free society, there is no limit to what one thinks(Sinani, 1999). It is difficult to understand the nature of individual reflection except when it takes the form of actions of an objective character. After all, the thought may arise in relation to a specific action, but it is also oriented around the nature of the action in question. The famous expression "cogitations poenam nemo patitur", is part of the current modern criminal law. The nature of the thoughts that arise in mankind is related to the philosophy of knowledge and action with a human nature. Concern for people's opinions is related to ethics. If the criminal law would punish the idea, the thought and the desire to commit a criminal offense, it would be united with morality. But criminal law is not characterized by the standard of basic morality, in the sense that not every moral norm has the value of a legal norm, and even more so with a criminal character.

Morality belongs to the individual conscience of the person while law derives from a public authority. Reflecting on the nature of the preparatory acts and correctly evaluating their features, I think that they neither harm nor risk harming the values of legal goods that are specially protected by the legal-penal norm. Even the undertaking of preparatory actions itself does not mean for sure that the criminal offense will be completed as long as there is a possibility that the person will change his mind and voluntarily give up further actions towards the criminal outcome.

A criminal offense can often be committed even without taking preparatory actions(Salihu.2015). In cases of immediate criminal offenses, the perpetrator of the criminal offense does not undertake preparatory actions. As a result, the preparatory acts as a stage that precedes the commission of the criminal offense, is possible but not necessary for its commission. The nature of the preparatory acts is not that of actions with a standard character, identical for each type of criminal offense. The character of the preparation is influenced by a number of factors such as; time,

place, type of criminal offense to be committed, qualities of the person against whom the criminal action is directed, possibilities, dangerousness of the perpetrator, etc. In cases where the preparatory acts are manifested as the creation of conditions, their character depends on the nature and type of the criminal offense that the person will commit.

It is possible to create different conditions when a person has decided to commit a murder and differently when he has decided to forge a document. If the preparatory acts were related to the time of committing the criminal offense, the person would otherwise be prepared for a theft that would be committed during the day and otherwise for a theft that would be committed at night. If these acts were related to the avoidance of obstacles, this in principle does not constitute a criminal offense, but exceptionally it may happen that the avoidance of obstacles leads to the consumption of a criminal offense. Such is case of a person who prepares to carry out the robbery of a bank and to avoid obstacles chooses to kill the bank guard.

The situation in the case of preparatory acts for criminal offenses committed by omission is special. Although the criminal offense is consummated by inaction, preparatory acts cannot be expressed otherwise than by active actions in this case as well. Thus we can mention the case of the person who avoides being called up for military service. To make this possible, he prepares a falsified medical report through which he will justify avoiding military service. In criminal offenses consummated by omission, the preparatory acts in most cases form in themselves the figure of another criminal offense.But there are also some types of criminal offenses, for the objective part of which the legislator himself expressed, that it can be committed both by action and by inaction. Such as: the form of the crime of inattentive treatment, which is provided for in Article 96 of the Criminal Code, 'negligent treatment of the sick by a doctor or other medical personnel, as well as non-implementation of therapy or the doctor's orders by the personnel doctor or pharmacist, when he has caused damage to health, endangered the person's life or caused his death' or the figure of the crime about abuse on duty, which is provided for in article 248 of the Criminal Code, 'intentionally performing or not performing actions or non-actions in violation with the law, resulting in the regular non-fulfillment of duties, by the person exercising public functions, when they have brought inequitable material or non-material benefits to him or other peoples and they have damaged the legitimate interests of the state, citizens or of other legal entities.....'

3. Punishment of Preparatory Actions

The current Albanian and European criminal legal standard clearly proves that, in general, preparatory acts are outside the trend of incrimination. The principle of impunity of preparatory acts has been preserved as a standard in important places in the European criminal doctrine such as; France, Germany, Switzerland, Italy, Spain, etc. However, this principle has undergone changes in some international legal acts. In the Statutes of the Nuremberg and Tokyo International Military Tribunals it is clearly proven that preparatory acts are included within the concept of attempt(Prothais.1985). In the doctrine, there have been opinions from different authors that the preparatory acts also apply to criminal offenses committed with indirect intent. Despite the fact that in principle the impunity of preparatory acts is recognized, exceptions to this rule are also recognized, which appear in the form of autonomous criminal offenses. There are no shortage of cases when this principle is violated, for the interests of what is known as "special prevention".

The special regime of incrimination of preparatory acts, is applied for reasons of usefulness, with the effect of expanding the incriminating spectrum and leads to the standard of special prevention from the substantive criminal law. Such a thing clearly proves that for certain forms of acts the preparation is presented as an autonomous criminal offense. This category of criminal offenses is specially structured within the epicenter of prevention, "ante delicium" as a concrete expression of the function of criminal law(Cerf.2007). Models of preparatory acts, transformed by the Albanian legislator into autonomous criminal offenses are quite rich. We can mention here the case of the criminal organization, article 333 of the Criminal Code of the Republic of Albania provides: "the

creation, organization or management of criminal organizations is punishable by imprisonment from five to fifteen years. "Participation in a criminal organization is punishable by imprisonment from four to eight years." In the case of Article 333 of the Criminal Code of the Republic of Albania, the preparatory actions are fully defined. Likewise, we can say the same about article 109 of the Criminal Code of the Republic of Albania, "Kidnapping or holding a person hostage", when this offense can be consumed with the intention of preparing the creation of facilitating conditions for the commission of a crime. In the Criminal Code of the Republic of Albania there is also a second group or category of criminal offenses which are defined as follows: Article 80 of the Criminal Code of the Republic of Albania "Providing the conditions and material means to commit murder". In the following, article 333/a of the KP of RSH sanctions: "The creation, organization or management of a structured criminal group for the commission of criminal offenses is punishable by imprisonment from three to eight years. Participation in a structured criminal group is punishable by imprisonment from two to five years", under the effect of the Framework Decision of the Council of June 13, 2002, with Law No. 9275, dated September 16, 2004, the provision was added to the Criminal Code of Article 234/a with content: "the creation, organization, management and financing of a terrorist organization shall be punished with imprisonment of not less than fifteen years. "Participation in terrorist organizations is punishable by imprisonment from seven to fifteen years." The provision of Article 234/bi of the Criminal Code of the Republic of Albania provides for the creation, organization, management and financing of armed gangs, the provision of Article 284/ai of the Criminal Code of the Republic of Albania also provides for the organization and management of a special form of criminal organization with specific purpose of cultivation, production, manufacture or illegal trafficking of narcotics.

In the current criminal legislation in force, preparatory actions are included in the profile of criminal offenses provided for by a number of provisions of its special part such as in articles 95, 110/a, 114,129,142, 143/a, 182, 185, 192, 216, 217, 218, 220-225, 233, 234, 234/a, 283/a, 283/b, 284/a, 285/a, 286, 286/a, 298, 324, 333, 333/a of KP of RSH. Penalty of preparatory acts, provided for in our previous legislations (Criminal Code.1952.1977) were special, the preparatory actions undertaken with the purpose of committing certain criminal offenses were criminalized and punished, these acts were not considered special criminal offenses but were punished as preparation for the commission of a certain criminal offense. According to the Criminal Code in force, preparation is no longer considered as a punishable initial phase of the criminal offense. However, for some socially dangerous crimes, the preparatory phase of their commission is considered a special criminal offense. This is the case when the criminal offense was not committed and the criminal activity was interrupted before reaching the stage of the attempt. Thus, for example, providing the conditions and material means to commit a murder is presumed as a separate crime by the provision of Article 80 of the Criminal Code, while considering them as a theft is considered as a crime by the provision of Article 142 of the Criminal Code.

In the last 18 years, in the wider Europe, the criminalization of unfinished criminal offenses has expanded enormously (Caroline.2008). The provision of article 433-16 of the French Penal Code provides for a specific form of criminal preparation related to the illegal wearing of a uniform, which is punishable by 3 years of imprisonment, but only when it is intended to prepare or facilitate the commission of a crime or a tort. The Netherlands, for its part, has implemented the position of countries with a tradition of civil law, when it has provided for the creation of a criminal organization in Article 140 of its current Criminal Code, the objective of which is to commit a criminal offense (Caroline.2008).

3.1 Material criminal offences

In most cases, when the legislature criminalizes individual conduct, it does so in view of the outcome that may follow. So the result is one of the most important constituent elements of the criminal offense and if it does not come, the criminal offense is not consumed. This is the pattern of what we call a material offense. Material criminal acts are those acts which are called committed when they

have caused the consequence to occur. In this category of acts, the causal link between the action or inaction and the resulting consequence determined by law stands out.

3.2 Formal criminal offences

Formal criminal offences are those that are considered consumed from the moment of performing the certain action, without the need for the consequence to occur. The formal criminal offense in which we often find the term assassination is actually the one in which the law incriminates a procedure without having any interest in what comes after it. The criminal offense is consummated regardless of the result that may be the consequence. The formal criminal offense clearly proves that the existence of a result does not affect and does not change the legal definition of the criminal offense. Formal criminal offenses are being used a lot. These works "are in fashion" because they are coherent with the forms and developments of current criminal activity without borders. By being envisaged as such, they are enabled to intervene earlier in the criminal process. This is in line with a new model of criminal policy which emphasizes the concept of preventing the criminal offense rather than simply dealing with the material consequences it brings. Some authors consider that the attempt is not distinguished from the act consumed in a formal criminal offense, because it is included with it in the notion of assassination (Hoxha.Kaçupi.Haxhia.2018).

4. The Differences between the Stages of the Commission of the Criminal Offense

Analysing the specific moments of the commission of the criminal offense or the difference between the stages of the commission of the criminal offense is important because it is related to the attitude of the court towards the issue of individualizing the punishment with limits defined by the law. Although the stages of committing the criminal offense have certain and even defined forms, however, the difference between them is not very simple in appearance. The legal meaning of the stages of the commission of the criminal offense assumes the limit of the activity of the committed offense and the activity interrupted in one of the stages of the preliminary criminal activity (Kaçupi.2007). The difference between the stages of preliminary criminal activity is based on the degree of realization of the will aimed at achieving a certain socially dangerous result, as well as by evaluating the degree of social dangerousness of the nature of the action and its consequences, in function of of the degree of realization of the work (Kaçupi.2007). The quantitative and qualitative differences that exist between the stages of the commission of the criminal offense are in direct proportion to the social dangerousness that threatens a certain social relationship.

4.1 The difference between preparatory actions and the beginning of the execution of the criminal offense

It is important to distingush a theoretical point of view between the birth of criminal thought and its appearance, which is concretized through the forms of speech, writing and symbolic expression. The birth of the thought is not considered a legal fact and as such cannot be punished. In some cases, the expression of the opinion may affect the consumption of the figure of the criminal offense, as in the case of insult. Likewise punishable is the display of thought when it is made in the form of serious threats. While in the preparation there is the concretization of the criminal thought that finds expression in concrete material actions that prepare the conditions.

Preparatory actions precede the acts of execution of the criminal offense and in absence of a legal definition of these two doctrinal concepts, an unclear situation characterizes the difference between the preparatory acts and the beginning of the execution of the criminal offense. The beginning of the execution is not only the material composition of the attempt, it also develops in function of the subjective side of the criminal offense. Only the beginning of the execution is: "the act that attempts directly and immediately to commit the criminal offense".

Criminal intent is a fundamental element in the distinction between the preparatory act and the beginning of the execution of the criminal offense. A preparatory act is transformed at the beginning of the execution, when it is very close to the consummation of the criminal offense and which undoubtedly conveys the intention of the author to commit a criminal offense. The fact of finding a weapon or hiding in a place from where you can observe the victim's behavior is simply a preparatory act. Placing the perpetrator of the crime with a gun in his pocket, in a place where he is waiting for the victim to pass, clearly testifies to a transformation of the preparatory acts at the beginning of the execution of the crime. The conduct of the person will constitute a preparatory act until he begins the execution of the direct and immediate act that will lead to the consummation of the criminal offense. Specifically, positioning the weapon in the direction of the victim and preparing to shoot is undoubtedly the beginning of the execution of the criminal offense. If in preparation we have the beginning of performing active actions that prepare the performance of the act, in the manifestation of thought this thing is completely absent. According to the Albanian criminal legislation of 1977, the position of criminal responsibility of the person has been accepted as for the figure of the criminal offense remaining in the preparation phase (Haxhia.1984) as well as for that of the criminal offense fully consumed, as well as according to the Albanian criminal legislation of 1952.

4.2 Clear distinction between preparatory and attempted acts.

In the European criminal doctrine, there is the opinion that the preparatory and tentative acts are the two phases that have the most important differences between them in relation to the other phases. The differences between preparatory and attempted acts are those between different concepts of the phases of criminal activity. With attempts or "unsuccessful attempts", we are dealing with when the decision to commit a criminal offense has appeared with external acts, which form the beginning of the execution of criminal offenses, the result of which has not come due to circumstances completely independent of the will of the person who had planned the commission of the criminal offense. Although this concept is characteristic of countries with a Romano-Germanic tradition, it also prevails in countries with a Common Law legal tradition. (Molam.2001).

The opinion expressed by the author Carrara mainly takes place in Italy (Carrara.1993) according to which, in contrast to the equivocal preparatory act, the beginning of the execution cannot be explained except through the criminal intent of its author (Deveze.1981). The criminal law, for the existence of the attempt, requires that the external acts that manifest the project that the perpetrator has agreed to carry out, form a beginning to execute the criminal offense as the perpetrator wishes. This means that the perpetrator has started the execution of the criminal offense. As a necessary material feature of the preparatory acts, the social dangerousness that forms the preparation of such actions should be recognized. The creation of conditions, separated from other factors, cannot constitute attempts. The Criminal Code of the Republic of Albania defines the meaning of the attempt as: "A criminal offense is said to be pending when, although the person takes direct actions to commit it, the offense is interrupted and not completed due to circumstances independent of his will"(Article 22).

The French Penal Code, in the provision of its article 121-5, defines the attempted consummation when it is manifested through the beginning of the execution, when it has not been suspended or the result has not come out due to circumstances independent of his will. The Belgian Penal Code sanctions the attempt of delict and crime respectively in the provision of its articles 51 and 52. The Italian Penal Code in the provision of its Article 56/1 provides for the attempt: "...whoever performs suitable actions, directed directly at the realization of the crime, is responsible for the attempted crime, if the purpose is not fulfilled or the event is not proven". We are not dealing with attempts when the conditions have not yet been created for the perpetrator of the crime to act directly on the object. The other condition for there to be an attempt is a causal link between the act of execution and the intention of the author of the criminal offense. In the absence of cause, the doctrine is expressed of impossible attempts.

The attempt is considered impossible when the act of execution cannot cause the desired goal. A concrete example is when someone tries to poison someone with a non-lethal substance. One of the cases is the situation when the perpetrator gives up spontaneously at the last moment, it will not be a question of an attempted murder (Article 52,80,81. Belgian Criminal Code). According to some authors, there are no elements of the criminal offense remaining in the attempt phase(Kaçupi.2007), this opinion is not correct because the current criminal legal norm provides for criminal responsibility both in the case of a criminal offense remaining in the attempt phase and for a criminal offense that has been fully consumed, this logic follows the opinion of a wide group of criminalists(Spiro.Jaho.1972). Attempt as a preliminary phase of the criminal offense, although it is closely related to the special legal norm to which it refers, is oriented first by the general incriminating norm that is provided in the general part of the code. In this perspective, her conviction is realized as a result of the combination of the special criminal offense, which also provides for the determining circumstances from which the criminal responsibility arises, and the provision of Article 22 of the Criminal Code of the Republic of Albania that provides for the attempt. While the preparatory acts are closely related only to the special norm, from the point of view of incrimination and punishment in conditions where the general principle is that of the lack of incrimination of preparatory acts. The preparation is about creating the conditions and material means for committing the criminal act, which vary from one act to another, depending on the type of act, its nature, the environment and other circumstances in which it will be committed. In this way, the conditions and means for committing a murder differ from those that the author of the act would use to commit theft or a criminal offense in the economic sphere. Preparations are considered actions such as finding or making the means to commit the criminal offense, determining and studying the place of its commission, finding accomplices or people who will hide the perpetrator or traces of the criminal offense, avoiding obstacles and the creation of alibis. The preparatory phase begins with the materialization of the criminal thought, it begins the moment the person becomes aware of the creation of conditions that will enable, help or facilitate the commission of the criminal act. It is more advanced than the manifestation of thought and slightly more advanced than tentative.The degree of risk that threatens a given relationship in the preparation phase is less than its risk in the attempt phase. The last phase of preliminary criminal activity is the attempt to commit the criminal act.

4.3 The difference between the pending criminal offense and the consummated criminal offense and the position of the jurisprudence.

One of the problems of the doctrine but also of the jurisprudence of the crime remaining in the attempt is precisely the definition of a limit when the "executive act" of the criminal offense begins from the point of view of the objective side. Determining such a moment is important not only for the individualization of criminal responsibility but also for defining the distinguishing boundaries between the legal axis "attempts", "refusal to commit the criminal offense" and "preparatory acts".

The doctrine divides the criminal offense into four main stages such as: the birth of the criminal thought, preparation, execution and consummation of the criminal offense (Mantovani.2016). The preparation consists in the phase where the criminal offense can potentially occur, while the execution consists in the interval through which the author of the criminal offense shows in the outside world necessary actions to enable the desired consequence to occur. In other words, it represents the way or the means to produce the existence of the criminal offense (Brichetti.1965). In this sense, exclusively the moment when the action is criminally punishable, represents the point of main interest. The Court of Cassation in Italy states that: "for the determination of the punishable attempt, not only the acts of an executive nature are of criminal importance, but also those acts which by nature can be classified as preparatory acts, but due to the place, time, the means to make you believe that the action (executive acts) will begin, and that by its nature it can achieve the programmed objective, and that the author is at a point from where he cannot withdraw from the

realization of the crime". This position of the Court of Cassation comes in a case where the defendant had stood in front of a bank for a long period of time with the purpose of stealing it, a theft which he would commit accompanied by carrying a weapon without a permit. Referring to the above decision, it can be affirmed that "the existence of a pending criminal offense can be established not only when the perpetrator has taken typical and direct actions to commit the criminal offense but also when the entirety of his actions appeared in the outside world, constitute acts of a preparatory nature, with the only condition that the author does not have the opportunity to withdraw".

Under these conditions, the jurisprudence of the Criminal College of the Supreme Court of RSH is also worth noting. (No.608/26.09.2007), in this decision the panel stated that: "the figure of the crime provided by the provision of article 283/ai of the Criminal Code, is a formal figure. For this reason, the crime should be considered consummated even without criminal consequences, the passage of the narcotic substance to the other side of the state border, it is enough to prove the existence of even one of the forms of its objective side (import, export, trade in violation with the law". Through this decision, the Penal College confirms the thesis that the criminal offense of "trafficking in narcotic substances" will be considered consummated regardless of the fact that the substance prohibited in civil circulation has left the territory of the Albanian state, through the reasoning that these offenses criminal offenses fall into the category of formal criminal offenses for which the thesis of the attempt is not accepted. It is accepted that from the point of view of the subject and his behavior in relation to the legal facts, criminal offenses are divided into criminal offenses of commission and criminal offenses of omission (Cacciot.2005).

In the case of commission (formal) criminal offences, the crime is considered consummated with the execution of the illegal action or act without the necessary occurrence of a materialized legal consequence in the outside world. The situation is different in the case of omission criminal offenses (material), in which the application of the abstract norm in the concrete case is conditioned by the arrival of a material consequence, the absence of which raises for discussion the issue of the attempt as a way of showing the criminal offense. In the case of the provision of "Trafficking in narcotic substances" it should be considered a criminal offense of a material nature since its consumption requires the arrival of the desired consequence, the passage of the prohibited substance outside the Albanian territory.

In the unifying decision of the United College of the Supreme Court (No 3/2011): "The criminal offense of narcotics trafficking in the manner of import is considered committed upon proof of the circumstance that the narcotic substance has crossed the land, air or sea border of the Republic of Albania, despite the fact that it may not have arrived or passed through border points, customs, stations, ports and airports of the country including their transit areas. The criminal offense is considered committed regardless of the fact that, after crossing the state border or even police and customs control, the narcotic substance has arrived or not at the person or destination desired by the perpetrators of the offense in the Albanian territory. If the narcotic substance, despite the direct actions or omissions of the perpetrators of the offense for its importation, has not crossed the border due to circumstances that do not depend on their will, regardless of the time and place of the termination of the criminal action".

The United Colleges observe that, in the correct application of the criminal law and based on the consolidated criminal jurisprudence, based on the peculiarities of the way of committing the criminal offense of drug trafficking and since it is committed intentionally according to the case, the perpetrators have criminal responsibility for the commission of the criminal offense or for the pending criminal offense. If, in addition to the appearance of criminal thought and eventual preparation for the future, they deliberately perform concrete and direct actions and omissions on the object of the crime, with which they aim to achieve the criminal goal, the arrival of the consequences desired by them, i.e. the commission of the crime. For the qualification of the criminal offense of narcotics trafficking, it is essential to prove the intentional performance of actions or omissions, concrete in order to achieve in an illegal manner, the desired goal of the perpetrators of the offense, namely the illegal entry or exit of narcotics from the territory Albanian or their illegal

passage through Albanian territory to that of other countries, mainly to realize various benefits for themselves or for third parties. If we take into consideration the practice of the Court of Cassation in Italy, the Criminal College of this court confirms the thesis that: "The criminal offense of smuggling by its nature is a durable and non-consumable offense. Such a fact has practical importance in the context of committing the criminal offense in collaboration. Thus, the criminal offense of smuggling extends over time and does not expire with their entry into the state territory, but the state of illegality continues until they are put into circulation". Confirmation of the thesis that the criminal offense should be considered pending if the perpetrator is arrested before the border crossing points, also comes from the treatment of the institution of renunciation of the commission of the criminal offense.

Various authors state that: "The possibility of renouncing the commission of the crime of drug trafficking, even though the subject has undertaken all appropriate, direct and necessary actions for its commission, proves that the provision of Article 283/ai KP of RSH is a figure of a formal nature. In any case, this type of work is a figure with a clear material nature"(Ligori.2009). Referring to the above decision of the Court of Cassation, it results that acts of a preparatory nature or otherwise acts of a non-executive nature evaluated in their unity are relevant for the arrival of the consequence and the realization of the criminal objective, provided that the subject is located at a point that does not may be withdrawn or waived. This judicial statement, connecting it to the case under evaluation, brings the legal situation where the author, before entering the customs territory or even when he has entered it, can renounce the commission of the criminal offense and bear criminal responsibility for that offense criminal that he has carried out with his actions up to that moment.

4.4 Voluntary relinquishment as a final reason for not committing the criminal offense

Undoubtedly, the preparatory acts can announce the negative intention of the individual. To some extent, they show to the outside world the thought of committing a criminal offense. But, on the other hand, theoretically, by nature, they stay away from committing the criminal offense in order to leave room for the individual's repentance by realizing a different attitude or a definitive goal. In order to move from the attempt to the voluntary renunciation of committing the criminal offense, we must understand that the situation of the attempt is closely related to the psychological, subjective element. Voluntary renunciation of committing a criminal offense, in the European criminal doctrine, is evaluated as a psycho-physical reaction that is materially formed in the form of remorse and regret. This moral sense in the case of withdrawing from the further performance of certain actions clearly testifies to the connection between morality and criminal law. Although criminal law is not based on morality (the opposite is valid), it constitutes a "social morality expressed in a normative form".

In practice, cases of voluntary renunciation of committing a criminal offense are not absent. This action can occur both in the case of undertaking preparatory actions, and in the case of an attempt to commit a criminal offense. Voluntary renunciation of committing a criminal offense must be characterized by a real will to freely and individually avoid the criminal offense.

At the moment when the person can consume other actions of an objective character, which will bring the criminal consequence thus consuming the criminal offense, he decides with his free will to withdraw and not to commit the offense. Externally, no criminal consequences materialize. If the renunciation of the criminal offense becomes mandatory due to reasons beyond the will of the individual, then we are not dealing with voluntary renunciation of the commission of the criminal offense. This is, of course, an important legal moment to be evaluated and the first reflection on this moment belongs to the court, which must first appreciate the conscious character of the person, who was completely able, referring also to the circumstances of the event intensified the nature of actions with an objective character to finalize the criminal offense.

5. Conclusions

Determining clear dividing lines between phases is of great importance, especially in terms of implementing the principle of legality and legal certainty. For this reason, the legislator must clearly define the differences between the preparatory actions of the tenancy and this difference must really be a legal matter. In criminal law, even from current studies it is understood that it is not easy to differentiate the conceptual elements of the stages of committing the criminal offense.

Preparatory actions in criminal law are a mean of expressing the will to explicit a criminal action in the external environment and as such, are quite important to recognize and treat. Preparatory actions are mainly actions that do not translate into the certainty of the commission of the criminal offense and the arrival of the criminal result. These acts may be possible but not necessary for its performance. They are mainly actions that can be summed up under the epithet "almost identical", but not for every type of criminal offense.

The general principle that is promoted today by contemporary criminal doctrines is that of the exclusion of these actions from criminal incrimination. We can imagine that all these exceptions which are made to the principle of non-discrimination of preparatory actions, are due to the criminal policy. It can be concluded that the preparatory actions of a criminal offense in a significant part of the European criminal legislations are outside the trend of criminal incrimination (Celina.2017). In those cases where this principle is broken, the criminalization of preparatory acts clearly proves the legislator's attempt to criminalize at an early stage criminal offenses that are considered "criminal offenses as a means" to consume other more complicated forms of criminal activity as well as cooperation of countries also in the field of harmonization of substantive criminal law. The incrimination of preparatory acts is a proof that the actions of the person who creates the conditions or directs the activity directly in function of the arrival of the criminal consequence, contain the elements of the criminal offense. Autonomous criminal acts, the product of the special incrimination of preparatory acts, are an indicator of the "movement of subjectivism" in criminal law.

In addition to the concept of preparatory actions in criminal law, other significant legal moments have also been identified as important, such as the beginning of the execution of the criminal offense, attempted criminal offense and voluntary renunciation of the commission of the criminal offense. Scientific debates have never really concluded in a clear, unified position on the difference that exists between the preparatory acts and those that characterize the beginning of the execution of the criminal offense. The moment of the beginning of the execution of the criminal offense is the indicator that serves as a boundary between the end of the preparatory acts and the beginning of the execution of the criminal offense. Any action can be at the origin of the beginning of the execution, if this act will have as a direct and immediate consequence the consummation of the criminal offense. The meaning of the attempt shows us that for an act to be punishable, it does not mean that it must be carried out in its entirety with the criminal consequence. The new developments of the criminal law have long been oriented towards the interpretation of the subjective meaning of the attempt. It will not be considered that there is an attempt, if the person has not decided to commit the specific act even though he has taken some actions. In order to consider the action as an integral part of the criminal offense, it must be directed towards its realization and from the subjective side, the action must have been carried out for this purpose. Some authors accept the possibility of making an attempt with indirect intent, but in practice it is difficult to prove that the person acted with eventual intent to achieve a certain, socially dangerous result. The criminal offense cannot remain pending, when the person acts negligently in both its forms. In practice, I think that there is a very subtle difference between the preparatory acts and those that characterize the beginning of the execution of the criminal offense. Based on the meaning and nature of the preparatory acts, we cannot ascertain with certainty that the person will commit the criminal offense.

The preparatory and attempted actions of the criminal offense are legal moments of the absence of the criminal result. What is worth emphasizing from the comparison of these two institutes of criminal law, is their conceptual difference.

Based on what we have tried to present above, we think that preparatory actions cannot be present in the case of a criminal offense with indirect intent. In the situation of indirect intent, the Albanian criminal doctrine is on the position that the author of the criminal offense does not want to achieve any socially dangerous result, does not want the consequences to come. At the stage of preparatory actions, the author cannot determine whether the possible result will come or not. In some cases it is difficult to distinguish even if we are facing an attempted criminal offense or a consummated form of criminal offense. This difficulty has not been resisted by the position of the Criminal College of the Supreme Court of RSH, appearing as a jurisprudential excess. The dimension of jurisprudential excess has appeared in several cases and there have been quite a few debates about this, in terms of the legal definition of the fact of a criminal offense in cases where the material object is seized by the judicial police before crossing the state borders. The Criminal College of the Supreme Court has assessed in such cases, that the criminal offense will be considered consummated, such a position clearly avoids the hypothesis of the attempt of the respective criminal offense. This solution, although a habit towards a unifying tendency gave more impetus to the scientific debate which, for the sake of truth, finds the ideal environment in opposing positions. Formal criminal offenses should not be distinguishable, being simply and only subject to interpretation. First, in the normative aspect, they should have been formulated more clearly from the point of view of the technique of incrimination, which directly expresses the will of the legislator himself. We do not find this desire for clarity in the formulation technique of the provision at the appropriate level, respectively in the provisions of article 283/a and 278/a of the Criminal Code of the Republic of Albania.

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