

THE SPECIFIC FEATURES OF THE ATTEMPT IN THE CASE OF THE COMPLEX OFFENCE

Anca-Iulia STOIAN

Faculty of Law and Economical Science, Constanta, Universitatea Spiru Haret,
Bucharest, Romania
anca0304@yahoo.com

Abstract

The complex offence is a creation of a legislator who decides to include in the content of an offence, one or more actions or inactions that are distinctly incriminated. In the absence of such a specific intervention of the legislator to set up the complex offence, the provisions concerning the set of offences would have been applicable when the content of two or more offences had been established. In order to differentiate this form of legal unity of the offence from the set of offences, the Romanian legislator decided to explicitly regulate the concept of complex offence in the chapter on the plurality of offences. The attempt in the case of any offence can only be analyzed in the light of provisions of Articles 32 and 33 of the Criminal Code, this fact being valid also for the attempted complex offence. Besides these general features, the attempt of the complex offence has some specific features that we will try to analyze.

Keywords: *attempt, consummation, accomplishment of the result, guilt.*

The complex offence created by bringing together other offences or involving at least two offences has been referred to in the literature as a complex offence in its own right.

In the doctrine, two opinions about the attempt of this complex type of offence are outlined. In a first opinion, it is shown that the complex offence is consumed when the main legal object is prejudiced (the taking of the good took place). If only an action or inaction (violence or threat) took place, it is achieved only the attempt at robbery and not the simple offence of violence or threat in a consumed form [1]. In the second opinion, it is argued that there is an attempt of the complex offence when the execution of each of the component actions begins. So, for "an attempt of a complex offence to exist, it is necessary to initiate the execution of both component actions, the beginning of execution or the execution of a single one having the effect of dissociating the other, facing thus, an attempted or consumed offence and not an attempted complex offence"[2].

This type of complex offence created by bringing together two other offences, in terms of its objective side, consists of two actions. Of these, one has the character of

main action or of action purpose, and the other has the character of middle or adjacent action. In order not to make confusion with the real set of offences and for the fair settlement of the problem of the attempt, it is necessary to analyze the relationship between the two actions. Naturally, the (main) action or the action purpose has the greatest meaning. If it is consumed, the complex offence appears to be consumed even if the adjacent action is only in the execution phase.

In the legal literature, it is argued that even an attempt that the law does not punish can be integrated as an act of the adjacent action in the content of the complex offence. It was also argued that some complex offences would have a bivalent structure, presenting themselves under alternative form: simple offence - complex offence. It was argued by that fact that some of the terms used by the legislator do not always have criminal significance, and it was given as an example, the term "violence" used to criminalize some complex offences. In a first hypothesis, it may mean the offence provided by Article 193 of the Criminal Code; however, in another hypothesis, it may also consist in acts of violence that do not cause physical suffering, and thus do not amount to the offence listed in Article 193 of the Criminal Code. In this second hypothesis, violence would have the character of a super ordered element found in the structure of the complex offence [3]. However, this opinion is hard to take into account because it ignores the very definition of the complex offence given by the legislator in Article 35 paragraph (2) of the Criminal Code.

An attempt at the complex offence will also exist when the adjacent action has been committed in its entirety, but there are no enforcement actions specific to the main proceeding. Attempt at the complex offence will also exist even if the main action has been interrupted or the effect has not occurred, its specific execution acts being followed by the full execution of the adjacent action. In this respect, it has been established in practice that the act of the defendant who enters a yard in order to appropriate a good and is surprised before the good was appropriated, exerting violence on the injured person in order to secure his escape, constitutes an attempt at the robbery offence [4]. Regarding the subjective position of the perpetrator, it was said that "subjectively there is usually a single resolution but with a richer content than in the case of other offences,

because the perpetrator envisages that he affects a main legal object, as well as a secondary one and wishes or accepts this consequence" [5].

The complex offence can only be analyzed from the point of view of all the elements and the relationships between them, so the emphasis of only one element or another can lead to erroneous conclusions.

In the case of a complex offence involving one action in the objective side, the consummation takes place when the result of the action / inaction occurred, under the special conditions of the super ordered elements to be filled in.

A special case of attempt is the offence of assault that jeopardizes the state security. The offence is consumed when the act of killing or injuring the bodily integrity or the victim's health begins, regardless of whether this action has been terminated or interrupted. According to the Criminal Code, the attempt consists in producing or procuring means or instruments, as well as taking measures to commit this act.

The existence of the complex offence is conditioned by the existence of the component offences in the same phase of execution, since the idea of judicial dissociation of the legal unity in the case where the components are in different phases is accepted. From here it is proposed to introduce new ways of the attempt as follows: if no person dies, there will be an absolute attempt, and when only one of the victims dies, there will be a relative attempt. The consumed deed will exist when at least two victims die.

The premeditation (the overcome intent) as a form of guilt results from overlapping the guilt without prediction over the direct intent. In this case, there is a greater result than that envisaged and pursued by the perpetrator. The result thus produced is specific to a more serious offence or to an aggravated variant of the same offence.

In the doctrine, there is a unitary view in the sense that premeditated crimes cannot be committed in the form of an attempt, precisely because of the presence of guilt [6].

The Romanian Criminal Code knows many such complex premeditated offences: rape, robbery, sexual perversion, etc. In this category, we do not include those offences that result in the victim's suicide, which are not complex offences. Thus, we take into account the following aspects: the specific consequences of the intended basic offence did not occur (the sexual intercourse was not consumed, the good was not stolen, the

abortion did not occur, etc.), and the second aspect - the specific consequences of the premeditated crime occurred (the victim died or suffered serious bodily injury).

Therefore, if the deliberate offence remains in the attempted phase, but it does not produce the premeditated consequences, we will have an attempt at an intentional complex offence.

a). A first opinion presented in the doctrine argues the impossibility of the attempt in the case of a premeditated offence, in general, and of a complex premeditated offence, in particular [7]. As a form of guilt, the premeditated intent (overcome intent) results from overlapping the guilt (with or without prediction) over the intent (direct or indirect). In this case, there is a wider result than the one pursued by the agent, specific to a more serious offence, or to an aggravated variant of the same offence. It is shown that the premeditated offence cannot have attempt because there can be no decision to produce a worse result, which is the consequence of the delinquency.

Thus, whenever the worse result occurs, the complex premeditated offence is considered consumed even if the result of the intentional crime has not occurred.

Also, the difference in concrete social danger when the basic offence was consumed and the one in which it was only attempted can be highlighted in the case of judicial personalization of punishment, without the abstract social danger reflected in the legal punishment to change. A deliberate offence can have as basic offence, a simple offence, as well as a qualified form of offence. In conclusion, both the production of the result and the subjective position of the delinquency exclude the idea that the premeditated offence in its entirety could remain in the attempt phase.

In the same sense, it was decided that "if the law punishes the deed more severely in relation to the worse outcome of the offence, and this result has occurred, it means that the offence is consumed, that the attempt phase has been overcome" [8].

b). The opposite thesis, that of the admissibility of the attempt at the premeditated complex crime, was also widely supported. One of the arguments was that the legislator sanctioned the attempt at complex crimes (rape, robbery, abortion, deprivation of freedom of the victim), without distinguishing between basic forms and aggravated forms, which were premeditated. On the other hand, it has been argued that the rule according to which the attempt to carry out the criminal offence is not possible, is valid only in the case of a

premeditated simple, not complex offence, where the act of violence becomes an act of execution of the entire offence [9]. It has also been said that one cannot speak of the offence being consumed as long as the basic consequence has not occurred, because the complex offence is consumed when the main legal object has been violated [10].

It was proposed to use the notion of "relative attempt" in this case, because the attempt is relative only to the intended element of the structure of the premeditated offence, not to the premeditated crime as a whole. Therefore, the attempt cannot be conceived as an attempt of the entire crime, because the overcome result, produced by fault, excludes the idea of attempt, it can present as an attempt at the basic offence, when, although characterized by an incomplete execution, has nevertheless produced the pre-determined result prescribed by law [11].

Also, keeping in mind the attempt, some circumstances, such as stopping or preventing the outcome become effective. For example, if after the violence, the author lapses from sexual intercourse with the victim, and he/she dies after the aggression, the agent will respond for the attempted rape that resulted in the victim's death. In this case, even admitting the attempt at these offences, we appreciate that the agent's liability will be committed to the offence of injuries or death-causing injuries, because by stopping, he will not respond for the attempted offence that he initially intended to commit, but for the offence actually committed, according to Article 34 paragraph (2) of the Criminal Code. As a result, by desisting, the agent will be punished by a more serious punishment (5-15 years) than if he had committed a punitive attempt.

The identical sanction of the attempted offence and of the consumed offence would encourage the agent to consume the intentional offence, an idea with which we disagree, because the agent does not want to produce the worse result, this being in fact the premeditated intent. In this point a separate discussion can be made on the silent of the author [12].

Once an attempt is admitted, a number of issues will be raised by its sanctioning. This is because the perpetrator of a deadly deed could be punished more easily when this act is a component of a complex offence than when it is committed independently. For example, if we mention an attempted rape that resulted in the death of the victim, we would apply a penalty within half reduced limits of 7.6 years to 12.6 years, that is, less

than that prescribed for the offence of bodily injuries or death-causing injuries, which is of 5 to 15 years. This inequity could be remedied by legislative means, by amending the punishment limits. Legislative errors cannot however eliminate the reality, that of the existence of a premeditated crime.

Often in practice, it was decided that there was an attempt, but only in the form of the basic offence, and therefore the punishment for the offence consumed will be applied, solution too hybrid to be accepted.

c). One last proposed solution would be to break the legal unity of the offence and to retain an ideal set of offences [13]. It is admitted that theoretically there is an attempt, but that its retention would have unfair consequences from a sanctioning point of view. For example, the perpetrator of only violent acts as a result of which the victim dies, may claim to have committed the aggression only in order to acquire goods from the victim, with the purpose to benefit from an easier punishment.

The offences that resulted in the death of the victim are aggravated forms of intentional offences, not distinct, premeditated criminal offences; they keep their legal nature of intentional offences.

Breaking the criminal unity is imposed only where the principle is breached after which the absorbing offence cannot have a lower degree of social danger than that of the offence absorbed. For example, an abortion attempt that resulted in the victim's death would be punished with a lesser penalty than that of the offence taken by murders and death-causing injuries. In other cases where there is no such mismatch, it will simply be retained the attempt at the complex premeditated offence, with the risk of incoherence.

REFERENCES:

- [1] Mitrache C., Mitrache C., Romanian Criminal Law, General Part, Universul Juridic Publishing House, Bucharest, 2014, pp. 107 - 111
- [2] Papadopol V., Pavel D., Forms of Criminal Unity in Romanian Criminal Law. Bucharest: " Şansa" Publishing House and Press - S.R.L., 1992, p. 223.
- [3] Pavel D., The bivalent structure of some complex offences, R.R.D. no. 4/1982, p. 4;
- [4] Antoniu G., Reflections on the plurality of offences, Criminal Law Review, no. 4/1999, p. 9.
- [5] Stretianu F., Niţu D., Criminal Law, General Part, Vol. I, Universul Juridic Publishing House, Bucharest, 2014, p. 350;
- [6] Pascu I., Dima T., Paun C., Gorunescu M., Dobrinioiu V., Adrian M., Uzla A. S., Criminal Law. General Part, 3rd edition, Hamangiu Publishing House, Bucharest, 2013, p. 142
- [7] Antoniu G., Some Reflections on the Attempt in the case of Complex Offence, pp. 43-48
- [8] Hotca M. A., The New Criminal Code and the Previous Criminal Code, Hamangiu Publishing House, Bucharest, 2009, p. 96

- [9] Antoniu G., The Criminal Unity. Contributions. In: RDP, no. 3, year V, July-September, 1998, p. 19.
- [10] Antoniu G. (coordinator), Bulai C., Duvac C., Griga I., Ivan Gh., Mitache Ctin., Molnar I., Pascu I., Pasca V., Predescu O., Preliminary explanations of the New Criminal Code, Vol.1, Articles 1-52, Universul Juridic Publishing House, Bucharest, 2010, p. 389.
- [11] Pascu I, The New Criminal Code commented. General Part, 3rd edition, Universul Juridic Publishing House, Bucharest, 2016, p. 416.
- [12]. Ghencea F., Overview and regulation on silence, Annals of the University of Bucharest, No. 3/2009, pp. 100-107
- [13] Chiriță R., Attempt in the case of a complex premeditated offence, R.D.P. No.1 / 2000, pp. 51 - 61