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Abstract. This paper deals with the analysis of the texts of the criminal laws of the CIS countries for the purpose of reflecting the signs of voluntary refusal to commit crime. The specifics of the methods for describing the conditions of voluntary refusal for the perpetrator of the crime, as well as for other accomplices, are disclosed. The study shows the heterogeneity of approaches to the number of signs of voluntary refusal and the varying degree of completeness of their description. It is determined that for all the variety of formulations of voluntary refusal it is possible to outline common features typical of all criminal laws of the CIS countries.

Keywords: incomplete crime, voluntary refusal of crime, signs of voluntary refusal, prevention of crime.



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Introduction. Defining signs of voluntary refusal is of great importance for the development of the science of criminal law. Depending on the completeness of the description of the signs, law enforcement agencies are less likely to make mistakes in determining a voluntary refusal in the actions of a person. Currently, research in this field pursues several lines. There are highly specialized works describing the conditions for the refusal of juvenile delinquency [4]. In some works, the authors try to understand the moral aspects of the person's refusal to commit a crime [1]. In other works, attempts are made to determine the influence of accomplices on the commission of a crime [2].

Despite the diversity of approaches to the study of the refusal of crime, the refusal of criminal behavior, it is difficult to find works dedicated to the signs of or conditions for voluntary refusal of a criminal purpose. This institution is of tangible significance for the practical application of the criminal law, allows motivating a person, who is preparing to commit or already committing a crime, to refuse further criminal actions. The foregoing allows us to conclude that the science of criminal law needs a theoretical analysis of the signs of voluntary refusal.

Methodology. The research was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical methods, analysis and synthesis) and specific scientific methods. The latter include the formal-legal, linguistic-legal and comparative-legal, which were collectively used to study the texts of the criminal laws of 11 post-Soviet countries in order to identify features of reflecting signs of voluntary refusal of a crime in the rules of the criminal law. The choice of this group is due to the commonness of the previous historical development of criminal legislation within the USSR and an equal period of post-Soviet development. This makes it possible to predict, on the one hand, the existence of common features characterizing the norm of voluntary refusal, and, on the other, diversity in the formulation of individual signs and description of the actions of accomplices forming a voluntary refusal.

Discussion and results. A consecutive nature of the development of willful crimes presupposes the possibility of choosing the behavior of the subject at any stage of the crime. Legislators with the purpose of minimizing damage to legally protected social relations, as well as directly to the victim, provide for the possibility of a person to refuse further committing of a crime. Although the actions of persons having voluntarily refused the completion of crimes are socially dangerous, such persons are exempted from criminal liability for the purposes of general and private prevention [5, p. 263].

The analysis of the criminal laws of the CIS countries made it possible to conclude that they all contain rules regulating the voluntary refusal to commit a crime. Not every interruption of criminal activity by the will of a person can be considered a voluntary refusal of a crime. Rules in criminal



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legislation that use a predominantly imperative method for voluntary refusal define a number of conditions under which a person is not subject to criminal liability.

All the signs characterizing a voluntary refusal can be divided into the conditions pertaining to the perpetrator of the crime and the conditions relating to the organizer, the instigator and the accomplice.

The addressee of the general conditions of voluntary refusal is the person (perpetrator) preparing for the crime or committing actions (inaction) directly aimed at the commission of the crime, because, first of all, it is possible to prevent the completion of the crime by virtue of this person.

A number of texts of criminal codes give the general signs characterizing voluntary refusal of a crime. These include:

- the stage of development of a crime, when voluntary refusal is possible;
- voluntariness - a conscious refusal to complete the crime when the person realizes the possibility of bringing the crime to the end and regardless of motives;
- finality - the final decision of a person to stop the commission of a crime with respect to the onset of the same criminal result, unconditionality in relation to his/her further onset;

In this vein, the signs of voluntary refusal in the Criminal Code of the Republic of Azerbaijan, the Criminal Code of the Republic of Kazakhstan, the Criminal Code of the Republic of Moldova, the Criminal Code of the Republic of Tajikistan, the Criminal Code of Turkmenistan, the Criminal Code of the Russian Federation, the Criminal Code of Ukraine are most fully described [3]. Speaking about the said codes, the set of signs fixed therein is contained directly in the rule, and in a number of cases follows from its meaning (a sign of voluntariness).

As for the description of signs in the legislation of the CIS countries, there is no uniformity. A number of criminal codes describe the stages of development of a crime in which a voluntary refusal is possible as follows:

- termination of preparation for a crime or an action (action or inaction) directly aimed at the commission of a crime (the Criminal Code of the Republic of Azerbaijan) [3]. This option indicates the preparation for a crime, and the attempt to commit a crime is described in full. This approach allows saving the text of the law, avoiding duplication of the preparation signs. Similar wording is found in the Criminal Code of the Republic of Belarus, the Criminal Code of the Republic of Kazakhstan, the Criminal Code of the Republic of Moldova, the Criminal Code of the Republic of Tajikistan and the Criminal Code of the Russian Federation [3].

- termination of preparation for a crime, or attempted crime, or actions (inaction) directly aimed at committing a crime (the Criminal Code of Armenia) [3]. This version of the description



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indicates preparations for a crime and an attempt to commit a crime, and discloses the objective evidence of an attempt, without indicating the subjective side. In our opinion, using such wording, the legislator is trying to expand the scope of application of the voluntary refusal rule, not limited only to attempts committed with direct intent.

- termination of an inchoate crime (the Criminal Code of Turkmenistan) [3]. This description is general and refers to the regulation about an inchoate crime. It should be noted that through this formulation, the voluntary refusal regulation extends to the cessation of both preparation and an attempted act.

- termination of preparatory acts or termination of the commission of a crime, as well as prevention of the onset of a criminal result by a person (the Criminal Code of the Republic of Uzbekistan) [3]. This variation of the stages of voluntary refusal is fixed due to the fact that the Criminal Code of the Republic of Uzbekistan contains a specific formulation of an attempt to commit a crime that defines an attempt as "the beginning of an intentional crime".

- termination of preparation for a crime or attempted crime (the Criminal Code of Ukraine) [3]. In a particular case, the legislator refused to duplicate the definitions of the General Part of the Criminal Law, which helps to save the text.

Proceeding to the definition of other signs, and in particular, of voluntariness, it should be noted that all the Criminal Codes of the CIS countries, naming or defining the rule of voluntary refusal, use the word "voluntary". At the same time, we note that the sign of voluntariness implies the person's awareness of the possibility of completing the crime. The absence of this part of the sign can be found in the criminal law of the Republic of Turkmenistan.

However, the sign of voluntariness can be supplemented. The Criminal Code of the Kyrgyz Republic [3] notes that a person must be aware of and have a real opportunity to bring the crime to an end. A sign of finality is absent in the Criminal Code of Armenia, the Criminal Code of the Kyrgyz Republic, the Criminal Code of the Republic of Belarus and the Criminal Code of the Republic of Uzbekistan [3]. In general, the sign of finality is necessary for determining voluntary refusal. It should be noted that finality should be present at the first attempt of preparation or attempt to commit a crime.

A person who voluntarily refused to complete the crime should not be subject to criminal liability, except in cases where his/her actions already contain another part of the crime.

The voluntary refusal of the organizer, instigator or accomplice is described through a set of special signs.

Having analyzed the texts of criminal laws, we can conclude that the signs of voluntary refusal of accomplices are mainly differentiated by their role in the commission of a crime.



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There is an extended regulation, according to which the organizer and the instigator must prevent the commission of a crime by their actions. The overwhelming majority of legislators of the CIS countries point out the prevention of bringing the crime to an end (the Criminal Code of the Republic of Azerbaijan, the Criminal Code of the Republic of Kazakhstan, the Criminal Code of the Republic of Moldova, etc.).

An exception is the decision of the legislator of the Republic of Uzbekistan, where the responsibility of the organizer, instigator or accomplice is excluded in case of timely measures taken, depending on them, to prevent a crime. The Criminal Code of Ukraine also contains an alternative description of the condition for the voluntary refusal by the organizer, accomplice and instigator in the form of timely notification of the relevant state authorities about the crime being prepared or committed.

Speaking about the voluntary refusal of the accomplice, it should be indicated that the criminal laws of the CIS countries construe the following as the conditions of his/her voluntary refusal:

- taking all the necessary measures to prevent the crime (the Criminal Code of the Republic of Moldova, the Criminal Code of the Republic of Tajikistan, the Criminal Code of the Russian Federation, etc.).

- refusal of assistance to the perpetrator promised beforehand prior to the commencement of acts directly aimed at the commission of the crime, or prevention of the consequences of the already provided assistance (the Criminal Code of the Republic of Azerbaijan). A similar formulation is also contained in the criminal codes of the Republic of Kazakhstan and the Republic of Belarus.

The Criminal Codes of Armenia and the Kyrgyz Republic enact the same conditions in the form of crime prevention for all accomplices, including for the accessory.

The Criminal Code of Ukraine establishes a rule that, for the presence of a voluntary refusal in the accomplice's actions, requires to prevent the commission of a crime or to notify the relevant state authorities in a timely manner of a crime being prepared or being committed, as well as not providing them with the means or tools for committing a crime or not eliminating obstacles to the commission of a crime.

As mentioned above, the accomplices must prevent the commission of a crime, or take all the measures in their power to prevent it, by means of the commission of certain actions:

- timely notification of authorities (law enforcement agencies) about a crime that is being prepared or committed. The timely notification, shall be understood to mean the timely written or oral notification of authorities about the crime being prepared or committed. Timeliness means that the



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authorities should have sufficient time after receiving the notification to take measures to prevent the criminal result.

- other measures that prevented the crime from being committed. This wording is a judgement concept and covers all ways of preventing a crime. Other measures may include cases where the organizer or instigator has dissuaded the perpetrator from committing a crime or to stop actions (inaction) directly aimed at committing a crime; the organizer or instigator physically retains the performer in order to prevent the commission of a crime.

Both these actions are described in the criminal codes of the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, etc.

The Criminal Code of the Republic of Belarus does not define the actions which may prevent the commission of a crime. In our opinion, it does not matter how the criminal result is prevented, but it must be prevented.

A number of criminal laws of the CIS countries describe the actions of the accomplice, which form a voluntary refusal, in the form of "taking all the measures in one's power".

It should be noted that the term "all measures in one's power" should be interpreted according to a subjective criterion. It must be determined what the accomplice thought necessary to do to prevent the crime, because not all measures taken by the accomplice can really prevent the crime.

Other actions of the accomplice are also encountered, if: he/she refused the assistance promised to the performer prior to the commencement of acts directly aimed at the commission of the crime (Azerbaijan Republic); before the completion of a criminal offense by the executor will refuse him/her in assistance promised in advance (the Republic of Kazakhstan), and other actions. In these cases, the legislator tries to determine the action through the functional signs of complicity.

If the actions of the accomplices responsible for preventing the commission of a crime do not lead to the prevention of the perpetration of the crime by the perpetrator, the court may consider the measures taken by them as extenuating circumstances when imposing a sentence (the Criminal Code of the Republic of Azerbaijan, the Criminal Code of Armenia, etc.).

It should be noted that the conditions for voluntary refusal for co-participants are justified. These types of accomplices create a crime by involving the performer in its commission or assisting him/her, by virtue whereof they have an increased responsibility for the acts committed.

Summary. Typical of all criminal codes of the CIS countries is the presence of a voluntary refusal to commit a crime, however, a set of signs that allow stating a voluntary refusal in the act of a person, in some cases, vary.



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Analysis of the texts of criminal laws allowed us to make the most complete list of signs of voluntary refusal imposed on the perpetrator: a certain stage of the development of the crime, voluntariness and finality. The first two signs are contained in all criminal codes of the CIS countries. The sign of finality is not fixed in some cases.

The sign of a certain stage in the development of a crime, according to its legislative reflection, varies. This problem is leveled due to the fact that all criminal laws indicate the possibility of voluntary refusal only with an inchoate crime.

A person who voluntarily refused to complete the crime should be subject to criminal liability, if his/her actions already contain another part of the crime. This provision is common for all criminal codes.

Special demands are placed on the voluntary refusal of the crime by its accomplices. In the overwhelming majority of criminal codes, the legislator establishes a duty for the organizer and instigator to prevent the commission of a crime. Often, the actions are described, which can prevent a crime. The accomplice in most cases must take all the measures in his/her power to prevent the crime.

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