

Voluntary Refusal to Commit a Crime: Significance, General and Special Signs

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Abstract: The article describes and examines the significance of the rule of the voluntary refusal to commit a crime, as well as explores its general and special signs. It is noted that the voluntary refusal to commit a crime is the rule contained in any modern, progressive law. In this vein, there are different theoretical approaches to the determination of its value and signs. The signs are debatable in nature, and their establishment by the law enforcer may cause difficulties. The difference between voluntary refusal to commit a crime, which is implemented in three functions, is determined, definitions of general signs of voluntary refusal are proposed, their content is clarified. Special signs of voluntary refusal are disclosed.

Keywords: Voluntary refusal to commit a crime, signs of voluntary refusal, stages of a crime, preparation for a crime, attempted crime, criminal liability.

INTRODUCTION

Each rule of criminal law has its significance, which is subject to theoretical understanding. Voluntary refusal to commit a crime implements several necessary socially useful, humanistic, economic functions.

The issue of signs of voluntary refusal is highly relevant to the fact that each state regulates its movements of voluntary refusal, as well as its consequences (Moriarty 1989; Farrokhi and Sadeghi 2019). We believe that the signs should be developed by the science of criminal law, which can provide their complete and exhaustive list.

Voluntary refusal is a relatively complex legal phenomenon, characterized by several evaluative, challenging to determine signs. The theory (Garrett 2020) describes the problems that arise when establishing and determining both general and special signs. The problems of determining special signs follow from the general issues of regulating complicity, which is continuously being developed in theory (Arafa 2018). Speaking of the scientific development of the subject matter, it can be noted that there are many studies devoted to personal issues. Some authors attempt to comprehend the moral aspects of a person's refusal to commit a crime (Goldstein 1975), while others make attempts to determine the influence of accomplices on the commission of a crime (Greenawalt 1980). For

instance, Greenawalt investigates communications that can lead to antisocial behaviour. Moreover, he concentrates on criminal counselling and vaguer advocacy of crime, that is to say, definitions encouraging illegal actions. However, the discussion also covers provocative comments that trigger hostile, violent responses, as well as to disclosures of the reality that supplies incentives to commit crimes or help with their commission.

The importance of voluntary refusal, as well as the whole mass of controversial issues regarding the general and special conditions of refusal, necessitate a constant theoretical understanding of the voluntary refusal to commit a crime.

MATERIAL AND METHODS

This article used the approaches of the dialectical theory of knowledge, comparative and linguistic-legal methods. An attempt was made to disclose the significance of voluntary refusal of a crime and systematize its essential signs. Conclusions are made on the basis of generalization.

RESULTS AND DISCUSSION

Significance of Voluntary Refusal to Commit a Crime

Any modern and progressive legislation should contain not only prohibitive, catarrhal, but also encouraging rules. One of these is the rule governing the release of a person from criminal liability in connection with the voluntary refusal to commit a crime.

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It is important to emphasize that such a rule contains the key to solving a number of tasks of criminal law, as well as to implementing advanced principles of the criminal law branch of the law.

The significance of the rule on voluntary refusal is that acting on an unlimited circle of people, it encourages them to stop preparing for a crime or attempt to commit a crime, and this, in turn, helps to prevent or reduce the harm that may be caused to public relations. This can be described in a broad sense. However, we should note that the effect of this rule can be detailed and conditionally considered through the particular interrelated functions of voluntary refusal.

The first function is that this rule is aimed at preventing harm to the objects of criminal legal protection, or reducing harm due to the motivation of the person committing the crime not to complete what was started. The legislator strives to avoid the completion of the crime, as this leads to adverse consequences for the individual, society, and the state. A person preparing or committing a crime may change his mind for various reasons, and the rule on voluntary refusal contributes to this. The state, fixing the rule on voluntary refusal to commit a crime, provides a person with an incentive to stop criminal activity (Mungan 2015). It can be concluded that this is a kind of transaction between the state and the individual, where the state allows a person to correct his behavior, providing a guarantee of non-criminal liability.

The second function is that a person, having realized the harmfulness of his behavior, and having stopped the criminal activity, should not be subjected to repressive measures on the part of the state. In our opinion, this function is highly important. Its value can be estimated by citing the opinion of Ia.I. Gilinskii on the correction of the convict: "No one has ever been corrected by punishment. This is well known to teachers, psychologists, and practitioners of law enforcement and criminal executive bodies. Only naive people hope for a "correction" of the convict in prison (colony). The prison serves as a school of criminal professionalization rather than a place for correction" (Gilinskiy 2013). In this case, we can say that it is ethically unreasonable to punish a person who voluntarily refuses to commit a crime (Farrokhi and Sadeghi 2019).

The third function of the rule is purely economic. The state, applying the rule on voluntary refusal,

reduces the cost of the resource of the investigating authorities, and also completely preserves the resource of the penitentiary system. Each investigation or court session has a certain cost spent by the state. This also applies to jailing a person. In the case of voluntary refusal, it is economically useless to spend resources on punishment (Mungan 2015).

General Signs of Voluntary Refusal to Commit a Crime

It is important to note that not every refusal of criminal activity can be regarded as voluntary, and also not in each case it is possible to exempt a person from criminal liability. In this regard, it is necessary to refer to the conditions of voluntary refusal.

We believe that there are several such conditions, namely voluntariness, finality, and refusal at a certain stage of criminal activity. We should point out that these are general conditions a voluntary refusal must meet (Bezugly *et al.* 2018).

The sign of voluntariness means that voluntary refusal occurs when a person refuses to complete a crime on the basis of his will and without the influence of any external factors (Naseri and Varvaei 2016).

Particular attention, as we think, should be given to external factors. According to the degree of influence on the process of committing a crime, they can be conditionally divided into favorable, neutral, and negative.

Favorable factors can facilitate the commission of a crime. For example, the alcoholic intoxication of a victim.

Neutral factors do not affect the process of committing a crime, either positively or negatively. These include the general environment a person planned to commit a crime in.

And negative factors are those that make it difficult or impossible to commit a crime, for example, a person who commits a crime is detained by the police. This circumstance makes it impossible to continue criminal actions and, as a result, the result of the crime cannot be achieved. The following factors should be included: detection of an alarm the delinquent cannot turn off; inconsistency of the selected means or tools with the crime committed, etc.

We can note that the diversity of life situations determines the variety of these factors. Moreover, the

same factors in different situations may have different meanings. The sign of voluntariness is a volitional act to stop criminal activity, if the person was aware of the possibility of completing the crime. Under the influence of negative factors, this possibility may be absent. But their very presence does not indicate the absence of a sign of voluntariness. It seems necessary to establish the attitude of the person who commits the crime.

In determining voluntariness, one should be guided by a subjective criterion, that is, the person's idea of the current situation and the possibility of completing the crime, regardless of whether there really was such an opportunity (Bezugly 2016). The decision to recognize the refusal as voluntary depends on the establishment of the subjective and objective components of free will according to the formula: the subjective component is "I do not want", the objective component is "I can" (Sheveleva 2015). In such a situation, the refusal should be recognized as voluntary.

The motives for refusing to commit a crime do not matter. Refusal may be caused by the request of the victim, his relatives, unauthorized persons. It is important that the person retains the opportunity to complete the crime.

Another one sign is finality. Finality should be understood as a person's lack of intention to postpone the commission of a crime. In turn, one cannot recognize the refusal as final if the person decided to postpone criminal behavior until a better time or change the criminal effort to another, but similar, target or victim (Yaffe 2015).

We believe that the finality refers specifically to a specific crime. A person may refuse to rob the store on the same day, but after a week rob the neighboring store and, if there are other signs of voluntary refusal, it can be stated that the first attempt should not entail punishment.

The sign of finality is not always possible to establish in objective reality, since the mind of the person committing the crime is closed to us, and we can establish many signs either due to objective circumstances, or from the words of the person who committed the crime, eyewitnesses. Both of these options are not sources of absolutely reliable information (Bezugly 2016). The considered sign has no time limits. This makes it difficult to establish. It seems that the finality is a rather controversial and

evaluative sign, and it can only be established ex-post. So, if a person, preparing for the murder, refused him, but after a few years nevertheless killed this victim, then how should the first episode of preparation be evaluated? We believe that in this example one can find arguments both in favor of and against voluntary refusal.

Voluntary refusal is possible only at a certain stage of criminal activity. Three stages can be distinguished: preparation for a crime (Bezugly *et al.* 2018; Bezugly *et al.* 2020), attempted crime (Bezugly *et al.* 2019) and the completed crime.

At preparation for a crime, voluntary refusal is always possible; it can be expressed both in an active or passive form. At the stage of preparing, the object of criminal law protection does not suffer damage but is put in danger only.

Speaking about voluntary refusal at the stage of attempt, it should be noted that the classification of the types of attempt as incompleting and completed has been theoretically and practically justified. An unfinished attempt will take place when the person has not completed all the actions that, in his opinion, are necessary for the criminal result to occur, and the result does not occur. At the end of the attempt, the person completes all the actions that, in his opinion, are necessary for the criminal result to occur, but the result does not occur.

In case of an incompleting attempt, voluntary refusal is possible both in the form of action and in the form of inaction. In this case, the determination of voluntary failure does not cause difficulties. However, at the stage of the completed attempt, a crime can only be voluntarily abandoned in an active form. A person, having completed everything necessary for the onset of a criminal result, must by his actions not allow the end of the crime. A person may himself influence the cause-effect relationship, or else contact the law enforcement authorities.

When there are all signs of a specific *corpus delicti* that a person wanted to commit, voluntary refusal is impossible.

Having examined the sign of the stage of criminal activity at which voluntary refusal is possible, we should note that in some cases of voluntary refusal, a person is still criminally liable. The basis of liability may be the existence of an independent *corpus delicti* in the actions of the refused person.

If a person illegally acquires weapons for murder, but subsequently refuses to kill, he is liable only within the framework of illegal acquisition and possession of weapons.

Also, liability may arise in the case when a person has caused harm to the object of criminal law protection, which is less than the originally planned harm. So, during the murder, the health of the victim may be harmed, during the theft property may be destroyed or damaged. We believe that a person should be held responsible precisely for the corpus delicti that is contained in his actions, without taking into account the crime that the person refused. It will be absolutely fair.

Special Signs of Voluntary Refusal to Commit a Crime

The general signs discussed above characterize the voluntary refusal to commit a crime. We can indicate that these signs apply to co-execution. The voluntary refusal of the organizer, instigator or accomplice is described through a set of general and special signs.

Speaking about special signs, one should note that they are determined by the nature of complicity as a whole, as well as the functional characteristic of a particular accomplice.

We should immediately distinguish between the conditions of the voluntary refusal of the organizer and the instigator and the conditions of complicity. The organizer and the instigator perform actions characterized by greater social danger than the actions of an accomplice, in connection with which a different completeness of actions for each accomplice is determined (Bezuglyy 2017). It is believed that the person who organized the commission of a crime or persuaded another person to commit a crime should prevent the onset of a criminal result. It is possible to draw a certain analogy with a voluntary refusal at the stage of a completed attempt - there can be no refusal in a passive form.

The refusal of the organizer and instigator is possible only in an active form and can be expressed in the impact on the performer in order to terminate his criminal activity; impact on causation; informing authorities about an upcoming or ongoing crime, as well as other measures. It should be noted that the actions in case of refusal of the organizer or instigator can be very diverse, and their legal regulation should be broadly interpreted. In the theory of criminal law, it is

noted that the measures taken can be very diverse, but the main thing is that they are effective (Arutyunov 2013). We believe that the main indicator of effectiveness is the absence of a completed crime in the actions of the performer.

However, the active actions of the organizer or instigator can not always lead to the absence of a criminal result. For example, the executor may not agree to stop preparing for the crime or attempted crime, the police may not have time to prevent the end of the crime. In such a situation, the release of a person from criminal liability is impossible, but it is possible to raise the question of recognizing such behavior as a mitigating circumstance.

Turning to the consideration of the conditions of voluntary refusal of an accomplice, we should note that this type of accomplice does not directly cause the executor to desire to commit a crime, but only strengthens his will. In this regard, we believe that it is reasonable to acknowledge the voluntary refusal of an accomplice in the event that he has taken all possible measures to prevent a criminal result, regardless of whether the result has occurred or not. It should be indicated that the interpretation of the term "all dependent measures" should be made according to subjective criterion. It should be noted that the term "all measures in one's power" should be interpreted according to a subjective criterion. It must be determined what the accomplice thought necessary to do to prevent the crime, because not all measures taken by the accomplice can really prevent the crime (Bezuglyy *et al.* 2018).

CONCLUSION

Summing up a brief review of the significance of voluntary refusal to commit a crime and its signs, a series of conclusions can be drawn.

The voluntary refusal to commit a crime is a necessary rule of modern and progressive criminal law. The rule implements a number of functions, namely:

- the rule is aimed at preventing harm to objects of criminal legal protection, or reducing harm due to the motivation of the person committing the crime, to leave his intents incompleated;
- the rule allows avoiding repressive measures on the part of the state to a person who has voluntary stopped the crime;

- the rule reduces the cost of the resource of the investigating authorities and completely saves the resource of the penitentiary system.

Considering the general signs of voluntary refusal, we should note that there are three of them: voluntariness, finality, and the possibility of refusal at a certain stage of criminal activity.

Voluntariness should be understood as a person's refusal to complete a crime, taken on the basis of his will and without the influence of external negative factors, when a person realizes the possibility of completing the crime.

Finality should be understood as a person's lack of intention to postpone the commission of a crime.

The possibility of refusal at a certain stage of criminal activity. At preparation for a crime, voluntary refusal is always possible; it can be expressed both in an active or passive form. In case of an incompleting attempt, voluntary refusal is possible both in the form of action and in the form of inaction. At the stage of the finished attempt, refusal is possible only in an active form; the person must by his actions prevent the completion of the crime.

The voluntary refusal of the organizer, instigator or accomplice is described through a set of general and special signs. Distinguishing special signs is due to the nature of complicity as a whole, as well as the functional characteristic of a particular accomplice. The organizer and the instigator must by their actions prevent the onset of the criminal result. Refusal in a passive form is excluded, but actions aimed at preventing crime can be different, and their list should be subject to an extensive interpretation. For an accomplice, it is necessary that he take all possible measures to prevent a criminal result, regardless of whether the result has occurred or not. Evaluation of the actions of the accomplice should be made considering his idea of the measures that are necessary to prevent a crime.

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