DISTINGUISHING BETWEEN VIEWS AND ROLES OF POLITICAL AND LEGAL DOCTRINES FOR DEVELOPING THE LEGAL STRUCTURE OF STAGES IN THE COMMISSION OF A CRIME

INTRODUCTION

The study of stages in the commission of a crime in scientific literature began in the 17th and 18th century. Initially, foreign scholars, mainly German lawyers (Zachariae, Luden, Mittermeier, Bar, Arnold, etc.), considered stages of committing a crime from different perspectives. Subsequently, their scientific works had a significant impact on the theory of an inchoate offense, the development of this institute in the classical criminal law of Russia in the first half of the 19th century and views of the Russian lawyers. In the early 19th century, there were not sufficient studies on the allocation of criminal intentions at various stages of committing a crime and the doctrine of stages in the commission of a crime in Russia. The first fundamental work concerned with the stages of committing a crime dates back to 1842. Professor N.V. Ratovskii’s monograph has been the only scientific book on this topic in Russia for more than 20 years (RATOVSKII, 1842). At the same time, the first general doctrine on stages of committing a crime was defined by O. Goreglyad in "The experience of forming the Russian criminal law" (1815), L.A. Tsветаев in "Outlines of the theory of laws" (1825) and G.I. Solntsev in "The Russian criminal law" (1820).

To one degree or another, the concept of an inchoate offense was touched upon in the works of S.I. Barshev, L.S. Belogriots-Kotlyarevskii, S. Budzinskii, L.E. Vladimirov, O. Goreglyad, V.V. Esipov, P.D. Kalmikov, A.F. Kistyakovskii, G.E. Kolokolov, A.N. Kruglevskii, A.V. Lokhvitskii, P. Lyakub, A.N. Orlov, S.V. Pozynshev, P.P. Pustoroslev, N.V. Ratovskii, N.D. Sergeevskii, G.I. Solntsev, L.A. Tsветаев, A. Chebyshev-Dmitriev, etc.

The analysis of numerous scientific works on an inchoate crime demonstrates a set of provisions, views and opinions, sometimes directly opposite and contradicting, including legislative norms and judicial practice. This circumstance testifies to the importance and complexity of the research subject.

This controversy around the doctrine and the institute of an inchoate crime can be exemplified by F. Schiller’s artistic and expressive statement: “In the whole history of man there is no chapter more instructive for the heart and mind than the annals of his errors. On the occasion of every great crime, a proportionally great force was in motion. If by the pale light of ordinary emotions the play of the desiring faculty is concealed, in the situation of strong passion it becomes the more striking, the more colossal, the more audible, and the acute investigator of humanity, who knows how much may be properly set down to the account of the mechanism of the ordinary freedom of the will, and how far it is allowable to reason by analogy, will be able from this source to gather much fresh experience for his psychology, and to render it applicable to moral life. The human heart is something so uniform and at the same time so compound”. Heart, will, morality, “the play of the desiring faculty” and “the pale light of ordinary emotions” are the concepts, moral categories and epithets used by F. Schiller to describe an attempt. The philosopher revealed a clear and inextricable connection between an attempt, thoughts and desires, which means sufficient subjectivism in this sphere of human life on the verge of a crime and an attempt. The concept of an attempt was characterized by S.
Budzinskii (1870, p. 27): “There is no subject in criminal law that arouses more diverse views, like an attempt”.

METHODS

While working on this article, we used the system-structural, deductive, inductive, statistical, historical, logical, comparative-legal and other methods of scientific research. Criminal law needs not only positive but also retrospective study. The latter is possible due to general developmental properties and patterns inherent in criminal law as a social phenomenon. They determine the application of appropriate historical and social methods, with amendments to specific features of the research subject. In modern legal science, no comprehensive theoretical study of any legal phenomenon can be conducted without the historical method of cognition. The scientific methods of historical and legal research are a system of interrelated principles, laws and categories based on a philosophical worldview and the related means (methods), as well as procedures for cognizing the development of legal phenomena. On the one hand, historical and scientific research develops through embracing new data and entering previously unexplored areas of the history of science. On the other hand, its genesis is conditioned by revealing the internal connections and causes of historical events.

Indeed, changes in criminal law are inevitably caused by changes in the social sphere that should be regulated by law. Moreover, these changes are irreversible. The law of the past cannot be applied to the current social relations, no matter how perfect it may seem. On the contrary, the historical development of criminal law is determined by the legal acts inherent in its essence and their interpretation by new generations, the application of knowledge and achievements obtained through the study and assessment of historical experience (ALIMOVA et al., 2020).

RESULTS

One of the most significant issues of the teaching about the stages of committing a crime is the definition of stages in the development of criminal activity. P. Lyakub (1866, p. 5) noted, “…the views of criminologists on this issue varied to the point of improbability: what is clear to one is completely refuted by the other, and vice versa”.

Describing works of foreign scholars, A. Chebyshev-Dmitriev (1866, p. 28) remarked, “…this issue is among the most controversial in the science of criminal law, despite the fact that it has long been the subject of the most thorough development”. According to the author, the reason for this phenomenon is the very essence of the issue. The grounds for punishing an attempt are closely related to the principle of criminal punishment in general, and the inner aspect outweighs the external one. “There are very few points of support for an external assessment of a fact and it is necessary to disclose the concept of criminal activity to give it at least an approximately correct assessment” (CHEBYSHEV-DMITRIEV, 1866, p. 46).

To prove the inconsistency and extensive scope of the research subject, it can be noted that the Russian scholars failed to establish uniformity in the conceptual framework and referred to the stages of a crime as “periods”, “phases”, “degrees” or “steps” (NAZARENKO, SITNIKOVA, 2003; IVANOV, 1992; KUZNETSOVA, 1999) depending on a subjective viewpoint.

O. Goreglyad (1815) and L.A. Tsvetaev (1825) in their early works discussed the stages of committing a crime but they did not offer a consistent approach and did not provide clear concepts. Without defining the stages, they only mentioned the development of a crime, its internal and external stages. Subsequently, S.I. Barshev (1840) distinguished between a committed (completed) criminal intent and an attempt. Two years later, N.V. Ratovskii determined three stages: 1) “internal actions” (a series of intents “hidden in the depths of the human heart”, “from the first thought to firm determination”; 2) an attempt; 3) a committed crime.

According to A.M. Bogdanovskii (1857), a crime is an action that inflicts only external material harm, i.e. if there is no harm, there is no crime and punishment. Thus, various stages are determined based on the objective aspect of a crime (the development of a criminal act). N.S. Vlasev (1860) adhered to the opposite position and believed that the subjective aspect of a
crime deprived the concept of a "guided dashing person" from certain moments in the implementation of one's criminal will. He emphasized the subjective aspect of a crime (the development of criminal intent).

Thus, the Russian scholars made the first attempts to define and differentiate the systematic development of criminal activity. However, their opinions (including legal assessments) had their differences and sometimes even diametrical oppositions. Since the 1860s, the theory of stages in the commission of a crime had been studied more actively in Russian criminal law. Legal scholars published their monographs, lecture courses and textbooks of the general part of criminal law.

V.D. Spasovich proposed the following four stages of a crime: 1. the completed implementation of one's evil will; 2. an attempt; 3. preparation; 4. the discovery of intent. The scholar examined the development of criminal intent in the opposite direction, i.e. from a completed crime to intent to commit it. According to V.D. Spasovich (1863, p. 45), "the measure of moral evil weakens as one's intention diminishes and finally turns so vague that criminal prosecution becomes impossible and inexpedient". To justify his classification, V.D. Spasovich highlighted the objective (action and its consequences) and the subjective aspects (will, knowledge), which are interconnected as a "spirit" and "body". At the same time, the "gravity of a crime" falls on the "evil will" (intent), therefore two types of relations can be distinguished between the will and the deed: the commission of a crime and an attempt (SPASOVICH, 1863).

A. Chebyshev-Dmitriev subdivided crimes into completed (the commission of a crime) and inchoate (preparation and an attempt). In addition, the scholar revealed the stages of criminal intention consistently realized by the criminal: 1) intent arising from the feeling of a certain need, prompting motive or criminal goal, whose achievement should serve as a means to satisfy the need; 2) the offender’s activity aimed at the implementation of the initial criminal intent, i.e. the preparation of methods to violate the existing law, the commission and execution of the main act, the realization of the above-mentioned intention, namely, the violation of law and achievement of the crime objective; 3) other actions and consequences that the criminal did not foresee, neglected or did not plan (CHEBYSHEV-DMITRIEV, 1866).

P. Lyakub emphasized preparation, an attempt and completed crime. He described all the stages in sufficient detail but did not dwell on their inner relationships (LYAKUB, 1866). P.D. Kalmykov (1866) wrote about the following stages in the commission of a crime and referred to them as "periods": 1. the expression of one's intent; 2. preparation; 3. an attempt; 4. the commission of a crime. While considering the stages of committing a crime, A.N. Orlov (1868) divided all the crimes into completed and inchoate.

S. Budzinski (1870) studied stages in the commission of a crime and called them moments of developing one’s will or stages of developing one’s determination in the sphere of action. They were as follows: 1. the verbal expression of one’s determination; 2. preparation; 3. implementation (an attempt); 4. the commission of a crime as a completed external form that includes the other stages of such an act.

A.V. Lokhvitskii (1867) called crime stages the stages of manifesting the criminal will and singled them out depending on the "phases of different criminal will": 1. a thought; 2. determination; 3. preparation; 4. an attempt. The author noticed that there were much more phases but law could not distinguish them.

L.S. Belogrits-Kotlyarevskii determined the following stages of the implementation of a criminal act: 1. the discovery of intent; 2. preparation; 3. an attempt. Moreover, the scholar proved an inextricable connection between will and action since the guilty will passes from the sphere of thought into the real world through an action. "These two elements (will and action) are in the same relationship as content and form, spirit and body" (BELOGRITS-KOTLYAREVSKII, 1903, p. 75).

N.S. Tagantsev’s theory of three criminal wills had a significant impact on the concept of stages in the commission of a crime (NAZARENKO, SITNIKOVA, 2003). The scholar identified three steps: 1. the will discovered; 2. the will being implemented; 3. the will fulfilled (TAGANTSEV, 1994).
Thus, scientific views of the 19th century on classifying the stages of committing a crime were different in terms of definitions, concepts, developmental directions of criminal activity, distinctive criteria and their number.

**DISCUSSION**

The "preparation" term originated in Russian criminal law in the first half of the 19th century. The Russian legal science defined it in different ways: the discovery of intent, a part of an attempt or an independent criminal category. In the doctrine of the Russian criminal law, preparation was initially defined as a special type of an attempt, i.e. the so-called remote or removed attempt (Tittmann, Feuerbach, etc.) (LYAKUB, 1866). Subsequently, this viewpoint was perceived and declared in the works of O. Goreglyad (1815) (he wrote about preparation only within the framework of an immediate or remote attempt; the "preparation" term did not have an independent meaning; preparatory actions were mentioned in relation to the main crime for describing a remote attempt), G.I. Solntsev (1820) (a remote attempt denotes a situation "when someone takes only preparatory actions to commit a crime") and N.D. Sergievskii (1900). This understanding of preparation contradicts the German legal science that laid the basis for the doctrine of an inchoate crime. According to the position of Henke and Mittermeier, illegal actions are not only planned (the preparation of crime means) but also begin to be implemented in case of a remote attempt (LYAKUB, 1866).

However, this approach did not become widespread. Under the influence of the French law in the 1920s, the Russian doctrine of criminal law and current legislation referred preparatory actions to the discovery of intent rather than its implementation (TAGANTSEV, 2001).

According to N.V. Ratovskii (1842, p. 26), preparation is "actions by which criminals put themselves in a position in which they could commit a crime without further preparations" (in particular, waiting for the moment to commit a crime, looking out for a suitable area, supplying themselves with tools for committing a crime, etc.). The same position was supported by A.F. Kistyakovskii (1875) since there were no significant differences in concepts and approaches.

P. Lyakub consistently substantiated his position regarding the content of preparation and its difference from an attempt. The scholar claimed that "preparation should be understood as the totality of those or other means that seem necessary for a person planning to commit a crime to achieve the goal" (LYAKUB, 1866, p. 15). P. Lyakub attributed the preparation of weapons, gunpowder, poison, crowbars, counterfeit keys, etc. to preparatory actions. P. Lyakub logically pointed out that even a remote attempt had its starting point. In support of his viewpoint, he cited the following legislative norm on an attempt: "an action by which the execution of an evil intention begins or continues" (Article 11 of the Code of Laws of the Russian Empire of 1857, Volume 15, Book 1) (LYAKUB, 1866, p. 37).

Dwelling on legal consequences for an individual, P. Lyakub showed the danger of mixing such concepts as preparation and an attempt. Preparation should be subject to criminal liability only when it poses a danger (LYAKUB, 1866). For example, it refers to state crimes since preparation for their commission is an encroachment on the violation of public order (LYAKUB, 1866).

Finally, criteria for assessing intentions can be only external and visible actions, by which one can judge the degree of evil will. An objective basis is needed for investigating such a case (LYAKUB, 1866).

S. Budzinskii provided a general definition of preparation and argued that this act aimed at allowing a crime and facilitating its execution. In his opinion, preparation does mean the beginning of crime execution and the execution or non-execution of the prepared crime depends on the criminal’s will. The scholar noted that this act was represented as preparation only when considered in relation to another act (execution). This relationship is doubtful and can be indicated only in the form of an assumption or a guess. This shows the neutrality of preparation in its external manifestation within the framework of illegality. According to S. Budzinskii, preparation can be distinguished from early execution only when they are related, but everything is rather arbitrary. If the criminal’s actions only create the possibility of committing a crime, it is preparation. If such actions are in a cause-and-effect relationship with
a socially dangerous consequence, then the crime is considered completed. The execution of a crime begins when there are clear signs of the intended crime (BUDZINSKII, 1870).

N.S. Tagantsev disclosed the content of preparatory actions. He divided such actions into three categories: 1. actions that create conditions for a crime (the acquisition and adaptation of means, obtaining information necessary for the commission of a crime, the removal of obstacles, etc.); 2. actions that create conditions for the use of proceeds of crime; 3. actions that conceal the traces of a crime and aim at avoiding criminal liability (TAGANTSEV, 1994).

The fundamental legal characteristics of preparation are its delimitation from other stages, including the discovery of intent, an attempt and, accordingly, punishment. It is worth mentioning that the need to distinguish between intent and preparation was questioned, as having no practical value because both stages of a crime were not subject to punishment. However, scholars stated the difficulty of distinguishing between preparation and the early execution of a crime, which is crucial since an attempt to commit a crime entailed criminal liability.

A. Berner (1865) named three reasons conditioning the impunity of preparation from the material and procedural perspective: 1. preparatory actions are distant in time from the beginning of execution; 2. preparatory actions do not indicate criminal intent and can be only a "passing thought" or "momentary impulse"; 3. it is often impossible to prove preparation as a crime.

N.S. Tagantsev concluded that preparation was not punishable because it was a special type of the discovery of intent. The scholar traced the transition from one stage to another through the characterization of intent as a necessary component of preparation: "By an energetic act of determination, the criminal will ceases to be an intention and becomes activity but the path that the criminal has to go before the implementation of the plan is sometimes very long". (TAGANTSEV, 1994, p. 189)

N.V. Ratovskii (1842, p. 69) stressed the correctness and fairness of non-punishable preparation: "a cunning criminal would always find a case for justification", while "the most innocent actions will be subject to some insignificant suspicion and judicial investigation". The scholar stated the need for states to develop security and preventive measures in relation to preparatory actions for committing crimes rather than punitive measures. A similar approach to preventive measures was supported by other scholars, for example, A.N. Orlov (1868).

Noting the opposite effect of punishing preparation, P.D. Kalmykov (1866) claimed that this would induce evildoers to be more careful and hurry up in implementing their plans. P. Lyakub's views on the punishment liability of preparation were based on the views of a French lawyer in Russia. To bring charges against a person, one must have material facts indicating intent to commit a crime that are absent during preparatory actions (LYAKUB, 1866).

Other scholars adhered to a similar position and acknowledged that it was difficult to judge whether a person would commit a crime or not based solely on preparatory actions. Perpetrators can always refuse to implement their malicious intent and it would be unfair to hold them accountable for such actions (BERNER, 1865).

An exception to this general rule was the great social danger of state crimes. P. Lyakub (1866) called it the right to the self-defense of state, especially if high-ranking officials committed a crime, had an obvious "malicious intent" or planned certain actions that are constituent elements of a crime. Other scholars, including N.V. Ratovskii, P.D. Kalmykov, A.F. Kistyakovskii and A.V. Lokhvitskii, adhered to this approach and focused on the doctrine of an inchoate crime.

A.V. Lokhvitskii distinguished between “important” and “unimportant” crimes based on the degree of their public danger. A person preparing the so-called “important” crime should be held liable, while the one planning an “unimportant” crime was not subject to criminal responsibility (LOKHVITSKII, 1867).

Considering the difference between preparation and an attempt in the context of punishment, S. Budzinskii (1870, p. 42) relied on the Italian doctrine and used artistic images to distinguish between these two concepts: "just as a bird standing in a nest and spreading its wings cannot be called flying, so preparation cannot be considered an attempt".
Thus, the Russian legal doctrine of criminal law of the 19th century defined preparation as an activity aimed at creating conditions for the commission of a crime. Scholars did not pay much attention to the stages of detecting intent and preparation due to their equal unpunishability. However, most of them stated that preparation should be subject to punishment in case of its social danger or if it forms an independent component of a crime.

The “attempt” term in the science of criminal law of the 19th century meant both the attempt itself and the entire scope of an inchoate crime. All the possible ways of realizing criminal intent were studied within the framework of the general “attempt” concept since they had a close connection. While highlighting one way, it is impossible to neglect the other.

It is especially difficult to determine the rules for distinguishing between the stages of preparation and an attempt. To solve this issue, it is necessary to mark the starting execution of a crime and interpret it from the objective or subjective perspective to stages in the commission of a crime, namely: the supporters of subjectivism understood the beginning of execution as the moment criminal intent was detected, while the supporters of objectivism claimed the beginning of certain actions formed the objective aspect of a crime. We cannot but agree with A.N. Orlov (1868) who noted that the most important issue in the doctrine of an attempt was the precise definition of its concept to determine it among the other stages.

In 1815, O. Goreglyad made the first attempt to define the concept of an attempt. He wrote, “An attempt occurs when someone commits or undertakes such external acts that directly or indirectly aim at committing a crime or means preparation for it” (GOREGLYAD, 1815, p. 24). Indeed, this description corresponds to the theory of stages in the commission of a crime of the 19th century, namely, an attempt should be expressed in the external world and facts of the surrounding reality given that this criminal intention would not be completed. At the same time, there is no fundamental difference between an attempt at a crime and preparation for a crime. After analyzing the sources of the criminal law of the 19th century, A.N. Orlov (1868, p. 7) noted that the concept of an attempt established in the Code of Criminal and Corrective Penalties of 1845 and the corresponding theory of criminal law "was the fruit of later science".

N.V. Ratovskii examined and interpreted the concept of an attempt:

"In general, it is an act trying to realize a known phenomenon in the external world“. In other words, there is an indication of the general concept and the obligatory external manifestation of such an act. However, the scholar revealed the stages of the so-called “internal actions” preceding the commission of an attempt: the emergence of the first thought, firm determination to produce a known phenomenon and the implementation of criminal intent in the external world. Although the first and second stages are different, N.V. Ratovskii argued that it was not so easy to distinguish between them, which is "significant for science and law". (RATOVSKII, 1842, p. 66)

Developing the above-mentioned idea about the definition of the "attempt" concept, N.V. Ratovskii (1842, p. 84) concluded that "an attempt is an external action having an evil intention to commit a crime, taken or omitted, that hinders the occurrence of phenomena relating to the concept of a completed crime according to law". N.V. Ratovskii (1842) indicated both objective and subjective aspects of a crime in this definition, as well as its illegal and incomplete nature, i.e. two main features of an attempt: a malicious intent and the objective incompleteness of a crime. P.D. Kalmykov (1866) defined an attempt as a crime started but not completed. It is noteworthy that the scholar considered an attempt as a crime, similar to the current legislation of the Russian Federation (Clause 2 of Article 29 of the Criminal Code of the Russian Federation).

P. Lyakub (1866, p. 64) wrote, "An attempt to commit a crime has an external criminal impact that aims at completing such a crime but the latter did not occur due to some unforeseen circumstances". After considering this definition, we have determined the following features of an attempt: an action that manifested itself in the outside world; an illegal nature; focus on committing a completed crime; a crime was not brought to an end due to some circumstances beyond the control of the guilty person. P.D. Kalmykov (1866) supplemented this list with one more feature, i.e. the beginning of execution.
S. Budzinskii (1870, p. 45) defined an attempt as "an act aimed at the implementation of criminal determination that was not completed or did not produce the results desired by the guilty person". This definition has the following features: an attempt is an act; its objective aspect has not been completed; an attempt aims at implementing criminal intent but fails to achieve its goal.

A.N. Orlov (1868, p. 9) understood an attempt as "an external action deliberately aimed at committing a certain crime, whose sole essence reveals a clear malicious intent". First of all, A.N. Orlov pointed to the external action and intent of the guilty person.

Initially, the scholar argued that criminal intent is of secondary importance to define the concept of an attempt but later he argued that the essence of an attempt expressed precisely the subjective aspect of such an act: "the moment of will, a malicious intent, its firmness and maturity during an attempt are much more important than the actual moment" (ORLOV, 1868, p. 14). A.N. Orlov connected punishability with the subjective aspect (the moment of will): "The seed and the basis of punishability is precisely the moment of will that should be recognized as primary or even supreme".

A.N. Orlov’s definition of an attempt shows not only its form but also essence. According to the scholar, an attempt should aim at committing a crime but the beginning of execution serves for the correct determination of intent and is not obligatory.

At the same time, A.N. Orlov properly determined the relationship between an attempt and socially dangerous consequences. In particular, socially dangerous consequences might occur in the course of an attempt but their absence cannot be a feature of an attempt.

In the first half of the 19th century, the concepts of preparation and an attempt were merged under the unified stage of an attempt. In the second half of the 19th century, scholars tried to separate and identify them. However, scholars continued to include preparation and other stages of the commission of a crime into the doctrine of an attempt. Therefore, an attempt was presented as a collective category of criminal law. In a general sense, the concept of an attempt was defined as a deliberate unlawful act aimed at committing a crime, and not brought to an end due to some circumstances beyond the control of the guilty person.

To study the concept of an attempt fully and comprehensively, it is necessary to consider this stage of committing a crime through objective and subjective factors, which will allow to distinguish between an attempt and preparation for a crime and enrich the doctrine of an inchoate crime. When analyzing the subjective aspect of an attempt, we should focus on the form of guilt. In this case, we agree with most scholars that an attempt is present only in intentional crimes. This circumstance was proved by the Russian legislation of that historical period. In particular, P. Lyakub believed that a would-be criminal should demonstrate firm determination (will) to commit a crime and reveal it to the outside world. If there is no will, then a person is not subject to criminal liability. The actor should determine a criminal goal and strive for it (LYAKUB, 1866).

N.V. Ratovskii (1842, p. 56) characterized the subjective aspect of an attempt and mentioned that the onset of a socially dangerous consequence "was more a matter of chance than of will" through one’s carelessness. Accordingly, it is possible to define the purpose, direction of the criminal’s will and legal consequences when intending to commit a crime since an attempt presupposes one’s desire and direction of the will towards the initial goal. Following the scholar’s logic, we can conclude that if a harmful consequence was not the offender’s goal but happened by chance, it means that the guilty person did not perform any actions indicating an attempt or preparation. L.E. Vladimirov (1889), G.E. Kolokolov (1884), A. Berner (1865), N.S. Tagantsev (1994), etc. denied the possibility of a careless attempt. Moreover, G.E. Kolokolov considered only a certain intent and did not admit the existence of an indefinite (eventual) intent. He considered it a “fantasy of criminologists” since a sane person could not be indifferent to socially dangerous consequences (1884). While studying the correspondence between the form of guilt and an attempt, S. Budzinskii mentioned that will, as a subjective element, outweighs an act, as an objective element, in the structure of an attempt. The scholar based his conclusion on the comparison of the volitional aspect and the deed given that both components are well-balanced in a completed crime (BUDZINSKII, 1870).
This viewpoint was supported by A.F. Kistyakovskii. In his opinion, an unintentional act and an attempt are incompatible and mutually exclusive concepts (KISTYAKOVSKII, 1875). A.N. Orlov (1868, p. 19) emphasized that a careless act and an attempt "mutually repelled".

Thus, most Russian scholars agreed on the possibility of committing an attempt with a deliberate form of guilt. However, it is difficult to determine the type of intent upon the commission of an attempt. N.V. Ratovskii (1842) subdivided intent (malicious intent) into a purposeful and deliberate commission of an offense, and a definite or indefinite intent. He relied on the provisions formulated by the German criminologist A. Feuerbach. In the 19th century, most forensic scientists used this classification of intents.

Disagreements were caused by the type of intent for committing an attempt. If scholars agreed on a certain intent, there was no consensus on the possibility of committing an attempt with an indefinite intent. Some authors completely denied an indefinite intent, the others often interpreted this concept in different ways and saw a dependence between the definition of an attempt and the possibility of its commission with an undefined intent. In the 19th century, lawyers did not classify intents into direct and indirect, as established in the current Criminal Code of the Russian Federation, but divided them into definite, indefinite and alternative types.

There is the following question: if an attempt is possible with an undefined intent (can have various consequences) and none of these consequences occur during the actual attempt, then what kind of an attempt would be a criminal offense? Answering this question, N.V. Ratovskii explained that means and tools of committing a crime could indicate the type of intent. When such methods were not sufficient, he proposed to legislatively establish such actions as independent elements of a crime (RATOVSKII, 1842). When solving this issue, A.N. Orlov proceeded from the definition of an indefinite intent that differed depending on the understanding of its purpose and, accordingly, its essence. He wrote,

If an indefinite intent is viewed as the direction of will, in which the criminal wants to inflict any violation or harm, the acceptance of an attempt is highly doubtful. On the contrary, if an indefinite intent is regarded as the opposition to a criminal will aimed at one specific goal, then an attempt is undoubtedly possible, both with a dolus alternativus and with a dolus eventualis. (ORLOV, 1868, p. 20).

Facing difficulties in differentiating the stages of preparation and an attempt, many scholars decided to consider the objective aspect of a crime, its typical features and criteria for the beginning of a crime (KISTYAKOVSKII, 1875). In this case, it is necessary to take into account the nature of actions consisting a crime: homogeneous or heterogeneous. Scholars noted that there was no particular difficulty in distinguishing between preparation and initiation of a crime when it consisted of homogeneous actions. The task became more difficult when the crime comprised heterogeneous actions. In such circumstances, it is difficult to determine whether the action preceding the main one is preparation or the beginning of an attempt, for example, blows during a rape or burglary during a theft.

S. Budzinskii believed that actions marked the beginning of execution if they allowed an assumption that a particular crime would be committed. Otherwise, if the starting attempt was only the beginning of the main action, then the actions preceding the main one, for example, breaking into an apartment, would be unpunishable, which, of course, would not be just and fair. According to the scholar, such preceding actions either constituted an independent element of a crime (blows during a rape) (BUDZINSKII, 1870) or were an aggravating circumstance (burglary during a theft). The Russian scholars expressed opposing views on determining the beginning of a crime or its starting point. In particular, A.F. Kistyakovskii believed that the judge should independently determine the beginning of the commission of a crime based on the circumstances of the case. The scholar proposed to legally establish “breaking into someone else’s room or getting inside through a window <…> and burglary in general” as a completed crime (KISTYAKOVSKII, 1875, p. 106).

On the contrary, N.S. Tagantsev (1994, p. 85) believed that leaving the decision on the start of a crime to the judge’s discretion “introduced a random element into the definition of an attempt, i.e. the discriminator’s ability to analyze the event under discussion”. Another
fundamental issue when qualifying an attempt, as well as determining the possibility of its commission, is the nature and structure of a criminal act as a combination of physical actions.

N.V. Ratovskii was one of the first scholars to claim that an attempt was possible only in crimes consisting of a series of interconnected physical actions (preparation and commission) and impossible in crimes committed through a single physical action. In his opinion, such crimes comprised verbal abuse (insults), threats and blasphemy since any preparation for such a crime was a mental process “inaccessible to the judge’s examination” (RATOVSKII, 1842, p. 79).

S. Budzinskii, L.V. Vladimirov, A.F. Kistyakovskii, G.E. Kolokolov, P. Lyakub and A.N. Orlov supported the above-mentioned position on the possibility of committing an attempt in certain crimes, depending on the structure of criminal offenses. They believed that three elements merged in crimes committed through one action - determination, intent and action, which excludes the commission of an attempt. Thus, S. Budzinskii (1870) believed that offenses inflicted by an action might not have the stage of an attempt if they were committed instantly. A.N. Orlov (1868) remarked on the connection between an attempt and the recognizable progressiveness of criminal activity.

However, several modern scholars disagree with N.V. Ratovskii on the issues under consideration. They argue that an attempt is possible in all crimes, provide examples of preparatory actions aimed at finding accomplices and emphasize the specific subjective perception of the victim, for example, a deaf person unable to realize and perceive the nature of an insult (GRIN, 2003). The possibility of an attempt, whose objective aspect is formed by one’s inaction ("omission" or "neglect"), is still questioned. In relation to an attempt through inaction, N.V. Ratovskii wrote that it could not exist in formally defined crimes consisting in a failure to fulfill an obligation since a person still had a temporary opportunity to fulfill the obligation.

N.V. Ratovskii described an attempt through inaction in a very specific way, i.e. by characterizing the intellectual and partly volitional moment of an indirect intent. The latter demonstrates the confusion of concepts and approximate attempts to give a legal description of an attempt in relation to various elements of a crime. P. Lyakub (1866) wrote about the impossibility of an attempt through inaction since the fulfillment of one’s intention did not begin in case of criminal inaction. A.N. Orlov (1868) and G.E. Bells (1984) adhered to a similar opinion. Due to the lack of real actions aimed at the implementation of an attempt, P. Lyakub considered it incorrect to define preparation as a remote attempt.

S. Budzinskii believed that a failure to fulfill the obligation established by law was not punishable until the expiration of a certain period, and after such a period, the crime was completed and the stage of an attempt was absent. As a rule, S. Budzinskii did not acknowledge an attempt through inaction. However, the scholar highlighted an attempt on crimes that could be committed both through action and through inaction (for example, murder). In this case, an attempt was possible upon deliberate criminal inaction aimed at an illegal goal (BUDZINSKII, 1870). While considering the concept of an attempt, the lawyers of the 19th century tried to solve the following issues: firstly, the classification of an attempt on a crime consisting of heterogeneous acts; secondly, the impossibility of an attempt on a crime committed through a single physical act; thirdly, the possibility of an attempt through inaction in materially defined crimes.

In the Russian doctrine of an inchoate crime, attempts were divided into types (degrees), depending on their proximity to a completed crime to determine a punitive measure.

O. Goreglyad was one of the first scholars to subdivide attempts and distinguish between close (strong) and remote (weak) degrees. N.V. Ratovskii adhered to the opposite position. The scholar analyzed the works of foreign criminologists, mostly German lawyers, and concluded
that it was unnecessary to define the degrees of an attempt based on its proximity to a completed crime. He noted,

if an offender crossed the border, beyond which an attempt was subject to punishment, no matter how far they went in the field of criminal activity, no matter how close an attempt came to a completed crime, the punishment would be the same, of course, if the attempt was stopped by any external obstacles Consequently, the degrees of an attempt existed only in theory and were not used in practice. (RATOVSKII, 1842, p. 55).

P. Lyakub supported this approach to the classification of attempts depending on their proximity to a completed crime. He believed that this division only confused practitioners, while theory and practice should stick together. Thus, the scholar recognized any attempt as completed and a failed attempt "was not and could not be". However, P. Lyakub (1866, p. 71) distinguished between close and remote attempts, and denied their equal punishability since attempts were qualitatively and quantitatively different and "liability for an attempt increased as it got closer to committing a crime". A. Berner (1865, p. 68) also expressed a similar judgment: "An attempt should be punished more severely as it gets closer to the end of a crime".

N.D. Sergievskii disagreed and stressed the uselessness and even impossibility of such a division of attempts. The scholar wrote, "Preliminary activity is so diverse that it cannot be represented as two types" (SERGIEVSKII, 1900, p. 98). The criminal and legal views of the 19th century on the classification of attempts slightly differed. They used similar grounds, techniques and approaches to the substantiation of attempts and their subsequent division into degrees.

In particular, P.D. Kalmykov distinguished between two main types of an attempt: initiated and completed, with many intermediary degrees, which were almost impossible to determine, according to N.D. Sergievskii. Developing the idea of attempt types, P.D. Kalmykov defined an attempt as the most distant moment from completion. When an attempt was completed, a person performed all the necessary actions for the onset of socially dangerous consequences, but the crime was not brought to an end due to some circumstances beyond their control. Attempts of the second degree posed a great social danger (KALMYKOV, 1866). S. Budzinskii discussed the classification of attempts in a different way. In his opinion, an attempt should be classified into "unfinished or interrupted (tentative conato)" and "finished (conatus perfectus) or failed".

It is worth mentioning that S. Budzinskii did not identify the concepts of a completed attempt and a failed crime, which might seem obvious from his classification of attempts. Justifying such a division, he clearly showed that a completed attempt and a failed crime were not equivalents. The concept of a failed crime was complete. Initially, a person completes a crime and, only after a certain time it becomes obvious that the intended socially dangerous consequences did not occur, it is possible to assert a failed crime (BUDZINSKII, 1870). Therefore, S. Budzinskii's classification was based on criminal consequences as objective components of an attempt and thus the manifestation of an attempt in objective reality.

Based on the definitions of a failed crime contained in the Austrian and French codes, S. Budzinskii formed his own definition of this concept. Accordingly, "a failed crime occurs when a person performed an act leading to the actual commission of a crime but there were no intended consequences due to some circumstances beyond their control". (BUDZINSKII, 1870, p. 251). S. Budzinskii (1870) clarified that the concept of a failed crime applied only to materially defined crimes, while formally defined crimes were connected with the concept of an incompletely attempt.

If we pay attention to attempt-related terms, we can see either the identification of concepts or their denied equalization. For example, A.F. Kistyakovskii (1875) did not distinguish between the concepts of a completed attempt and a failed crime. A. Berner (1865) used the "failed attempt" term and identified it with a completed attempt. A.V. Lokhvitskii (1867, p. 203) also identified these concepts and noted that the French called it a "failed crime", while the Germans preferred a "completed attempt".
As can be seen from the conceptual framework of an attempt, there is a gradual rejection of its division into close (strong) and remote (weak). Currently, there is a distinction between a completed and an unfinished attempt. At the same time, scholars often duplicate concepts and excessively differentiate criminal acts, which is possibly related to their desire to determine criteria for imposing a fair penalty. In general, they agree on the main feature of delimiting the stages of criminal activity, i.e. consequences and results, as well as the volitional element in terms of the criminal’s indifference to the non-occurrence of the intended consequences. In addition, the concept of a failed crime is common but scholars define it in different ways: as a synonym for a completed attempt or as an independent type of an attempt.

A. Chebyshev-Dmitriev’s classification of attempts was based on the Code of Criminal and Corrective Penalties of 1845 and distinguished between completed and incompleted attempts. Depending on the reasons why criminal intent was not brought to the end, attempts can be classified as interrupted for reasons beyond the criminal’s control and voluntarily abandoned (CHEBYSHEV-DMITRIEV, 1866). The concept of a futile attempt became the subject of consideration in the Russian science of criminal law in the middle 19th century. According to scholars, this issue had not been addressed until the beginning of the 19th century. The German scientist A. Feuerbach began to develop the theory of the so-called futile attempt. Accordingly, he was called the “father of new philosophy” (ORLOV, 1868, p. 18).

Among the Russian experts of that time, the initiative on this issue belonged to N.V. Ratovskii. He objectively noted that the attitude of scholars to the solution of this problem directly depended on the theories they adhered to. For example, those who supported the theory of intimidation and the theory of prevention and correction expressed the opposite views. Followers of the theory of intimidation believed that actions were subject to punishment when they were objectively dangerous. Followers of the theory of prevention and correction argued that an attempt should be punished even if the object or means of its commission were unusable (RATOVSKI, 1842).

The Russian legal literature of that period contained calls of scholars to consider issues that had direct practical and not exclusively theoretical significance. Their position was conditioned by significant discrepancies in the theory of Russian criminal law, legislation and practice. The theory of criminal law could not ensure the development of the current legislation in connection with the requirements of its time. The legal literature of the 19th century considered the issue of inappropriate means differently (both as casuistry and as practice) since it was ambiguously assessed by scholars in terms of practical significance and the need for such a comprehensive study. In particular, L.E. Vladimirov (1889, p. 58) wrote, “An obstacle of the second kind (inappropriate means) served as a grateful topic for the German forensic scientists who love to deal with casuistic issues, suitable for compiling monographs but unimportant for real-life justice”.

Earlier, M. Rudinskii (1877, p. 9) expressed the opposite opinion regarding the significance of this issue, noting that “...the doctrine of an attempt committed with inappropriate means and over an unsuitable object has not only theoretical but also a practical interest, and is not the fruit of idle scholarship”. The Russian scholars identified the following main theories on a futile attempt. According to the objective theory, the punishability of an attempt should be established only when the person’s act forms the objective element of a crime and poses a real social danger. Even A. Feuerbach wrote that there was a danger of mixing law and morality (RUDINSKII, 1877). P. Lyakub and V.S. Solovev also stated that an attempt could be called immoral, without violating legal norms and committing a crime (LYAKUB, 1866).

M. Rudinskii expressed the exact opposite opinion. He wrote that punishment for a futile attempt was imposed not for the discovery of intent, but rather for intention expressed in an external action. However, law evaluates not only the objective act of criminals but also their guilt, accordingly, an attempt evaluates immorality. When punishing a futile attempt, there is no confusion of moral and legal components: law and morality are independent but interrelated concepts (RUDINSKII, 1877).

According to S. Budzinskii (1870), an act that is not initially feasible cannot have a starting point and there can be no punishable attempt. The scholar had a negative attitude to the punished discovery of intent if there was no detected “evil” intention. From his viewpoint, it was
permissible to apply preventive measures to the guilty person: to establish police supervision, temporarily detain such a person or, at the request of the potential victim, demand additional security measures (for example, bail and surety). S. Budzinskii’s main thesis was the following call: “One cannot punish for an impossible crime and confuse punishment with repression” (BUDZINSKII, 1870, p. 112).

A.N. Orlov and M. Rudinskii criticized the above-mentioned position in their works. Each scholar proceeded from his own understanding of the “attempt” concept. They believed that if a phenomenon had no end, it might have the starting point. Assessing the opinion that there could be no starting point of an act that was impossible to complete, A.N. Orlov (1868, p. 11) claimed that it contradicted “sound logic and the rules of everyday life”. He argued that an action might not be completed due to insufficient means while having the starting point.

Further developing A.N. Orlov’s position, M. Rudinskii provided similar arguments. When considering this issue, one should proceed from the very concept of an attempt, which implies the early commission of a crime. Moreover, one should not confuse the concept of an attempt and the beginning of execution. The scholar substantiated his opinion in a very specific and ambiguous manner, giving comparative examples. The key phrase in his theory was as follows: “One can encroach on something and not start a real action, and vice versa, one can initiate an action and not encroach on anything”. Speaking about a madman who jumps to take off, we can say that he attempted to take off but there was no starting point of this action. When a crime is committed by negligence, its commission has been started but there is no attempt since it presupposes the beginning of intent (RUDINSKII, 1877).

The subjective theory presents a different understanding of an attempt, according to which an attempt to commit a crime reveals a socially dangerous intent of a person (the so-called “evil will”) and must be punished in each case. The founder of this theory is the Danish scholar H.Ch. Oersted. Subsequently, his theory was developed by the German followers and Russian lawyers, including S.I. Barshev (1840), G.E. Kolokolov (1884), A.N. Orlov (1868), N.V. Ratovskii (1842), M. Rudinskii (1877) and V.D. Spasovich (1863). Subjectivists regarded intent as the major element in the theory of an attempt, which was called the “evil will” in the terms of the 19th century. This conclusion was confirmed by V.D. Spasovich (1863, p. 94), who wrote that “the evil will was the main component of a crime”. This way the concept of a crime was defined in the legislation of developed states (SPASOVICH, 1863). According to A.N. Orlov (1868, p. 21), “an attempt is subject to punishment since it contains a criminal will, therefore it is unimportant whether an external action is objectively dangerous or not for its absolute punishability”.

A.V. Lokhvitskii approached the punishability of an attempt in a slightly different way. To recognize the punishability of preparation or an attempt, there should be a combination of objective and subjective elements. The scholar mentioned that “in the ancient world, as well as modern age and the era of robust laws, one’s will, intention and desire were almost neglected and the criminal was punished for material consequences”. Along with the development of civilization and the adoption of Christianity in Russia, the approach to an attempt and its punishment changed “because outwardly actions and rites without inner consciousness do not matter in the Christian tradition” (LOKHVITSKII, 1867, p. 245). M. Rudinskii expressed a similar opinion about an attempt and its punishment. He noted that,

it was not the objective aspect that served as the basis for the punishment of an attempt but the criminal will expressed in some action <...>. Only undeveloped peoples who do not know how to delve into the will of the criminal assess crimes objectively, i.e. by the amount of harm caused. (RUDINSKII, 1877, p. 54).

Thus, subjectivists believed that a futile attempt should be punished on a general basis. However, they distinguished between the so-called imaginary crimes and an attempt on an inappropriate object. They did not regard these offenses as crimes and claimed that an attempt could not be punishable (ORLOV, 1868). The legal literature of the 19th century contains many judgments about a futile attempt that form a mixed theory (mediating, compromise and conciliatory).
Within the theory of improper means, they can be further divided into absolutely and relatively improper. A.F. Kistyakovskii (1875) formed two groups of absolutely improper means: a) when the use of such means is the result of an error; b) when they are used intentionally. Their absolute improperness suggests that they can never, under any circumstances, lead to the onset of socially dangerous consequences. These means are chosen by a person due to extreme ignorance and superstition ("naivety and the lack of understanding"). While developing the theory of absolutely improper means of committing a crime, the scholar declared the impunity of an attempt made with the use of such means. A.F. Kistyakovskii (1875, p. 129) wrote, "To defend the punishability of such an attempt would mean to defend the punishability of one malicious intent of a dubious nature. This would mean doing more unfair and absurd than they did in the Middle Ages".

M. Rudinskii strongly disagreed with the theory of absolutely improper means and considered it theoretically untenable. In his opinion, there were no means, even applied out of superstition, which, under certain conditions, could not commit a crime, i.e. any means could be used for criminal purposes under some conditions. However, M. Rudinskii could not determine the punishability of an attempt made with the use of improper means. In general, the scholar declared the impunity of an attempt committed with the means chosen because of superstition and ignorance but made an exception for the following type of an attempt: "when such means are used not out of superstition but because the one who resorted to them knew in advance that they were valid for the given task and could implement the initial intentions". (RUDINSKII, 1877, p. 46).

P.D. Kalmykov drew attention to the insufficient relationship between the will and the external act in an attempt committed with the use of absolutely improper means. In this case, he did not regard an attempt as such and concluded that a futile attempt was not punishable. At the same time, the scholar allowed the application of certain administrative (police) measures to the guilty person, depending on the circumstances of the case (KALMYKOV, 1866).

When qualifying an attempt made with improper means, modern scholars proceed from the fact that criminal liability is excluded due to the absence of public danger of the actions being taken, therefore there is no attempt, which is objective and justified (ANISIMOV, 2003). G.E. Kolokolov expressed a judgment that differed from the views of his colleagues and drew a specific conclusion from the general rule of impunity of a futile attempt. The use of means out of superstition is often due to either a mental disorder or idiocy, i.e. the reasons that exclude the sanity of a person. Therefore, the scholar proposed to establish a “relative presumption of insanity” in relation to such a person. This presumption would require a special examination by the court in each case.

This innovation would consolidate the principle of the private presumption of insanity of a person who committed a futile attempt. G.E. Kolokolov proposed to extend the institute of the criminal’s sanity and introduce the concept of a relative presumption of insanity. If the jury recognized a person sane, the latter would be punished according to the general rules on an attempt. If a person was found insane, they would be exempted from punishment (1884). Relatively improper means are suitable but their use cannot lead to a criminal result in specific conditions due to their disproportion (for example, the dose of poison was insufficient, etc.). S. Budzinskii (1870) called a crime committed with the use of relatively improper means conditionally impossible. According to N.V. Ratovskii (1842), such means included those that in abstracto (in general) were capable of committing a crime, but in concreto (in this particular case) were insufficient or useless. L.E. Vladimirov (1889) adhered to a similar position and assumed that such an attempt should be punishable.

Disagreeing with the division of means into absolutely and relatively improper, P. Lyakub (1866, p. 47) noted the objective difficulty of such a distinction since “sugar can also bring the death closer to a person suffering from edema”. The scholar believed that a futile attempt could not be unpunishable but the penalty should be less severe due to its lesser public danger. P. Lyakub claimed that an attempt on an improper object should be punished more leniently than an attempt made with the use of improper means.

N.S. Tagantsev opposed the theory of dividing means into absolutely and relatively improper and highlighted the incorrectness of this classification. To demonstrate the inconsistency of
this theory, the scholar compared sugar and poison. That way he proved that both drugs could be equally harmful and safe, depending on specific life circumstances, which means that the division in question is conditional. N.S. Tagantsev wrote,

Most studies recognize that sugar will not be used for poisoning but any physician will claim that there are such painful conditions in which the introduction of even a small dose of sugar into the body can cause serious health disorders and even death; even the notorious example of giving a potion is not decisive since, undoubtedly, such a method can harm the nervous system. What is an insufficient remedy? The most powerful poison given in the smallest dose or in such a composition that deprives it of its harmfulness is an improper means as sugar or magnesia. (TAGANTSEV, 1994, p. 126).

During the period under review, another theory was formed considering a futile attempt from the position of selecting improper means, namely the theory of the grounds for choosing improper means. It assumed that such a choice could be accidental (made by mistake or delusion) or deliberate, which determines the punishability of a futile attempt. Under this theory, a real criminal will with a random selection of improper means is punishable upon detection. If a deliberate choice of improper means is determined by the extreme ignorance or superstition of the guilty person, such an attempt is not punishable (TAGANTSEV, 1994). Despite the variety of theories, views on the punishability of a futile attempt and the corresponding terms, the prevailing opinion was that an attempt on an improper object was impossible, therefore it should not be punished along with an attempt using the means chosen by superstition and ignorance. The issue of a futile attempt remained relevant and controversial in the Soviet period and the current doctrine of criminal law.

In the 19th century, the doctrine of criminal law established and developed the institute of a voluntary refusal to commit a crime. It should be noted that modern legislation inherited the norms and approaches of the 19th century. A voluntary refusal to commit a crime was studied with due regard to reasons for not completing the crime, the grounds for impunity and the release of the guilty person from a criminal penalty. Moreover, the moral and ethical aspects of a person’s voluntary refusal to commit a crime were considered in detail. The scholars of the 19th century identified two groups of reasons for not bringing criminal intent to an end: the unwillingness of the guilty person (internal motives: fear, repentance, etc.) and impossibility (external reasons: the presence of a witness, an insurmountable counteraction, the lack of strength, etc.). Based on the foregoing, the main thesis is as follows: an attempt voluntarily abandoned is not subject to criminal punishment, unless such an attempt forms an inchoate crime.

The pre-revolutionary scholars were unanimous in their legal assessment of the legislative norm providing for the impunity of a voluntary refusal to commit a crime. They noted that the corresponding norm was correct and useful from the perspective of criminal policy as it contributed to the completion of criminal intent. According to S. Budzinskii (1870, p. 156), “this norm was especially applicable if a person was not a hardened criminal and struggled between temptation and the voice of conscience while committing a crime”. In 1825, L.A. Tsvetaev noted that “the fact of an uncommitted crime was less important than what was left behind” (TSVETAEV, 1825, p. 44). P.D. Kalmykov determined two grounds for the impunity of a crime in case of voluntary refusal: 1) legal: a person interrupted criminal activity before the onset of socially dangerous consequences; 2) political: public forgiveness of voluntarily repentant criminals for private prevention. “If we forgive voluntarily repentant criminals, this will excite them to listen to the voice of their conscience, otherwise they, knowing that in any case, they will be subject to responsibility, will be interested in ending crimes” (KALMYKOV, 1866, p. 109). A similar approach was proposed by A. Berner (1865).

In addition, N.V. Ratovskii considered the possible release of the guilty person from criminal punishment in case of a voluntary refusal to commit a crime, i.e. a refusal for internal (moral) reasons, including remorse, a fear of punishment, etc. In this case, the relevant decision depends on a certain theory of punishment that a scholar adheres to.
Thus, N.V. Ratovskii linked release from punishment upon a voluntary refusal and the theory of punishment in the doctrine of criminal law. In particular, supporters of the theory of intimidation, correction and prevention insisted on release from punishment in case of a voluntary refusal. On the contrary, N.V. Ratovskii believed that the guilty person could not be released from criminal liability even if the latter repented because it was impossible to judge the motives for refusing to bring the crime to an end. Courts could not define certain reasons for such a refusal due to their subjectivity, perhaps there might be some objective external obstacles that remained unknown to the court. The scholar also noted that "in case of a voluntary refusal to commit an attempt, the criminal should be punished less severely than when they were interrupted by external conditions" (RATOVSKII, 1842, p. 44). Of course, this rule applies only to the committed act that does not form an independent component of a crime. S.I. Barshev adhered to this approach on the issue of release from punishment in case of a voluntary refusal to commit a crime.

According to P. Lyakub (1866, p. 51), "...not to punish in this case would be much fairer". Nevertheless, he formulated the conditions necessary for the complete unpunishability of a person in case of a voluntary refusal: the finality of such a refusal; its obviousness; the refusal to commit a crime should be proclaimed before the start of the crime; if the crime is already in progress, the perpetrator should strive to prevent its possible socially dangerous consequences. P. Lyakub (1866) argued that the motives for refusing to commit a crime did not matter, whether it was remorse or fear of punishment. This approach was supported by most scholars.

A completely different approach was demonstrated when assessing an attempt that was interrupted due to some circumstances beyond the control of the guilty person. Scholars expressed the following unanimous opinion: such an attempt should be punished in any case and it did not matter whether there was an insurmountable obstacle or the guilty person thought that such an obstacle existed. However, punishment, in this case, should be less severe than that for a completed crime. In this regard, S. Budzinskii wrote that the Italian canonists justified the imposition of a lighter penalty for an attempt by the fact that God wanted to prevent the consequences, protect the criminal and subjected the latter to less severe punishment. Plato also expressed a similar thought that if the offender did not commit a crime, the genius had spread his patronage over the former (BUDZINSKII, 1870). Thus, the theological component was present in the doctrine of a voluntary refusal due to circumstances beyond the control of the guilty person.

G.E. Kolokolov did not admit the possibility of an inchoate crime, therefore his opinion about a voluntary refusal to commit a crime differed from the judgments of most forensic scientists who developed the Russian doctrine of criminal law. The scholar considered it impossible to commit an incompleted attempt because the very concept of an attempt presupposed the completion of one's activity. In this connection, G.E. Kolokolov regarded the acts defined as incompleted attempts as preparation for a crime.

While rejecting the generally accepted division of attempts, G.E. Kolokolov offered his own classification depending on the reason for the non-occurrence of a socially dangerous consequence:

1. The non-occurrence of socially dangerous consequences due to the circumstances that do not depend on the will of the guilty person;
2. The non-occurrence of socially dangerous consequences due to preventive actions of the victim of an attempt.

G.E. Kolokolov exemplified his idea with the commission of criminal acts in a state of passion. When a person comes to their senses, if it is still possible, they strive to immediately take measures to prevent the criminal result, which does not exclude criminal liability, although makes it less severe than that for an attempt whose criminal result was not achieved due to circumstances that did not depend on the will of the perpetrator. The scholar made the amount of punishment dependent on the "demoralization of the guilty person" (1884).

In our opinion, there is no significant difference from the generally accepted classification of attempts. Indeed, G.E. Kolokolov proceeded from the consequences of an attempt rather than
particular circumstances of a voluntary refusal. However, the indicated elements of an attempt are interrelated and interdependent. In other words, the occurrence or non-occurrence of socially dangerous consequences depends on the will of the guilty person or objective life circumstances.

CONCLUSION
The first doctrines of stages in the commission of a crime were set forth in the Russian criminal law in the first half of the 19th century. Scholars emphasized various, often contradictory, views in theory, legislation and judicial practice on inchoate crimes, and explained them by the importance, large scope and complexity of the research subject. The stages of committing a crime were defined by the pre-revolutionary Russian scholars in different ways: "periods", "phases", "degrees" or "steps." Different doctrines of crime stages began to develop in Russia in the middle of the 19th century.

The institute of an inchoate crime was first enshrined in the Code of Laws of the Russian Empire (1832) but the relevant acts significantly changed during the 19th and early 20th centuries. The analysis of legal acts of the indicated period has demonstrated that the Code of Criminal and Corrective Penalties of 1845 (with the subsequent amendments) was the most complete and clear, fully corresponding to the principles of humanism and proportionate penalties and establishing legislative norms on the stages of committing a crime. In this respect, the above-mentioned Code of 1845 surpassed the Code of Laws of the Russian Empire of 1832 and even the Penal Code of the Russian Empire of 1903.

The punishability of preparation and an attempt as a completed crime allowed to effectively fight against socially dangerous acts and suppress these encroachments. This institute of criminal law performed the task of preventing crimes in their early stages. Many scholars highlighted the preventive and protective functions of the Russian legal norms on preparation and an attempt. Being a social science, jurisprudence largely depends on the existing political regime of each state. The transformations of the last decades of the 20th century laid the basis for forming a new criminal law, free from ideology and based on the priority of universal human values. Law cannot be cognized apart from the conditions of the time it emerged and developed. Studying the genesis of a particular legal institute or norm, scholars can predict their further development and functioning.

Currently, it is still relevant to study the theory of an inchoate crime, a completed crime and a voluntary refusal to commit a crime. However, a new stage begins when the accumulated theoretical and factual materials are generalized, analyzed and given an adequate assessment. Modern scholars continue to propose new concepts, theories and draft laws aimed at eliminating the existing gaps and shortcomings. This research claims that their solutions on topical issues are not truly new and original.

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Distinguishing between views and roles of political and legal doctrines for developing the legal structure of stages in the commission of a crime

Distinção entre pontos de vista e papéis de doutrinas políticas e jurídicas para o desenvolvimento da estrutura jurídica de etapas na prática de um crime

Distinción entre las opiniones y las funciones de las doctrinas políticas y jurídicas para el desarrollo de la estructura jurídica de las etapas de la comisión de un delito

Resumo
A estrutura jurídica das etapas na prática de um crime determina o desenvolvimento sistemático da atividade criminosa, que mostra a conexão entre a vontade e a ação, e permite impor uma pena proporcional a tal crime. O artigo apresenta diferentes visões sobre o tema da pesquisa na ciência russa do direito penal, suas mudanças dependendo de abordagens, doutrinas políticas e legais, opiniões científicas, condições socioeconômicas da Rússia no século XIX. A correlação de conceitos e etapas de preparação, tentativa e um crime concluído é estudada com base em critérios objetivos e subjetivos, a legislação do período em análise, com relação até mesmo a visões opostas de muitos estudiosos.

Palavras-chave: Completo crime. Crime incipiente. Recusa voluntária de cometer um crime. Preparação. Intenção.

Abstract
The legal structure of stages in the commission of a crime determines the systematic development of criminal activity, which shows the connection between one’s will and action, and allows to impose a proportionate penalty for such a crime. The article presents different views on the research subject in the Russian science of criminal law, their changes depending on approaches, political and legal doctrines, scientific opinions, socio-economic conditions of Russia in the 19th century. The correlation of concepts and stages of preparation, attempt and a completed crime is studied based on objective and subjective criteria, the legislation of the period under review, with due regard to even opposite views of many scholars.

Keywords: Completed crime. Inchoate crime. Voluntary refusal to commit a crime. Preparation. Attempt.

Resumen
La estructura jurídica de las etapas de la comisión de un delito determina el desarrollo sistemático de la actividad delictiva, que muestra la conexión entre la voluntad y la acción de uno, y permite imponer una pena proporcional para ese delito. El artículo presenta diferentes puntos de vista sobre el tema de la investigación en la ciencia rusa del derecho penal, sus cambios dependiendo de los enfoques, doctrinas políticas y legales, opiniones científicas, condiciones socioeconómicas de Rusia en el siglo 19. La correlación de conceptos y etapas de preparación, tentativa y consumación del delito se estudia sobre la base de criterios objetivos y subjetivos, la legislación del período que se examina, teniendo debidamente en cuenta incluso las opiniones opuestas de muchos estudiosos.

Palabras-clave: Crimen consumado. Crimen incipiente. Negativa voluntaria a cometer un delito. Preparación. Intención.