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CONTINUITY OF CRIMINAL LAW RULES FOR ASSIGNING PUNISHMENTS FOR AN ATTEMPT TO COMMIT A CRIME

Continuity is the indisputable factor that directly affects the development and features of any legal system. Continuity in criminal law is what connects the past, present and future, brings into the life of a new generation the time-tested achievements in this field of law. At the same time, although innovations are directed to the future, their strength is in connection with the past and relying on national traditions and customs, which is a precaution against careless copying of foreign law in law - borrowing by the law of one or another state the provisions of past or contemporary legal systems [1, p. 539].

Legal experience is an important component of improving the law on criminal responsibility. Continuity in law unites and connects three components - past, present and future. The past is the embodiment of the accumulated experience and practice of applying the law, the future is the formation of goals and needs in the perspective of its development. The past shapes the present and influences the future. However, very often in criminal law, the present comes into confrontation with the past. The dynamic development of criminal legislation seeks the future, is guided by ideas about the future as a goal in the present, and each time in a new way applies the legal experience of the past to achieve this goal.

In the Criminal Code of Ukraine of 2001, Part 2 of Art.68 contained the rule that when imposing punishment for an unfinished crime, the court, guided by the provisions of Articles 65-67 of this Code, takes into account the degree of severity of the act committed by the person, the degree of implementation of the criminal intent and the reasons due to which the crime was not brought to an end, but is not obliged to reduce the punishment in the case of an attempt by a person.

In contrast to the criminal legislation of Ukraine, at that time the criminal codes of many other countries contained norms that stipulated a mandatory reduction of the penalty for an attempt to commit a criminal offense. Therefore, in connection with the trends of humanization of criminal legislation, the acquisition of specific weight by issues of protection of the rights and freedoms of a person and a citizen, the rules for assigning punishment for an unfinished criminal offense were improved, since they no longer corresponded to modern legal trends in the state. Thus, by the law of April 15, 2008, the legislator changed parts 2 and 3 of Art.68 of the Criminal Code. Thus, part 3 of Art.68 of the Criminal Code of Ukraine in the new version established: "For the commission of an attempted crime, the term or amount of punishment cannot exceed two-thirds of the maximum term or the amount of the most severe type of punishment provided by the sanction of the article (sanction of part of the article) of the Special Part of this Code." Therefore, the new version of Art.68 of the Criminal Code established a system of mandatory mitigation of punishment for an uncompleted criminal offense. In this case, we can talk about continuity in law, borrowing the best practices of other countries. At

the same time, it should be emphasized that the legislation, which was previously in force in certain territories that now make up our state, in the past also established a system of mandatory reduction of punishment for an uncompleted criminal offense. Thus, according to the "Military Article" of Peter I of 1715, an unfinished crime was either punished less severely, or the punishment was the same as for a finished crime (for example, execution), but was committed in a more humane way (without torture).

Article 110 of the Regulations on Criminal and Correctional Punishments of 1845 provided that "the amount of punishment is determined by: 1) greater or lesser proximity to the commission of the crime, if the crime has not been completed; 2) from the special circumstances accompanying the attempted crime, which aggravate or mitigate the guilt of the criminal." The punishment for a crime that was not completed was reduced by one, two, three or four degrees. This approach to determining the punishment for attempted crime was followed by the majority of particular German codes of that time, Belgian, Italian, Hungarian, and Dutch codes. Moreover, the Dutch Code in most cases reduced the punishment for attempted murder by 1/3 compared to the punishment for a completed criminal offense. Thus, on the basis of these facts, it is possible to assert the heredity of the criminal law norms of legislation of the XVIII-XIX centuries, the return and borrowing of historical experience for the formation of modern norms of criminal law [2, p.141-142].

Analysis of legislative provisions, as well as many years of judicial practice, show that the imposition of a less severe punishment for an unfinished criminal offense than for a similar finished one certainly corresponds to the principle of justice. In this regard, the legislator's approach to solving the issue of punishment for an attempt on him in the current Criminal Code of Ukraine appears to be justified: since the degree of public danger of an unfinished criminal offense is much lower than that of a completed one, the responsibility for them should also be differentiated.

This is due to the principle of justice, according to which the punishment must correspond to the nature and degree of public danger of the criminal offense, the circumstances of its commission and the person of the guilty.

Meanwhile, borrowing the leading experience of other countries and his own historical experience, the legislator did not take into account certain specificities of his own modern legislation. Thus, the Criminal Code of Ukraine of 2001 in Art. 15 established the division of duties for attempted murder into two types: completed (Part 2, Article 15 of the Criminal Code) and unfinished (Part 3, Article 15 of the Criminal Code). Instead, the current wording of part 3 of Art.68 of the Criminal Code of Ukraine provides for a mandatory reduction of the penalty for attempt without specifying its type. Taking into account a higher degree of public danger of a completed attempted crime when imposing a punishment is possible only on the basis of part 1 of Article 68 of the Criminal Code of Ukraine, but only in those cases when, after the application of Part 3 of Article 68, the amount of punishment does not become absolutely determined.

Such a provision seems unacceptable. Therefore, it is considered appropriate to add part 3 of Art.68 of the Criminal Code of Ukraine with reference to the fact that the term or amount of punishment for an unfinished attempt cannot exceed two-thirds of the maximum term or the amount of the most severe type of punishment provided for by the sanction of the article (sanction of a part of the article) of the Special Part of this Code, and the term or amount of punishment for a completed attempt may not exceed three quarters of the maximum term or the amount of the most severe type of punishment

provided for by the sanction of the article (sanction of part of the article) of the Special Part of this Code.

Speaking about the prospect of the future development of norms on the imposition of criminal punishment for an attempt on him, it is impossible not to emphasize the position of the drafters of the new criminal code of Ukraine. Part 5 of Article 2.6.3 contains provisions on the mandatory reduction of punishment for attempted murder depending on its type: "The severity of attempted crime of 3-8 degrees of severity is reduced: 1) when the attempted murder is completed - by one degree; 2) in the case of an unfinished attack - by two degrees" [3].

References:

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