INTRODUCTION

Criminal law requires not only positive but also retrospective research. The latter is possible due to general properties and patterns typical of criminal law as a social phenomenon, which determines the appropriate methods of historical and social research and amends them only in relation to the specifics of the subject matter under consideration.

The treaty of Prince Igor with the Greeks can be attributed to the first legal monuments influenced by Roman law. The same can be said about the Treaty of Prince Oleg with the Greeks. The latter was signed by Prince Oleg and Byzantine emperors Leo and Alexander in 911. The second document was concluded between Prince Igor and Greek kings Leon and Alexander in 945 and had a similar structure but with more details (VLADIMIRSKII-BUDANOV, 1907, p. 90-94). Both treaties mostly contain rules related to criminal law and criminal proceedings. They establish responsibility for various crimes: murder, theft, the infliction of harm with a sword or other objects, robbery, looting, kidnapping and misprision of escaped slaves.

The 18th century saw the first studies and legal assessments of the ancient sources of Russian law. In the 19th century, scholars initiated the fundamental studies of the Old Russian legislation. In 1756, Strube de Pyrmont became one of the first to notice the incorporation of the Norman-Byzantine legislation into the above-mentioned treaties. N.M. Karamzin, M.P. Pogodin and A.L. Schletser adhered to a similar viewpoint. However, the Russian legal literature did not provide common opinions and scientific viewpoints differed significantly. In particular, I.F.G. Evers (1835) substantiated the originality of the Old Russian law and stated that legal norms reflected "exclusively the Russian (Scandinavian-Germanic) law and partly Byzantine law" (p. 175).

M.F. Vladimirski-Budanov (1907) claimed that the treaties concluded between Russia and Byzantium contained the norms of “mixed” or “compromise law”, i.e. the essence of their contracts was neither purely Russian nor Byzantine since they were drawn up by the contracting parties to adjust the Russian conventional law with the Byzantine cultural law (VLADIMIRSKII-BUDANOV, 1907, p. 92). Assessing these contracts, the scholar stated that they mostly comprised norms of the Russian conventional law. The author’s position and logic were based on the role and legal agreements with the Greeks as legal monuments and proceeded from the contractual nature of documents as bilateral agreements. The influence of the East Roman law on such treaties was revealed and proved by Professor V.I. Sergeevich who believed that a contract included the so-called “Greek law”. The scholar wrote that the meaning of treaties as monuments of law came down to the fact that they provided "a new law imbued with Greek concepts". A different opinion was expressed by M. Shangin. He commented on the Russian-Greek treaties of 945 and found norms of exclusively Byzantine law.

The impact of Byzantine law manifested itself in a changing view on crimes: the subjective and moral approach common to the Russian Truth was replaced with the objective-legal one. During the period of the Russian Truth, mental elements of the crime were prioritized. On the contrary, Byzantine law paid more attention to facts of the crime (external aspects, i.e. a criminal
action) (CHEBYSHEV-DMITRIEV, 1862, p. 125). According to A.M. Bogdanovskii, the development of true concepts of crime and punishment in ancient Russia was influenced on the one hand, by the Greco-Roman law (Kormchaia Book) and the Byzantine and Christian concepts of church and clergy, and on the other hand, by legal books of Western Russia (Statutes).

A.M. Bogdanovskii (1857) emphasized that the Christian and Byzantine concepts had a real impact on Russian law when the Russian society reached a certain level of its development and could perceive such concepts (BOGDANOVSKI, 1857, p. 4). Thus, A.M. Bogdanovskii revealed several factors influencing Russian law and denied that it had borrowed any constructs from the German law in its ancient history despite their similar legal phenomena and institutions. In his opinion, this circumstance gives a pause for thought but is easily explained by the unique development of Russian legal life (BOGDANOVSKI, 1857, p. 4).

**METHODS**

The above-mentioned viewpoints reflect three main concepts of the 19th century that characterize the influence of Roman law on Russian legislation.

1) The independent development of the Russian legislation (M.M. Speranskii, S.A. Muromtsev and F. Leontovich). According to S.A. Muromtsev (1875, p. 182), the Russian legal system formed and developed irrespective of Roman law.

2) The derivative nature of Russian law, i.e. Russian law derived from Roman law and is based on the Roman and Byzantine traditions (K.D. Kavelin) (SHERSHENEVICH, 1893, p. 238).

3) The borrowing of certain institutions and concepts of Roman law in certain periods of the Russian legal development (N.L. Duvernois, A.M. Gulyaev and N. Rozhdestvenskii) (DUVERNOIS, 1872).

**RESULTS**

During the functioning of the Russian Truth (11-13 centuries), criminal law distinguished between an endeavor and complete crime, accordingly, different types of punishment for them. The Russian Truth considered an endeavor as an action that began but did not achieve its goal, while a complete crime required criminal consciousness to turn into a real action causing harm. Since the dogma of the Russian criminal law of that time was not further developed, the stage of endeavors was described in the disposition of crimes against a person. An example of a crime against a person is a blow with a sword. It was regarded as a complete crime if a person actually stroke the opponent with a sword and was punished with a fine of three hryvnias. “If someone takes out a sword but does not strike, then should pay one hryvnia” (Chapter 20). It means that an endeavor was punished three times fewer than a complete crime.

Considering an attempt to commit a property crime, the Russian Truth does not determine this stage, i.e. it seems to be unpunishable. The thief detained while trying to commit theft could be killed on site or brought for a trial to the prince’s court. Thus, the imposition of punishment was based on objective factors, including the time a criminal act was committed. The volitional aspect was expressed in the imposition of punishment for an incomplete crime. Subsequently, the criminal law of Muscovite Russia adopted the doctrine of the degrees (stages) of implementing a criminal intent, which can be attributed to the least developed spheres. Before the Council Code of 1649, the Old Russian law had not acknowledged the stages of committing crimes. Among other things, the influence of the Greco-Roman sources (reception) on the criminal laws contained in the Council Code of 1649 was reflected in the doctrine of endeavors.

The Council Code of 1649 classifies endeavors depending on the types of crimes, in particular, crimes against a person (murder; Article 8, Chapter 12) or state (Article 1, Chapter 2). Moreover, the concept of endeavors is based on the subjective criterion of guilt, namely, an intent and guilty intent expressed in any preparatory actions taken from the outside. There is an intent against the life and health of the sovereign that is punished with death, for example, “if someone by any intent proceeds to think up an evil deed against the sovereign’s well-being, [...] punish such a person with death” (Article 1, Chapter 2).
DISCUSSION

It should be noted that there are ambiguous and controversial assessments of Article 1 of the Council Code of 1649 in the Russian historiography in terms of punishing a guilty intent. According to V.I. Sergeevich (1903), “a guilty intent against the life and health of the sovereign had exactly the same legal consequences as the very act committed” (p. 124). On the contrary, H.H. Thalberg (1912) believed that Article 1 did not provide for a guilty intent but rather an intent complicated by preparatory actions and did not punish verbal threats against the sovereign with death (p. 63-64).

At the same time, there is a common opinion regarding a guilty intent against the life and health of the sovereign (ABRAMOVICH et al., 1987, p. 140). A guilty intent in the Council Code of 1649 was qualified as a political deed, therefore it was punished with death and expressed either verbally or by the initial preparatory actions. According to notes on the original scroll, the main source of the Council Code was the Statutes of Lithuania in the 3rd edition (1588), namely, Part One (Chapter 2-9), Chapter 20 and fragmentary Chapter 10 (EPIFANOV, 1961; CHERNOV, 1958, 1963). The formulations of state crimes against the life and health of the sovereign were borrowed from these Statutes, which is proved by a comparative analysis of both documents and a list of marks on the margins of this scroll.

The influence of Byzantine law on the Council Code of 1649 in terms of criminal law regulation was considered in V. Linovskii’s work “The study of the sources of criminal law contained in the Code of Tsar Alexei Mikhailovich” (LINOVSKII, 1847). The author was careful in assessing the impact of the Greco-Roman law and limited its significance for the Council Code of 1649. According to V. Linovskii, Byzantine law influenced the Council Code of 1649 through the punishment system determining the internal relationship between crime and punishment according to formal retaliation, the division of crimes into public and private, the introduction of mutilation as a penalty, a formal view of the crime.

The Council Code of 1649 mentioned various degrees of implementing an intent depending on a particular action, including an intent and the so-called guilty intent combined with any criminal act and expressed in it. This was typical of complex crimes requiring long preparation and consisting of several acts: “they wanted to make money but did not make it”, give them an inch and they will take a mile (Decree of September 8, 1661). There was a correlation between the socio-political conditions of that period and legal life on the amount of punishment, in particular, the intent of a slave person on the life of their master was punished on a par with an attempt at self-harm, i.e. cutting off a hand (Article 22, Chapter 8).

The Council Code of 1649 referred to the concept of a threat as an attempt, i.e. the threat of arson led to the clarification of the circumstances and the surrender of the guilty person on bail, and in case of a fire, the threatened person was tortured but did not receive satisfaction for the torment after acquittal (Article 202, Chapter 10). The Statutes of Lithuania determined this provision. A person without an estate was immediately punished with imprisonment for a threat of homicide. At the same time, a person with an estate was inflicted with a “commandment”, i.e. an additional punishment in the form of a threat opposed to the initial threat only if such a person committed a crime that did not reach the goal, for example, wounded and did not kill the victim. However, there is no distinction between a failed crime and an attempted murder. In some cases, an attempt to commit a crime is punished less severely than the commission itself (a complete crime). According to Chapter 1 Article 5, “if [the assailant] wounds someone, but does not kill him: inflict on him a beating [with the knout] in the market places without mercy, cast him in prison for a month” (SOBORNOE ULOZHENIE, 1649).

For the first time, the Military Articles of 1715 distinguished between complete and incomplete crimes but did not elaborate preparation and endeavors. A guilty intent against the sovereign was punished on a par with the commission of a crime, which was clearly described in the document: “although the action was not committed, there was will and intention”. This approach was actively used in law enforcement in the first half of the 18th century. On the contrary, the order excluded the punishability of a guilty intent, including in relation to political crimes: “laws are not obliged to punish anything other than external actions”. According to Catherine II, laws cannot punish intentions. Moreover, an action is required to “express the will
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striving to commit a crime”. Within the order, the will manifested in a criminal act is characterized as evil. It arises under the influence of passions and can be tamed with the mind.

According to Article 201 of the Order, the action that caused a crime is not unpunishable but such a penalty is softer than the one established for a complete crime. The text distinguished between an endeavor and a complete crime based on the two-stage realization of one’s will. While analyzing the external manifestation of human will in the form of an action as a crime component, Catherine II classified such actions into “the will striving to commit a crime”, “the action that initiates a crime” and “the action that states the fact of a crime”. In this regard, the order prescribed “to make punishment more severe for a complete crime so that a person who began some atrocity can be given an incentive to stop doing that”. It motivated the private prevention of crimes.

Describing various stages of attempts that were unfinished due to external obstacles, the Military Articles of 1715 established equal punishment for endeavors and complete crimes, except for certain crimes. For example, the disposition of rape was as follows: “the rape of a woman that started but was left unfinished is punished upon consideration”, i.e. without any explanation why it was not over (Article 167). Here is the disposition of theft: “if a thief is caught, scared off or interrupted, he should be punished with a rod” (Article 185). The Code of Civil Laws of the Russian Empire of 1832 (SVOD ZAKONOV ROSSIISKOI IMPERII, 1832) (as amended in 1842) replaced the Military Articles of Peter the Great but preserved legal norms on an incomplete crime, the stages of committing a crime, attempted murder, an intent, a complete crime and the punishability of an incomplete crime. Article 7 of the Code of Laws of 1832 established three stages of committing a deliberate crime: an intent, attempt and complete crime.

Moreover, it is essential that an intent was understood not as a guilty intent but as an intent discovered through one or another action (Article 8 of the Code of Laws of 1832). A whole article also covered an attempt that was understood as an intent discovered through an action and having criminal consequences (Article 9 of the Code of Laws of 1832). The onset of consequences is obligatory and distinguishes between intent-related and attempt-related actions. The legislator noted that the criminal consequences of an attempt did not occur if the criminal voluntarily refused to complete the crime or it was not completed for objective reasons beyond their control.

Under Article 10 of the Code of Laws of 1832, a complete crime was defined as a crime committed “according to the initial intent and having the assumed harm”. After considering this concept and the wording of a complete crime, we have suggested that the legislator included preparatory actions in the stage of an attempt and proceeded from the deliberate nature of guilt, as well as materially defined crimes with the compulsory infliction of harm as an unlawful result of such crimes. Therefore, formally defined crimes were not influenced by the above-mentioned Code of Laws. As for the punishability of an incomplete crime, the Code of Laws of 1832 provided a lesser penalty for such a crime and stipulated that an attempt voluntarily abandoned, as well as actions preceding the attempt but not posing a public danger, should be punished through softer measures (Article 115 (Article 126 as revised in 1842), (Article 117 (Article 128 as revised in 1842) (SVOD ZAKONOV ROSSIISKOI IMPERII, 1842). In addition, an attempt forming an independent component of a crime is subject to the punishment established by law for the commission of a complete crime (Article 116 (Article 127 as revised in 1842).

While comparing the theory of criminal law and the legislation of the first half of the 19th century, we have concluded that most legislative norms reflected the views on the criminal law of that period in the development of the Russian criminal law. On August 15, 1845, the Criminal and Correctional Punishments Code was adopted (entered into force on May 1, 1846) (ULOZHENIE O NAKAZANIYAKH UGOLOVNYKH I ISPRAVITELNYKH, 1845). The document had been developed for four years under the active involvement of Emperor Nicholas I. A lot of work was done to systematize the laws of the Russian Empire ensuring rights and security, which the Emperor himself called “the main subject of desires and concerns” (ULOZHENIE O NAKAZANIYAKH UGOLOVNYKH I ISPRAVITELNYKH, 1845, p. 2, 25).
In comparison with the Code of Laws of 1832, legal norms on the stages of committing a crime in the Criminal and Correctional Punishments Code are more developed and specified, as well as have complete formulations. Furthermore, it had overcome internal contradictions of articles providing for the punishability of a criminal attempt. Thus, Article 8 of the Code of 1845 fixed the following stages of committing a crime: a clear intent, preparation for committing a crime, attempted murder and complete crime.

Article 9 of the Code of 1845 described more clearly and in detail the concept of an intent and its external expression. A typical feature of intents was an expression of intention to commit a crime in the form of threats, boasting or an offer to commit a crime, i.e. verbally. Under the rule set out in Article 117 of the Code of 1845, an intent to commit a crime was subject to punishment only if it was discovered in one of the following forms: a verbal expression, written expression or realization through an action. One’s intent to commit a crime was punished in cases directly established by law and the chosen punishment depended on the category of the crime.

Article 97 of the Code of 1845 established that punishment was imposed only if a criminal intent, preparation for committing a crime, an attempt on it, a complete crime or misconduct were undoubtedly proven and imputed to the defendant. The life, health and honor of the Emperor were subject to special protection, which was reflected in Article 263 of the Code of 1845. There was criminal liability for any intent to overthrow the sovereign, deprive their liberty, limit the power or use violent actions against the Emperor and all their family members, primarily the heir to the throne and the Emperor’s wife. These attempts were punished with the deprivation of all property rights and the death penalty.

An intent to commit this crime could be revealed through an oral or written expression of will, the presence of accomplices, the preparation of a conspiracy or participation in it, the organization of a criminal group or involvement into it, and any other way. In this case, there was no difference between the type and amount of punishment depending on the stage of the crime. The legislator was indifferent to such circumstances due to the special state importance of the victim of an encroachment, namely, the life, health, honor and freedom of the sovereign, the fundamental rights of the Emperor and all members of the Imperial Family. Such a disposition as "any malicious intent and criminal action against the life, health or honor of the Sovereign Emperor and any intent..." indicates the imposition of punishment for an intent and preparation, an attempt and a complete crime regardless of the stage of the crime. Other accomplices were also punished together with facilitating agents and perpetrators.

The compilation of written or printed essays or images aimed at inciting disrespect for state power, personal qualities of the monarch and the existing government was punished like an intent if their intentional distribution was not proven. These actions were not regarded as preparation for a crime and entailed a penalty in the form of imprisonment for a term of two to four years with the deprivation of certain rights and benefits. However, those persons who were guilty of raising a rebellion against the supreme power or just expressing an intent to overthrow the government or a part of it were also sentenced to the deprivation of all property rights of state and death. The legislator’s approach to determining punitive measures in relation to crimes against state power for accomplices and non-informants remained the same. If a criminal intent was revealed but did not reach another stage, an alternative punishment was imposed either in the form of the deprivation of all property rights and banishment, condemning to hard labor or the mines for a term of 12 to 15 years, or in the form of imprisonment for a term of 10 to 12 years, and corporal punishment.

There was also a penalty for the detection of an intent to treason and the compilation of letters or other essays inciting opposition or resistance to public authorities (without intentional dissemination). In addition to detection, an intent became punishable if it formed an independent component of a crime, for example, a threat (ULOZHENIE O NAKAZANIYAKH UGOLOVNYKH I ISPRAVITELNYKH, 1845). According to comments to Article 115 of the Code of 1845 (as amended in 1864), an endeavor with the use of unsuitable means was qualified as a criminal intent, which thereby contradicted Article 117 providing an exhaustive list of punishable intents, for example, a criminal intent against the Emperor. These comments to Article 115 criminalize a failed assassination attempt. Under a special provision of Article 117,
an attempt with the use of absolutely unsuitable means, chosen out of ignorance or superstition, should not be legally punished. However, legal scholars of that period rightly noted that the Russian legislation lagged far behind the generally accepted theories of law in this respect. Within the framework of the Code of 1845, the detection of an intent formed both an independent component of a crime and the stages of committing a special category of crimes against state power implying various punitive measures up to a death penalty.

Article 10 of the Code of 1845 provides a simple yet concise concept of preparation: "the search for or adaptation of means for committing a crime". Later this concept was supplemented with Article 1928 and Article 2111 of the Code of 1845, where preparation included "the adaptation of the materials necessary for that and all the measures taken to commit, for example, a murder". Thus, the Code of 1845 regards preparatory actions as those performed by a person to bring the chosen means into a suitable state (materials and tools) for committing a crime. In other words, the legislator disclosed the concept of preparation but did not provide an exhaustive list of preparatory actions since they objectively do not exist due to a variety of factual circumstances.

Such means were recognized as objects of the outside world used to commit a criminal act. The acquisition or adaptation of any items for the commission of a crime without their use in its execution was not covered by the concept of a crime. The actions of a criminal like returning to a crime scene, waiting in ambush, etc. could be considered preparation (TAGANTSEV, 2001, p. 535). The legislator tried to distinguish between the stages of preparation and attempted murder, as well as to encompass all the actions of a person intending to commit a crime using criminal prohibition. It is worth mentioning a requirement of the Code of 1845 on the means of committing a crime, namely, an indication of the criminal purpose of using the above-mentioned means. The Code of 1845 provides responsibility for planning a crime. Punishment for preparation could be established only in cases directly specified by the relevant law, or when the nature of preparatory actions contradicted the law. The acquisition or use of the means involved in crime preparation could form components of another crime.

Article 118 of the Code of 1845 established the following qualifying circumstances of preparation: 1. illegal means of a crime; 2. the danger of acquiring means of committing a crime for at least one person. The Code of 1845 supported the idea of punishing preparation for a crime and extended the list of preparatory actions. During the period from 1845 to 1879, the number of articles indicating the punishment of preparatory actions doubled, which emphasized the importance of suppressing a crime even at the stage of its preparation. Thus, the Code of 1845 recognized the public danger of preparation for committing a crime.

However, the punishment for preparation was always softer than that for attempted murder or a complete crime. At the same time, an attempt was punishable only when it was prevented due to circumstances beyond the control of the offender. Borrowed from the European legislation, the "humane" practice of imposing a softer punishment for preparation than for a complete crime had some exceptions. For example, the death penalty was established for the preparation of certain crimes against statehood (Article 242 and Article 249 of the Code of 1845).

In conformity with the Code of 1845, preparatory actions for some crimes were considered equivalent to complete crimes, including crimes against the Emperor and members of the Imperial Family (Article 264), a revolt against the supreme power (Article 271), counterfeiting coins and banknotes (Article 591), a murder (Article 1928) and arson (Article 2111). The rule on crime preparation was further developed in the Criminal and Correctional Punishments Code supplemented with explanatory comments on judicial decisions of the Cassation Department of the Ruling Senate in the seventh revised and enlarged edition of 1879 (ULOZHENIE O NAKAZANIIYAKH UGOLOVNYKH I ISPRAVITELNYKH, 1879). Provisions of the general part remained the same but the list of criminal preparatory actions was expanded. These were crimes against the life of the sovereign, a revolt against public authorities, the creation of written or printed appeals, high treason, murder, money counterfeiting, the forgery of stamped papers or unauthorized resettlement.

The theory of voluntary refusal was described and consolidated in the Code of 1845. In comparison with the Code of Laws of 1832, it had been legally developed. According to Article
119 of the Code of 1845, punishment for crime preparation or an attempt to commit a crime could be imposed only for the committed crime and not for the crime conceived by the guilty person. An attempted crime was defined in Article 11 of the Code of 1845 as "any action which begins or continues the execution of an evil intention". This legal definition means that an attempt includes both facts (an action, its beginning and continuation, timeframe) and mental elements (an evil intention) of the crime. Scholars of that time positively assessed the concept of an attempt and noted that an evil intention was understood as an intent in general (both direct and indirect). Thus, A.N. Orlov believed that the concept of an attempt revealed its essence since it highlighted mental elements of the crime, which surpassed any foreign legislation.

CONCLUSION
Legal innovations of the Code of 1845 significantly affected the rules for imposing punishment for an attempted crime. According to Articles 120-122 of the Code of 1845, punishment for an attempt depended on a combination of circumstances, namely: the reasons why a crime was not completed; the proximity of an attempt to an actual crime; the degree of intent realization; a set of numerous crimes. Depending on the completeness of a crime, a penalty was imposed by one or two degrees lower than the measure established by law for a fully complete crime. If an intent was fully realized (the criminal did their best, but the crime was not completed for objective reasons), the punishment was imposed as for a complete crime.

Subsequently, Article 120 of the Code of 1845 (as revised in 1864) altered the mitigating degrees of punishment for an attempted crime. For instance, punishment for an attempt that was not ended due to circumstances beyond the control of the criminal was imposed two, three or four degrees lower than the punishment determined by criminal law for a complete crime. This legislative approach corresponded to the fundamental principles of the Russian criminal law about the impossibility of imposing equal punishment for a complete and incomplete crime (TAGANTSEV, 1875, p. 23). The degree to which punishment was reduced was determined by courts depending on the proximity of such an attempt to an end.

The Code of 1845 also established responsibility for a complete attempt. It was punished with one, two- or three-degrees lower penalties than a complete crime. In other words, there was a direct connection between a punitive measure and the completeness of a crime.

In relation to a failed attempt, the Code of 1845 (as revised in 1864) and the Criminal Code of 1903 contained only the concept of an unsuitable means which was not provided for by either the Soviet or the Russian criminal law. The issue of a failed attempt caused numerous discussions in the scientific community and different judicial proceedings due to the absence of full-fledged legislative consolidation. Various judges recognized similar acts as preparation, a completed attempt or a failed attempt (TAGANTSEV, 2001, p. 563). Based on the legislative concept of an unsuitable means and the corresponding litigation practice, it was established that insinuation, slander and incantation formed a criminal intent and were subject to punishment according to Article 123 of the Code of 1845.

The definition of a complete crime is as follows: "a crime is considered to be committed when the negative consequences occur as planned by the criminal or any other person" (Article 12 of the Code of 1845). According to the legislator, a complete crime is a committed act causing some harm or damage. N.S. Tagantsev (1994) and V.D. Spasovich noted the imperfection of this legal norm and stated that it was necessary to distinguish between intentional and unintentional evil to recognize some crime as complete. A.N. Orlov adhered to the same viewpoint: "The only regret is the inaccuracy and ambiguity of the edition which arouses doubts about the true meaning of the legislator’s will".

In addition, the Code of 1845 used two different terms to describe a complete crime: a committed crime (Article 8) and organized crime (Article 12). A. Chebyshev-Dmitriev considered this approach of the legislator as a mistake and explained that the concept of a "committed crime" cannot be equivalent to the concept of an "organized crime" because the first was more suitable for designating a crime committed by negligence rather than an intentional offense. Deliberate commission causes harm and entails the imposition of full-fledged punishment (CHEBYSHEV-DMITRIEV, 1862, p. 22).
While conducting a comparative analysis of the Code of 1845 and the Code of Laws of 1832, we have noticed a tendency to “humanize” the Russian criminal legislation and elaborate legal norms on the stages of committing a crime, the rules of punishment, work with the conceptual framework and terms. It is worth mentioning that several scientific views of the Russian criminal law were reflected in the Code of 1845. The idea about the stages of committing a crime was developed, specified and interpreted by science, criminal legislation and judicial practice.

In particular, the Code of 1845 distinguished between crime preparation and an attempt, dwelled on the concept and content of an intent (classified typical features), established a circle of crimes, an intent to commit which would be criminally punishable, and compiled a list of crimes, whose preparation is criminally punishable in the absence of qualifying circumstances characterizing facts of the crime, namely, the use of prohibited means and dangerous methods of committing a crime. The Code of 1845 divided attempts into complete and incomplete without using these particular terms but imposing different types of punishment. In the first edition, a complete attempt was punished in the same amount as a complete crime. In the edition of 1864, punishment for a complete attempt was imposed in several degrees.

Compared to the Code of Laws of 1832, the Code of 1845 used a different approach to the voluntary renunciation of a criminal purpose in terms of punishment. The legislator regulated voluntary refusal at the stages of preparation and an attempt and excluded punishment if the act committed did not become part of another crime. Even in case of a forced refusal, the punishment was less severe than for a complete crime.

A. Chebyshev-Dmitriev emphasized a significant difference in legislative decisions concerning an endeavor and a complete crime contained in the Code of Laws of 1832 (as revised in 1842) and the Code of 1845. The scholar revealed even larger differences when comparing the Russian legislation and foreign laws. For example, the French Criminal Code did not mention the expression of an intent or crime preparation but provided for equal punishment for an attempt and a complete crime and made a complete crime unpunishable unless the crime occurred at the will of the criminal. The Penal Law Code for the Kingdom of Bavaria of 1813 established punishment for crime preparation. The Oldenburg Code of 1814 defined the commission of a crime. However, A. Chebyshev-Dmitriev claimed that it was less comprehensible than the Russian Code of 1845. There was also the Saxon Code of Law of 1841 describing attempts on an object that is immune to any attempt (CHEBYSHEV-DMITRIEV, 1862, p. 13).

The Charter of Punishments Imposed by Magistrates of 1864 was designed to regulate the procedure for imposing punishment by judges but also contained separate norms on the stages of committing a crime viewed in the context of sentencing (CHISTYAKOV, 1991, p. 394-419). The punishability of an attempt upon voluntary renunciation to commit a crime underwent a significant change. According to Article 17 of the Charter of 1864, an endeavor stopped at the will of the defendant was not subject to punishment. This legal norm was free from such subjective factors as motives and goals and did not require their establishment. The article was interpreted restrictively with due regard to subjective factors (CHISTYAKOV, 1991, p. 429). It should be noted that magistrates were endowed with the right to reduce a sentence by half considering the possibility of attempted theft or the participation of perpetrators (Article 172 of the Charter of 1864). This was a statutory right and not a duty. Article 172 referred to an attempted theft that was not completed due to circumstances beyond the control of the defendant. However, it was punished as a complete crime.

The Special Part of the Charter of 1864 contained only two components of a crime (Article 172 (theft) and Article 176 (fraud), both of which were crimes against one’s property in the sphere of property relations. As a rule, punishment for an attempt was reduced by half. In addition, the Charter of 1864 contained legal norms on crime preparation that formed independent components of a crime. For example, Article 106 provided criminal liability for “preparation for sale and the sale of medicinal substances and compositions without proper authorization in case of consequential harm”. Article 115 of the Charter of 1864 established criminal liability for “the preparation for sale or sale of foodstuffs or drinks harmful to health or deteriorated, as well as for making utensils from materials harmful to health”. Chapter 9 of the Charter of 1864 was supplemented with Article 115.2 and Article 115.3. They provided liability for “the
preparation, storage or sale of food supplies or other goods in violation of the established rules or without the acquisition of a special stamp”.

Later the stages of committing a crime were further developed in the Criminal Code of March 22, 1903. Assessing the Code of 1903 and agreeing with the opinion of other scholars (AGAFONOVA; UZOROV, 2001, p. 79), we need to acknowledge that this legislative source was a sufficiently developed criminal law, whose systematization and scientific basis corresponded to the challenges of its time. The issues of incomplete crimes were considered in Article 49 and Article 50 of the General Part. According to Article 50 of the Code of 1903, crime preparation was “the acquisition or adaptation of a means for the execution of a deliberate criminal act” (TAGANTSEV, 1904, p. 100). Compared to Article 10 of the Code of 1845, the new concept of preparation had a complete structure and clarified the form of guilt associated with crime preparation.

Punishment for crime preparation was determined in cases specifically provided for by law. An important factor determining the amount of punishment for crime preparation was the fact that preparation had to be stopped due to circumstances beyond the control of the guilty party. The punishment was imposed for the preparation of crimes against the sovereign and state power: against the life of the sovereign; a rebellion against the government; the preparation of written or printed appeals; high treason; money counterfeiting money; the forgery of stamped papers; unauthorized resettlement, etc. (ESIPOV, 1903, p. 30).

The legislator’s approach to the imposition of punishment for crime preparation remained unchanged. The legislation consistently ensured the special protection of the Emperor, the state system and all the attributes of state power. The Code of 1903 presented comprehensive information on an endeavor, its beginning and end through facts and mental elements of the crime. Article 49 of the Code of 1903 stated that an attempt is understood as “an action that launches a criminal act and is desirable by the criminal but not completed due to circumstances beyond the control of such a person” (TAGANTSEV, 1904, p. 99). This legal definition comprises will-related aspects, i.e. such an action cannot be completed against the criminal’s will. A prerequisite for an attempt is the incompleteness of a criminal act and the perpetrator’s indifference to this circumstance. In the same article, the legislator directly indicated that endeavors were not punishable (Clause 3 of Article 49 of the Code of 1903).

Finishing the legal description of an attempt, Article 49 claimed that “an attempt to commit a crime using an useless means chosen out of extreme ignorance or superstition cannot be punished”. There is a clear analogy between Clause 4 of Article 49 of the Code of 1903 and Article 115 of the Code of 1845 (as amended in 1864) as they provide the same rules for the impunity of an attempt made with unsuitable means. Article 115 of the Code of 1845 determined that the use of objects and means that could not harm the person whose murder was attempted could not be considered an endeavor.

N.S. Tagantsev commented on the connection between an unusable means and ignorance provided for by Clause 4 of Article 49 of the Code of 1903. The scholar noted that if there were all the conditions for punishing an attempt, then “the fact that the guilty person used unsuitable means should not matter. On the contrary, if the guilty person decided to fulfill a criminal intent by means testifying to complete ignorance, superstition, etc., then there were only criminal thoughts and wishes but not a will that is dangerous to society, therefore such an attempt was not considered punishable” (TAGANTSEV, 1904, p. 104).

The punishability of endeavors was provided for in the Special Part of the Code of 1903 in chapters on forgery (Chapter 21), murder (Chapter 22), bodily damage and violence against an individual (Chapter 23), indecency (Chapter 27), criminal acts against personal freedom (Chapter 26), theft, robbery, extortion (Chapter 32), fraud (Chapter 33), etc. Moreover, the rule on punishment is indicated after a sanction in one or another article without specifying the type and amount of punishment, namely, “an attempt is punishable”. Clause 2 of Article 49 of the Code of 1903 determined the punishability of an attempt on serious crimes: “an attempt on serious crimes and other crimes, in cases specified by law, is punishable but the penalties established by law are mitigated on the grounds of Article 53”.

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Article 53 provided for the mitigation of punishment, including for an incomplete crime, on the following grounds: capital punishment cannot be imposed; if law establishes a low limit of punishment, courts might reduce the punishment to the established limit or switch to another penalty in the following order: from a death penalty to hard labor with no fixed term or for a term of 10 to 15 years; from permanent hard labor to hard labor with a fixed term; from hard labor with a fixed term to imprisonment in a house of correction; from banishment for free settlement to imprisonment in a fortress for a term no less than one year; from imprisonment in a house of correction to incarceration; from incarceration to arrest.

The Code of 1903 more clearly defined the limits of punishing a detected intent in comparison with the rules contained in the Code of 1845. The detection of an intent was not subject to punishment, except for those cases when the act itself revealed a criminal intent and formed an independent component of a crime. This referred to crimes against the state. Punishment for a detected intent to commit a crime against state power was established in the Code of 1845. The novelty of the Code of 1903 was to establish punishment for incitement “to form a rebellious community even if it was not formed” (ESIPOV, 1903, p. 30).

The Code of 1903 did not contain the concept of a complete crime. The analysis of its norms on criminal acts and their punishment, the conditions of imputation and criminality of such acts proved that a crime was recognized as complete in the presence of all the components of a crime established by criminal law. Most likely, the legislator proceeded from the previous negative experience of using general concepts of a complete crime in the Code of Laws of 1832 (Article 10) and the Code of 1845 (Article 12). Legally established concepts were sharply but justly criticized for incompleteness, ambiguity, absence of all the components of a crime, etc.

N.S. Tagantsev, a developer of the Code of 1903, commented on this source and explained that the concept of a complete crime was defined in two ways (by the legislator and the judge who interpreted the end of a crime in various ways) and depended on the specifics and structure of certain offenses. Therefore, the definition of a complete crime in relation to certain crimes and their general features is not included in the law (TAGANTSEV, 1904, p. 100). The scholar noted theoretical differences in understanding the essence of a complete crime and the contradictory nature of the judicial practice.

At the same time, the Code of 1903 contained the concept of the so-called “preliminary crime”. For instance, Article 508 stipulated responsibility for an attempt to force a person to commit a crime with the use of violence, a threat of violence or with the use of any other authority. Crimes against the Emperor and the Imperial Family can be attributed to the same group. In particular, Article 99 established responsibility for encroachments on the life, health, freedom or inviolability of the reigning Emperor, as well as on depriving or limiting the sovereign’s power. Such a crime was considered complete at the stage of its preparation or encroachment.

Complete crimes at the stage of preparation were also described in Article 101 (a violent encroachment on the legislatively established form of government or succession to the throne in Russia or any of its parts) and Article 457 (preparation for a murder). The Code of 1903 distinguished between crime preparation and an attempt on it. Voluntary renunciation to commit a crime was highlighted as an independent institution. The fundamental feature of the concept of an endeavor is the fact that some crime was not finished due to circumstances beyond the control of the criminal. An attempted offense in relation to a flawed object was recognized as non-criminal. In certain cases, an attempt was still punishable but to a lesser extent than a complete crime.

The denial of the basic legal concepts based on class conflicts and class differences between the Soviet criminal law and the so-called bourgeois law had no objective grounds, negatively affected both the science of criminal law and judicial practice and later resulted in the return of traditional time-tested concepts. Many provisions of the Criminal Code of the RSFSR of 1926 were so clear and comprehensive that they have remained practically unchanged to this day. This document absorbed not only the communist views on criminal repression, time has shown the depth and accuracy of many legal norms and institutions contained in it, which gives grounds for asserting the continuity of the provisions laid down in the first Russian Criminal Code and even the pre-revolutionary criminal law.
Under the Criminal Code of the RSFSR of 1926, a crime was defined as an action or inaction that was dangerous not for the system of social benefits (public relations), but the Soviet system and the rule of law established by the workers and peasants government for the period of transition to the communist system. Thus, the category of public danger was presented differently than today and, in fact, did not correspond to its name. The concept of a "dangerous crime against the state" would be more appropriate to its content. Public interests and values were not regarded as a benefit on its own. The absence of a formal criterion for a crime can hardly be an accidental omission of legislators. This was a deliberate step since such an approach complied with the concept of social protection measures and the control over persons posing a social danger. In this case, criminal prosecution could do without the formal procedures of proof and administration of justice. The criminal prohibition of an act could not "come to grips" with the principle of analogy proclaimed in the Criminal Code of 1926.

The material representation of a crime in the Criminal Code of the RSFSR of 1926, the principle of analogy, the theory of a dangerous state and measures of social protection were elements of a single "crime" concept in the Soviet criminal law, which gave priority in establishing the grounds for criminal liability not to law but judicial discretion. This often led to arbitrariness and helped to repress "unwanted persons". With a rather low certainty of both the rules for the appointment of repressive measures and the disposition of legal norms contained in the Special Part of the Criminal Code, the main role in establishing the type and amount of punishment belonged to the socialist legal consciousness, whose class orientation was not a secret to anyone. The class affiliation and social origin of the person who committed a crime were decisive for selecting a measure of social protection and influenced the degree of social danger of the crime committed. A typical feature of the Special Part of the Criminal Code of the RSFSR of 1926 was the fact that it differentiated responsibility in relation to accomplices. The most severe punishment was provided for instigators, leaders and organizers since these persons were recognized as the "driving force" of such encroachments, formed their ideological basis, justified the "attractiveness" of a crime in particular and criminal activity in general.

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The historical continuity of criminal law institutions in the Russian legislation and reception of legal norms: viewpoints on crime and punishment

Resumen
Este artículo se refiere a la continuidad histórica de instituciones de derecho penal como el delito y el castigo, teniendo debidamente en cuenta el cambio de opiniones sobre los componentes del delito y la imposición de penas. Los autores han realizado un análisis jurídico comparativo de las fuentes del derecho penal en Rusia, considerado la influencia del derecho grecorromano, bizantino y germánico, y han fundamentado su originalidad. Las etapas de la comisión de un delito y su papel en la elección de una determinada pena se discuten en los siguientes documentos: la Verdad Rusa, el Código del Consejo de 1649, los Artículos Militares de 1715, el Código de Leyes Civiles del Imperio Ruso de 1832, el Código Penal de 1903 y el Código Penal de la RSFSR de 1926.

Keywords: Stages of committing a crime. Guilty intent. Completed crime. The imposition of punishment. Facts of the crime.