

The Unfit Preparation and Attempt of Criminal Offence

Abstract

The question of unfit preparation and attempt is one of the most discussed as well as most unclear areas of substantive criminal law. Even though a lot of theoretical works have been dedicated to this topic (particularly in the past), a considerable amount of questions connected to unfit preparation and attempt still remains unanswered. The fact, that the written law itself usually governs only certain aspects of the problem (e.g. the current Czech Criminal Code specifically mentions the unfit preparation and attempt in just one provision of - section 46, par. 3). The aim of this thesis was to provide a comprehensive account of the unfit preparation and attempt in the legal theory, legal acts and case law and offer solutions to several problems of current legislation.

Unfit attempt and preparation of criminal offence can be understood as specific types of attempt and preparation of criminal offence - the major difference between “regular” fit attempt/preparation and unfit attempt/preparation being the fact that unfit attempt/preparation cannot result in a completed crime, due to the absence of one of the substantial elements of criminal offence. The impossibility of preparation or attempt is caused by an error of the perpetrator, usually in the form of a positive error in fact. Unfit preparation and attempt can be divided using several criteria, among the most significant are the distinction between relative and absolute impossibility and the differentiation of attempt/preparation on an unfit object, attempt/preparation by unfit means, and attempt/preparation of an unfit subject. The question, whether the error was ontological or nomological, is crucial for determining the perpetrator’s criminal liability.

The body of the thesis is divided into five parts. The first part discusses several different theoretical approaches to the unfit attempt. The second part deals with the concept of unfit preparation and attempt, both in the past and in the present, while the third and fourth part are dedicated to the various types of unfit preparation and attempt. The last part of the thesis is dedicated to penalisation of the unfit preparation and attempt and a short summary of several foreign legislations is given as well. The conclusion of the thesis highlights several problems of the current legislation and offers a few suggestions for their solution.

Key words: unfit preparation and attempt of criminal offence, subjective and objective theory, error of the perpetrator