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## THE CRIMINAL LEGAL REGIME OF THE PREPARATORY ACTS

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### **Abstract**

*This article deals with the particular aspects of the first phase of the external period of the intentional criminal activity, the phase of preparatory acts, essentially problematic, regarding the criminal legal regime and in particular their criminalization and sanctioning.*

*In committing crimes, use of the preparatory acts had and has, not infrequently, a high frequency.*

*Criminal law theorists have called "iter criminis" the criminal activity of a person, which, like any human activity has a development in time and space. During the course of the criminal activity, several phases can be distinguished.*

*It is true that the legislator criminalizes and punishes acts that have produced a dangerous consequence, but it is no less negligible to take into account some stages that occur during the course of the crime and which, although they do not lead to dangerous consequences, are dangerous because they can contribute either to the preparation of the commission of the crime, or they can present themselves even in the form of carrying out the criminal activity, which independently of the offender's will, or due to his intervention not to produce in the end the dangerous consequence.*

*A form of committing the crime is represented by its preparation by externalizing acts, activities that ultimately contribute to the creation of favorable conditions for obtaining the dangerous consequence accepted by the offender.*

*In this context, compared to the special implications that the preparatory acts have not infrequently had in the commission of criminal acts, the clarification of their problem represents both a doctrinal contribution and a practical necessity.*

**Keywords:** *acts of preparation, crime, intention, incrimination, sanction*

### INTRODUCTION

The institution of preparatory acts is known in the conduct of the intentional crime as the first phase of the external period.

During the preparatory activity, the perpetrator procures the necessary means to commit the act.

This preparatory activity presents a multitude of characteristics, conditions of realization, forms and a lasting manifestation.

The offender can produce the necessary objects, sometimes he can use them, or even adapt existing ones, he can seek to obtain the necessary information to help him achieve a desired result or he can even draw up a plan of action.

An important feature of acts of deprivation is that they are not part of the content of the rules of criminalization.

The notion, the characteristics, the incrimination and the sanctioning of the preparatory acts determined the orientation of some explanations and the tracing of a general content, developing a scientific analysis regarding them.

In the theoretical explanations of the preparatory acts, the most general and characteristic aspects of the preparatory acts that have been in time susceptible to further developments and edifying deepening must be clarified.

The preparatory acts, as a form of the intentional crime, must be analyzed scientifically and from the point of view of the fact that it follows in time as a stage of making the criminal decision.

The act of preparation is an activity that is preceded by a psychic attitude of the man who projects in his mind the crime with its development and its consequences.

The purpose of this paper is to develop the theoretical concept of solving the problem of one of the phases of the intentional crime, namely training in criminal law, as well as to review the principles of practical application of this concept.

### I. EVOLUTION OF CRIMINAL ACTIVITY

“Criminal law is certainly a sensitive policy area, in which the differences between national systems remain substantial, for example in terms of types and levels of sanctions, as well as clarifying behavior as a crime or misdemeanor” (Mirişan, 2017, p. 12), however, a constant of criminal law in most criminal regulations is the institution I chose to present in this study: the preparatory acts.

In the view of general criminal law, the part intended for the forms of the intentional crime must clarify from objective scientific positions the evolution of the criminal activity, the stages it goes through in its development, the relationship between the different phases that distinguish in the criminal resolution, must define the intended crime, the forms it can take, as well as the evolution of scientific research on intentional criminal activity.

The doctrine of criminal law also has the task of scientifically analyzing each of these phases.

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Only after clarifying these issues has it become possible to outline an overview of the forms of intentional crime of which they are part and the preparatory acts.

Distinguished legal theorists have addressed these issues of criminal law and developed them by clarifying the aspects of the place of each stage of criminal activity in its realization over time.

The crime committed is the typical form of the crime described in the criminal law, because it involves the production of dangerous consequences for society by violating fundamental rights, without which we would not be in the field of criminal law.

In the case of intentional crimes, the active subject of the crime first conceives the criminal activity, then executes it in order to produce the consequences.

The moment when the concordance between the deed of the person and the content of the incrimination norm is realized takes place when the criminal activity has been carried out in its entirety and the result has occurred. Basically, then the criminal decision was made.

In other words, the criminal activity has reached the phase of consequences” (Nistoreanu, Boroi, 2004, p. 25).

The non-production of the socially dangerous consequences does not mean that the activities reached in the phase of the execution of the crime cannot be incriminated, and in very special cases even those that form only the preparation of the crime.

What is certain is that, in the course of the crime, two phases are distinguished:

- The internal phase, which takes place in the inner forum of the person.

In this phase, the person conceives the crime, the idea of crime, the type of crime that he would like to commit and which in its development has 3 essential moments:

- sprouting the idea of committing the crime
- own deliberation on its commission
- the date of the decision to commit the crime.

- The external phase, which, as the word says, “external” is achieved by transposing the criminal decision taken by the perpetrator and which is the last moment of the internal phase.

By moving to the external phase, the criminal judgment is expressed in the following forms:

- form of preparatory documents (preparatory),
- attempt,
- the crime committed (Pitulescu, Medeanu, 2006, p. 159).

If the internal phase of the intentional crime by making the criminal decision forms the subjective side of the crime, from which the intention emerges as a form of guilt, the external phase realizes the objective side of the crime.

Making the criminal decision and even its manifestation by word of mouth, by oral transmission, although, as I said, it realizes the subjective element of the crime, it has no criminal relevance. Only the externalization of the decision through

material activity is likely to harm the social relations protected by the criminal law (Boroi, 2006, p. 135).

Therefore, in the external phase, the criminal decision is externalized by acts of nature to highlight it, at which point it acquires interest from a legal point of view (Boroi, 2006, p. 135).

So far, criminal thinking is not a danger, a threat as long as it has not been realized in a deed.

The criminal decision and its manifestation do not attract the criminal responsibility of the one who took it even if he communicated it, because they do not correspond to the concept of crime (Boroi, 2006, p. 135).

However, when the criminal decision taken is carried out through a material activity, then it acquires criminal relevance and then the external phase of the crime is carried out.

It is the moment when the perpetrator proceeds to carry out the decision taken.

This criminal material activity can be accomplished by one or more acts and has a development over time.

It results that the external phase of the intentional crime, manifested through material activity has in its turn several forms of development:

- the activity of the person carried out in order to prepare the crime which corresponds to the *phase of the preparatory acts* and in respect of which, although it is externalized and part of the external phase of the crime, the question arises whether it is part of the objective side of the crime

- the activity of the person performed in order to carry out the criminal activity that corresponds to the *phase of the execution acts*

- the activity of the person for the full accomplishment of the physical activity and the obtaining of the dangerous result that corresponds to the phase of the *socially dangerous consequences*.

These forms of criminal activity differ from each other in relation to the moment when it is or at which its development has taken place, and which may be closer or less close to the final moment of the occurrence of the consequences that the law had in view.

Definitions of the forms of the crime were also given in the doctrine: "by the forms of the crime are meant those types or variants of the crime that differ from each other according to the stage in which they are or at which the criminal activity has stopped. (Boroi, 2006, p. 136).

The Romanian criminal law considers that the forms of human activity that can harm the protected social values are dangerous.

Under these conditions, the question arises whether all forms of intentional criminal activity have criminal relevance and can withstand the rigors of criminal law through criminalization and the application of a criminal sanction.

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## II. ACTS OF PREPARATION – FIRST PHASE OF THE EXTERNAL PERIOD OF THE CRIMINAL ACTIVITY

The first of the forms and phases of the intentional crime that is externalized is the acts of preparation.

During the preparatory activity, the perpetrator procures the means and tools that may be necessary for the commission of the act, a procurement that can be done by producing, adapting, acquiring, or obtaining information to help him.

At this stage, the perpetrator can develop a plan to commit the crime.

Practically, in the phase of preparation acts is included the entire activity of preparation of the crime preceding the execution.

It is situated in time within the “*iter criminis*”, after the criminal decision has been taken, being the first stage of its exteriorization and before the actual execution of the dangerous criminal activity through material acts susceptible to dangerous consequences.

Being carried out after the criminal decision has been taken and in the execution of the decision to commit a crime that they are preparing, it results that they can only be found for the intentional crimes.

They are not part of the criminal activity of execution, but are only likely to allow the transition to execution (Pitulescu, Medeanu, 2006, p. 161).

”According to the French professor Garraud, preparatory acts are those which do not enter or do not constitute the execution of the projected crime, but which are linked in the perpetrator's intention to this crime and which contribute or tend to contribute indirectly to its execution” (Pitulescu, Medeanu, 2006, p. 161).

It has been found in practice that in most cases, the perpetrator does not proceed to the execution of the criminal judgment before trying to ensure its success by preparing it in advance. He tries to create the most favorable conditions and means to be sure of the success of his criminal activity.

Only then, the perpetrator engages in the actual execution of the acts that characterize the material element of the crime, ie after preparing it.

We can state that the preparation for committing a crime takes place through preparatory or preparatory acts which consist of “certain acts, data acquisition activities, information or adaptation of the means or tools that will be used to commit the crime as well as creating favorable conditions for committing it” (Bulai, 1997, p. 390).

From the definition given to the training acts, their modalities can be deduced (Boroi, 2006, p. 137):

- the licit or illicit procurement of instruments or things to be used for committing the deed, making, modifying or adapting the instruments or things that will be used for committing the deed.

These are acts of material preparation.

We say that they are material because they involve performing acts that have a physical materiality, a physical existence.

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For example, if the perpetrator wants to commit a murder, he can get a gun, if he wants to commit a theft, he can make a key to break into a building.

They can also be considered acts of material training (for example: procuring a knife, a poisonous substance, a rope, a ladder, the keys to open the locks, securing the means of transport, removing obstacles, etc.) (Basarab, 1997, p. 350).

- gathering information and data on the place and time of the crime or on the victim, her lifestyle, behavior and daily schedule, or on the object or objects pursued by the offender, the possibility of appropriating and capitalizing on them .

These are acts of moral preparation.

We say that they are moral because they do not presuppose acts that have a physical materiality, a physical existence.

They consist in collecting data, information that creates favorable psychic conditions for committing the crime (Bulai, 1997, p. 390).

Preparatory acts are possible in the commission of any intentional crime.

They must meet certain conditions in order to be considered as such:

- Being encountered in intentional offenses, it follows that preparatory acts must also be carried out intentionally (Mitrache, Mitrache, 2006, p. 233), they reveal the fact that the perpetrator foresaw and pursued the production of the result for which he prepares, sometimes this undoubtedly resulting from it (drawing up a sketch for a house in which the perpetrator entered), sometimes this being equivocal, the preparatory activity can be associated the achievement of a lawful purpose (the purchase of a knife), in which case it must be established with certainty whether they were committed for the commission of the offense.

- The preparation of the crime must be done by the perpetrator is with direct intent, thus seeking to ensure the success of his illicit activity.

- The preparatory acts must be carried out for the commission of the crime (the purchase of the knife must be made in order to injure a person, obtaining information on the whereabouts of the person when the crime will be committed).

- The acts of preparation must not be part of the acts of execution, ie not be required by the content of the rule of incrimination to achieve the content of the material element of the objective side, which delimits them from attempt, otherwise one of the most controversial issues in the literature Specialized.

Thus, any activity that falls within the material element of the crime "as well as those acts that, without being part of the illicit action, are directly related to it, being directed against the object of the crime" (Zolyneak, 1992, p. 378).

### III. CHARACTERISTICS OF THE PREPARATION ACTS

The training documents have a number of characteristics:

- take place after the criminal decision has been taken;
- they can be material acts, when they materialize in a physical materiality, or moral acts when they do not materialize in a physical materiality;
- do not fall within the scope of criminal activity, are not part of the enforcement acts;

- represents an activity that precedes the execution;
- are likely to allow execution (Pitulescu, Medeanu, 2006, p. 161);
- contributes to the execution of the crime;
- creates the necessary conditions for the execution of the crime and the pursuit of the dangerous pursuit to be possible;
- have an optional character, for committing the intentional crime, its preparation not being obligatory;
- depend on the concrete way in which the perpetrator intends to commit the act and not on the way in which the incrimination norm is formulated;
- are possible in most cases, but are not mandatory;
- there are also situations in which the preparatory acts are not possible, the facts of danger being edifying in this respect (Pitulescu, Medeanu, 2006, p. 161);
- the preparation must be carried out intentionally;
- training can be carried out through a wide and varied range of activities that can be carried out in order to commit a crime in order to ensure its success;
- cannot be conceived only if the execution of the criminal judgment takes place within a certain time;
- they must be able to create favorable conditions for the commission of the offense;
- must be carried out to serve the commission of the offense;
- can be delimited in time and space;
- they presuppose a lasting manifestation;
- presuppose the existence of a period of time between the taking of the criminal judgment and enforcement in which they have effective training;
- favors the production of the result;
- do not directly endanger the social values protected by criminal law.

#### **IV. REGIME OF PREPARATION ACTS. CRIMINALIZATION AND CRIMINAL SANCTION OF THEM**

The externalized criminal activity is preceded by the psychic attitude of the person to commit the crime, because first the thought of committing the deed is formed, then the decision is made to commit the deed and then it is passed to its realization.

The criminal decision taken can be externalized:

- or by a preparation of execution, when the perpetrator makes material or moral acts of preparation;
- either directly by execution which may remain in the form of an attempt or may produce a socially dangerous consequence by committing the crime committed or exhausted.

The Romanian penal code in force does not include a definition given to the preparatory acts, it only provides a definition of the attempt, this implying the execution of the criminal intention.

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The doctrine has the task of defining the preparatory acts that have been seen as an activity of preparation for the commission of the crime by procuring tools, means and knowledge of the circumstances necessary for the commission of the crime, as an activity that precedes the execution.

The preparatory acts as a form of the external phase of the crime consist in the acts by which the realization is prepared, the concrete execution of the decision regarding the commission of the typical crime, being placed *ante infractio* (Tănăsescu, Tănăsescu, Tănăsescu, 2002, p. 257).

The question was whether they were a form of crime.

Preparatory acts (Basarab, 1997, p. 209) represents an independent form of crime that can be understood outside the content of the basic crime.

"However, independence is relative, because the meaning of the preparatory acts is fully realized only in connection with the subsequent forms and circumstances in which the legal content of the basic crimes is realized." (Tănăsescu, Tănăsescu, Tănăsescu, 2002, p. 257).

Complex discussions took place in the criminal doctrine regarding the criminalization and criminal sanctioning of preparatory acts.

The Romanian Criminal Code in force adopted the principle of non-incrimination of preparatory acts, not providing by a general provision the incrimination of these acts as a form of crime.

By way of exception, in some cases acts of preparation are criminalized as stand-alone offenses in the form of an attempt to commit a number of highly dangerous offenses, such as forgery or possession of instruments for the purpose of counterfeiting securities, in which case by committing the crime in consummated or tentative form, they will not be sanctioned separately as a competition of crimes, because they are absorbed in the committed crime.

In case of criminalization of the preparatory acts, their legal content is sufficient, in the sense that it does not need other additions (in terms of the subjective side or the objective side) (Tănăsescu, Tănăsescu, Tănăsescu, 2002, p. 258).

Therefore, the preparatory acts are not incriminated and sanctioned by the criminal legislation in Romania, except for the situation in which they represent independent crimes.

### CONCLUSIONS

Crime is an antisocial activity, unsuitable for social relations.

It is all the more serious when it is committed intentionally, that is, when the perpetrator is aware of the production of negative consequences of his actions, consequences that he wants.

In fact, the intentional crime is the most common type of crime encountered in the judicial practice of states in general.

In its development over time, as a period, it goes through certain stages, each of them being characterized by a certain degree of execution of the criminal decision.

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It is natural for the criminal law to incriminate the crimes committed, ie those for which the socially dangerous consequences provided in their basic contents or in the aggravated or attenuated contents have occurred.

There are situations in which the deed does not produce the socially dangerous consequence, remaining only in the form of decision-making, preparation (preparation) or execution.

Even if it does not produce the socially dangerous consequence, it can be incriminated and sanctioned.

Among the forms of criminal activity, particular aspects require the phase of preparatory acts, which immediately follows the internal phase manifested in the inner forum of the individual where the criminal decision-making process takes place and which reveals the criminal resolution as a result of the psychic attitude of the active subject.

Training documents do not have an express definition given by the Criminal Code.

The preparatory acts are located in time after the commission of the crime and are undertaken in order to ensure the success of the crime and to produce the dangerous consequence.

Acts of preparation can be acts of material preparation and acts of moral (intellectual) preparation.

They must meet clear conditions in order to be considered as such and have their own characteristics which distinguish them from other forms of crime.

They are found only in intentional crimes.

They are not incriminated and criminally sanctioned, except when they are independent crimes.

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