



EXPLORING ATTEMPTED CRIMES WITH FORMAL COMPOSITIONS: LEGAL IMPLICATIONS AND BENEFITS

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Abstract.

This article discusses the topic of attempted crimes with formal compositions. To begin with, it is worth exploring situations where the objective side of a crime involves multiple components, and cannot be performed in a single action. In such cases, formal compositions may offer a means of resolving the matter outside of the traditional criminal justice system. By examining examples of attempted crimes with formal compositions, this article seeks to shed light on the legal implications and potential benefits of such agreements.

Keywords: Crime, list, punishment, responsibility, analysis, criminal law, objective side, subjective side, subject, object.

In theory, one can find the point of view that an attempt in crimes with a formal composition is expressed in the fact that the subject does not have time to perform all those actions that form the completed crime. There are no questions about the possibility of attempted crime with a formal composition, if its objective side includes several mandatory signs. An example would be rape: the objective side of this crime can be sexual intercourse and the use of violence or its threats. In the case when a person only has time to use violence, but, for example, does not have time to commit sexual intercourse, his actions are qualified as attempted rape. More interesting from the point of view of qualifications are compositions in which the objective side is represented by one mandatory action.

To begin with, it is worth considering the option when the objective side of the crime, although it consists of one action, but it cannot be performed at once, but consists of several components. An example is Art. 234 of the Criminal Code of the Republic of Uzbekistan: the disposition of part 2 of this article is an alternative, deliberately illegal detention forms a completed corpus delicti. However, in order to detain a person, it is necessary to file a petition with the court to choose a preventive measure, after which the court must decide on the detention of the person. If the authorized person filed a petition before the court for the selection of a preventive measure in the form of detention, but the court refused it, then the actions should be qualified as an attempt to commit a crime under Part 2 of Art. 234 of the Criminal Code of the Republic of Uzbekistan (if there are other necessary elements of a crime).



Thus, an attempt on a crime with a formal composition is possible not only when the disposition of the article consists of several actions that must be performed in aggregate, also in cases where the article provides for one action that is of a complex, multi-stage nature.

Let us consider the possibility of an attempt on a crime with a formal composition, where, in order to end the commission of a crime, it is necessary to perform only one act, and it has no constituent parts.

Let us consider the possibility of an attempt on a crime with a formal composition, where, in order to end the commission of a crime, it is necessary to perform only one act, and it has no constituent parts. For example, let us turn to Art. 177 of the Criminal Code of the Republic of Uzbekistan, the disposition of this article is alternative, one of the foreseen actions is the sale of knowingly counterfeit bank notes of the Central Bank of the Russian Federation. The sale of counterfeit money or securities consists in using them as a means of payment when paying for goods and services, exchanging, donating, lending, selling, etc., that is, it is realized through the conclusion of contracts, which is the conclusion, which is concluded by the person selling the counterfeit bank ticket, but also by his counterparty. A situation is possible when the guilty person commits all actions aimed at completing this transaction, but the transaction was not concluded for reasons beyond his control (for example, the counterparty understands that the bank note is fake and refuses to conclude an agreement).

Now the courts qualify similar actions as an attempt to sell money. The court established that S. found a banknote worth 500,000 soums. After that S. went to a grocery store and asked to exchange it for smaller bills. The seller found outwardly that the bill was counterfeit and returned the money to C. However, after that he went to another store and tried to make a purchase, but there the seller, having examined the bill, declared that the bill was counterfeit and returned it to C. On the same day S. offered a friend H. to exchange counterfeit money into smaller bills. A friend found outwardly that the money was counterfeit and tore it up.

The actions of the defendant S. were qualified by the court under Part 2 of Art. 25, part 1 of Art. 177 of the Criminal Code of the Republic of Uzbekistan as an attempt to sell a knowingly counterfeit banknote of the Central Bank of the Republic of Uzbekistan.

The qualification of an attempted crime with a formal composition is possible in the presence of several mandatory signs of an objective side; in the case when the disposition is represented by one action, consisting of several constituent elements; and even in the case when the act is performed without a break in time, but its completeness depends on third parties.

Some authors distinguish a separate type of formal corpus delicti - truncated. Truncated crimes are understood as crimes that are recognized as completed at an earlier stage of criminal activity. Not all authors consider "it reasonable to distinguish this type of composition as truncated, and recognize the crimes referred to them as simply formal"¹. It is advisable to consider the definition of a truncated corpus delicti in the context of the concept of an unfinished crime, since this definition is closely related to the types of incomplete crime.

In the literature, you can find various definitions of the truncated corpus delicti, one of them: "it is a corpus delicti, for the recognition of which it is not required not only the onset

¹A complete course in criminal law. Ed. A.I. Korobeeva. St. Petersburg: R. Arslanov Publishing House. 2008.S. 320.

of a criminal result, but also the completion of those actions that can cause these consequences"². This definition cannot fully reflect the essence of the truncated corpus delicti; it contains an indication of the failure to perform actions that can cause a criminal result, but the truncated composition is a kind of formal, that is, the consequences are not at all a mandatory sign of the objective side of the composition. If, in this definition, the result is understood not as a consequence, but simply as the fulfillment of the objective side of the crime, then the definition as a whole loses its meaning.

"In formal structures, the legislator limited himself only to an indication of the act, which forms the objective side of the corpus delicti, and did not determine the consequences that can or should occur as a result of its commission"³.

A truncated crime is understood as a crime completed already at the stage of preparation or attempt. It does not seem possible that a crime with a truncated composition can be completed at the time of an attempt on his life or preparation for it.

Supporters of the selection of a truncated corpus delicti refer to robbery as such. The robbery is defined as an attack in order to steal someone else's property, committed with the use of violence dangerous to life or health, or with the threat of such violence.

To begin with, we will consider this provision in isolation from other articles of the Special Part of the Criminal Code of the Republic of Uzbekistan. The action in the disposition of this article is an attack, the method of committing a crime is indicated - with the use of violence dangerous to life or health, or with the threat of such violence, as well as a sign of the subjective side of the crime - the purpose of stealing someone else's property.

To establish the fact of a robbery, it is necessary to establish all the indicated signs, including objective ones - attacks and the use of violence or threats of violence. That is, the composition seems to be formal, for the commission of a completed crime it is necessary to commit an act containing all the signs of a crime.

It is important to note that the scientists who define robbery as a truncated corpus delicti speak about this: "The corpus delicti is formal, truncated. The moment of the end of the crime is brought to the stage of the assassination attempt. The robbery is considered completed from the moment of the attack for the purpose of stealing someone else's property, committed with the use of violence dangerous to life or health, or with the threat of such violence"⁴.

Immediately after indicating that the robbery is over at the stage of the attempt, the author indicates that the robbery is considered dead from the moment all the actions that are part of the objective side of the crime are performed (the author lists all the signs of the robbery). Considering this explanation from the point of view of logic, we have that the stage of the attempt is the moment of the end of all actions that constitute the objective side of the corpus delicti.

E.V. Blagov writes about "the impossibility of qualifying as an attempt to commit a crime the acts provided for by the offenses, with the help of which, in essence, attempts to commit

²Уголовное право. Общая часть. Под ред. И.Я. Козаченко. М.: Норма. 2008.С. 197.

³Criminal law of Russia. A common part. Textbook / ed. V.V. Lukyanov, V.S. Prokhorov, V.F. Shchepelkova, rev. and add. - SPb.: Publishing house of SPbSU, 2013. C.115

⁴Commentary on the Criminal Code of the Republic of Uzbekistan

a crime are criminalized as completed crimes"⁵. As an example, the author points out that the very application for extortion of the demand for the transfer of someone else's property forms the composition of extortion. This statement is also consistent with the concept of a formal corpus delicti - the disposition of the article specifies the requirement to transfer, when a person commits it, the crime is over.

This circumstance is indicated by A.N.Trainin: "The composition is always one and always" full "of those concrete elements from which it is composed according to the law. One of the elements is missing - there is no composition; there are all the elements - there is "all", "complete" composition. There can be no half, partial, "truncated" composition ".

We propose to consider the option that the corpus delicti may be truncated in relation to another corpus delicti, that is, an attempt on one of the crimes or preparation for it is considered another completed crime (the relationship of the corpus delicti, somewhat similar to the construction "general norm - special norm").

A crime shall be recognized as completed when the guilty person commits any actions aimed at causing death; encroachment means murder and attempted murder; consequences in the form of death or harm to health, in the presence of signs of encroachment on life, do not affect qualifications and are not mandatory.

This composition can also be considered as materially truncated (material in case of murder, truncated in case of attempted murder). For the complete fulfillment of the objective side, it is enough to commit an attempted murder.

In this case, also for the recognition of the crime as completed, it is necessary to commit all the actions that are part of the objective side of the corpus delicti. The disposition of the article can be considered alternative - it provides for murder and attempted murder. We can say that the encroachment on attempted murder is truncated in relation to Art. 97 of the Criminal Code of the Republic of Uzbekistan.

Another corpus delicti, referred to as truncated by the design of the objective side, is robbery. The objective side is represented by an action - an attack, if this action is performed in the presence of other necessary signs, the crime is recognized as completed. Robbery can be considered truncated in relation to theft: a person committing an attack with the aim of stealing wants to see the final result of his activities as the theft of someone else's property, that is, it can be called an attempted theft, which the legislator has recognized as criminal at this stage in connection with the method of committing a crime, other forms theft does not pose such a public danger.

For robbery, it is impossible to indicate the norm in relation to which its composition is truncated, since in a robbery there is a method inherent only in this crime - the use of violence dangerous to life or health, or the threat of such violence, and there is no single norm in the Criminal Code of the Republic of Uzbekistan, providing for liability for theft.

As noted by P.S.Yani⁶, the question of the possibility of attempted robbery cannot be resolved simply by denying such a possibility with reference to the truncation of this corpus delicti. The author cites the following situation, where the actions are qualified by the court as an attempted robbery: the perpetrators, with the aim of robbery, called the apartment of

⁵ E.V.Blagov Application of criminal law (theory and practice). - SPb.: Publishing house of R. Aslanov "Legal Center Press", 2004, pp. 189-90.

⁶Yani PS, Questions of qualification of robbery. Legality, 2015. No. 9 // SPS "Consultant Plus".

the currency merchant S. and, trying to enter it, asked to exchange dollars, however S., opening the locks, saw through the peephole that one of the criminals puts on a mask, and therefore did not open the door, but began to shout that he would call the police. Frightened, the accomplices fled.

However, in this case, the author points out that in the situation described, the objective side of the robbery has not yet begun; but if a person has not committed actions directly aimed at fulfilling any sign of the objective side, his actions should be qualified as preparation for committing a crime.

As N.F.Kuznetsov⁷, the beginning of the execution of the corpus delicti is present from the moment of committing at least one action (inaction) that is part of the objective side.

This opinion can also be found in the literature: "Through the construction of such norms, the legislator emphasizes the social danger of a particular crime and the importance of its criminal-legal prevention at the initial stages of preparation. <...> In these structures, criminal liability occurs at the stage of preparation or attempt to commit more serious crimes. In order to prevent them, the state initiates criminal prosecution at an earlier stage of creating an association of accomplices (banditry, illegal armed formation), searching for ways and means of committing a crime (illegal formation of a legal entity) or the initial stage of an attempt (assault with the aim of robbery) "⁸.

If we consider the truncation of the composition not as its separate characteristic, but as an indication of the relationship between crimes or forms of criminal activity, then it is possible to admit an attempt on crimes with the compositions usually referred to as truncated.

S.I.Tishkevich considers the truncation of the composition as a way of countering the criminal legal norm by the legislator: for example, robbery, as a corpus delicti, material in nature, is truncated by the legislator, "some of the signs of the objective side are subjectivized and transferred to the objective side of the composition"⁹. This proposal also seems to us logical and reasonable.

A.I.Rarog gives the following example: a person wants to take the life of a statesman in order to stop his state activities, but mistakenly takes another person for him and misses. In the described situation, there is an error in the object, due to the lack of a proper victim, the actions can only be qualified as an attempted encroachment. The author also notes that this qualification looks unusual - "attempted assassination", but this qualification is consistent with the requirements of logic.

The selection of this type of formal composition as a truncated one does not seem very reasonable, nevertheless, the issue of an attempt on these crimes is considered taking into account the point of view of the need to highlight such a construction of the objective side.

Perceiving the truncated corpus delicti as such, in which the moment of the end has been postponed to the moment of preparation or attempted murder, one can come to the

⁷ Criminal Law Course. Ed. N.F. Kuznetsova, I.M. Tyazhkova. M.: Zertsalo-M, 2002, In 5 volumes. V. 1. Teaching about crime. S. 383.

⁸ Sidorenko E.L., Katbambetov M.I. Promising and offering a bribe: international standards and prospects for their implementation in the Criminal Code of the Russian Federation // International criminal law and international justice. 2017.No. 3.P. 22 - 26.

⁹ Tishkevich S.I. Unified theory of criminal rule-making and qualification of crimes. Basic conceptual provisions. Minsk, 1992 S. 85.

conclusion that an attempted crime with a truncated corpus delicti is impossible. It is necessary to consider the concept of a truncated composition not as an independent category, but as an interconnection (remotely similar to the construction "general norm - special norm"), then this contradiction can be avoided.

In some cases, the need to qualify an attempted crime with a truncated composition is justified by the Armed Forces of the Republic of Uzbekistan, in other cases cited above, it is impossible to correctly qualify a person's actions without using the construction of an attempted crime with a truncated composition.