

Criminal Offense of Attempted Murder according the Criminal Code of Kosovo

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Abstract -Treatment of the criminal offense of attempted murder is very important. It is a fact that the actions of the perpetrator are such that he actually deprived one person of life, but that the circumstances created have saved the victim. To identify this criminal offense is not easy for those dealing with these cases, the police, the prosecution, the court and other procedural parties. The criminal offense of attempted murder is such that it is carried out only by direct intent. That is, the purpose of the perpetrator is deprivation of life, obtaining a life, and this is necessarily done intentionally. Otherwise, we would not have had a criminal offense of attempted murder, but with the criminal offense of bodily injury, threat, general risk and other criminal offenses. Depending on the consequences and circumstances of the commission of the offense.

The paper will be short, descriptive, identifying the most commonly occurring cases that may occur in practice. The paper will be based on the criminal code as it is determined the criminal offense of attempted murder, in this case the Kosovo Criminal Code, and identification cases will be taken based on the author's experience as a police investigator and now as defense lawyer.

There are few cases that are wrongly attributed and the perpetrator is wrongly punished for the fact that no proper identification of the criminal offense of attempted murder is made. And the author's goal is to contribute a little to this sensitive issue.

Index terms: *Murder, Attempt, Criminal Code, Corporal Injury, Victim.*

I. INTRODUCTION

General Aspects:

Human life is a fundamental right and is protected by all the norms of society, such as written and unwritten norms, as well as constitutions, laws, codes, conventions and international declarations as well as religious books, the Qur'an, The Bible, etc.

This right is guaranteed, given to be protected, where "*each person has the right to life* (CC, 2008).

The right to live, the right to life, is defined in different ways, depending on who deals with the issue of life. It is defined and sanctioned, inter alia in this way:

Everyone has the right to life (GDHR, 1948), *every human being's right to life is protected by law* (CPHRFF, 1950), *every human being has the permanent right to life* (ICCPR, 1966), and other forms.

This is so valuable, often the target of the attacks and criminal acts with which it is attacked, damaged or even extinguished. Thus, striking, damaging, absorbing and extinguishing this right and worth, this natural and humane, is tended to be hampered as much as possible, and this is achieved through the application of sanctions against the perpetrators of such acts. This preventive action has been achieved by identifying actions such as criminal acts and for which actions, the criminal justice system, and the entire state apparatus, is committed and directed to preventive and punitive warfare.

The greatest assault and damage to life can be, is the murder.

Murder is considered to be the most serious criminal offense and this is foreseen to be committed when, *anyone who deprives the other person of life* (CCK, 2013) and according to our Criminal Code, a punishment of at least five years of imprisonment is foreseen to life imprisonment.

The criminal law of different states sanctions this criminal offense with different penalties, to the death penalty which punishments are executed in various ways, whether by power, by injecting but also by head or hanging. (*The death penalty still applies to China, Vietnam, Iran, Saudi Arabia and the US, while most states have abolished this sentence*).

These sentences, from democratic states, are attempted to be removed, whereby Kosovo, this condemnation it had abolished in December 1999.

Criminal law protects life no matter which person's life is in question, whether he is a child, an adult, a healthy, or a sick person.

Also, canon law has treated and preserved this issue as a precious value. For example, the Kanun of Lekë Dukagjini, has highly rated the value of life, ku *The price of man's life is one, as for a good man as to the evil one* (CLD, 1933). The punishment, according to the Kanun of Lekë Dukagjini will be high, no matter who is the victim, was the wife, the boy, the girl, the baby in the cradle, the rich, the poor, the elder, where *punishment is one hand* (CLD, 1933).

For this reason, Murder as a criminal offense has been and continues to be a subject of study by many penalists, but also other people who have been taken and deal with other areas of treatment but are closely related to the consequences of the killings.

The murders, which are directed directly at causing the death of a person or more, acquire life as a sublime value, it also causes other consequences arising as a consequence of it. Thus, the consequences that arise in the family of the slain, as an emotional consequence, but also other consequences, of the economic nature, of the righteous development of the heirs, and as a result of other murders that can then be made as a sign of revenge. For this reason, this issue is also dealt with by social sciences such as Sociology, Psychology, Criminology and other sciences.

Thus, criminal law has given particular importance to the study of the criminal offense of Murder, the factors causing this, the ways, the objects used, the circumstances in which this offense is committed, the consequence that is caused because such actions deprive the person of life, the fundamental right is extinguished without which nothing else would be worth, nor any other rights.

The legal-criminal defense object of the Assassination work, human life, which, as good by nature, must be protected from damage and from the unnatural factors that cause the consequence of the loss of this good.

Because of the great importance in the protection of human life, for these criminal offenses is punished an attempt, and the punishment is too high and severe for the perpetrators of this offense.

Therefore, the Examination will be treated on a continuous basis, but with the knowledge that its treatment will be deficient and will not complete even those that need to be completed, to present it in the most complete and fair way, based on facts found and proven.

II. ATTEMPTED MURDER

"Whoever intentionally undertakes actions for the commission of a criminal offense but the criminal offense has not been committed or the elements of the criminal offense have not been committed, it is considered that he has attempted to commit the criminal offense".

In this way, an attempt is made for an offense under Article 28 of the CCK.

In the previous criminal code, Article 20 has regulated this issue, and in that case, the actions taken are required to be direct, and the criminal offense that should have been committed be dedicated, that is the deliberate act, which which is removed in the current new code.

Attempts, almost all of the country's legislation is defined by almost the same, with little difference, using terms, clarifying the definition of the way the perpetrators act in committing the offense.

In this case, the Criminal Code of the Republic of Albania defines very well the attempt, whereby, according to him, the desired consequence is not achieved by the circumstances which are created by factors and circumstances which are impossible to avoid by the perpetrator. The created circumstances have left the offense in an attempt, and they are circumstances that **were not** created by the perpetrator but were created against the perpetrator's will, are an obstacle in his actions deliberately committed to causing consequent.

The Criminal Code of the Republic of Albania defines the criminal offense as follows: *" The offense is considered as an attempt when, although the person takes direct action to do so, the offense is terminated and is not completed for independent circumstances by his will"*(CCA, 2016).

To our offenders, this issue has been dealt with extensively and, according to them, there are some conditions to be met before there are attempted criminal offenses. These conditions are:

1. *to undertake the act of committing the offense,*
2. *That action be undertaken intentionally and,*
3. *That the action is not completed, that is, not to be caused the consequences of the offense* (Salihu, 2003).

In the Case of Murders, Attempts are made when a person undertakes certain actions, actions that the perpetrator thinks are sufficient to commit the murder, actions he intentionally undertakes. All these actions that the perpetrator performs must be concrete actions that are appropriate to achieve the consequences but which have not been achieved such as shot the gun, stabbed, poisoned the food, thrown grenades, etc. . According to our practice, the attempt should be made with appropriate means and ways to qualify for *complete attempt* (Salihu, 2003).

The lawmaker has thought of some form of attempt: *inadequate attempt* when a person attempts to commit a criminal offense with a means that is inconvenient to cause the result, or the attempt is directed towards an inappropriate object (Article 29 of CCK -that).

The Attempt of murder is punishment for all kinds of murders, both ordinary and serious homicide, as well as murder committed in a state of mental illness. It is important to note that, in the murder committed by negligence, there can be no attempt to carry it out. Because, criminal practice, there are no known cases that may remain attempted and, at the same time, deemed to have been committed by negligence.

The Assassination Attempt is very punishable and based on different codes, it sets its height based on the type of killing that is attempted to be committed, common or severe, but it can not go beyond *three the quarters of the maximum punishment* determined for the offense which has been attempted to be committed, but not less than three years of imprisonment.

III. CONDITIONS FOR EXISTING CRIMINAL OFFENCE OF ATTEMPTED MURDER

The Attempt of murder exists in those cases where the perpetrator has taken all the actions to commit the murder, but the consequence has not been caused, despite his will. The consequence that must have been created is that the death of the person is not caused by the creation of such circumstances which have prevented the killing.

example 1:

If person A, intentionally, using AK 47 firearms shot in direction of person B who was in the car moving in traffic, and as a consequence of the use of the weapon, the bullet wound him in both feet, causing severe body injuries. In this case, Murder has remained unfulfilled and we say that in this case the criminal offense of Attempted Murder was committed and the perpetrator will be punished for the attempted murder.

Thus, the ways in which the attempt is made, the purpose and the consequences that caused, also define the type of offense that the perpetrator will face before justice. In the first example, the perpetrator will be punished for the criminal offense of Attempted Murder, Serious Bodily Injury, but also Illegal Content. Love is what will call the act as Attempted Murder, where, if the opposite is true, we would have to deal only with the criminal offense of Injury, Serious or Easy, of Illegal Weaponry.

If we get a simpler descriptive example, we would present it through a bridge that connects-joins two shores. Where the bridge will present the causal link between the action of the consequence, and if there are no bridges in this case, we will only have the attempt of committing the offense, and in our case, of Attempted Murder.

The criminal offense of Attempted Murder, based on practice, is usually carried out with firearms, cold weapons, knives, rods, helmets, work tools, then explosive devices, hand grenades, fire, water spill, electricity, gas poison and foods, then different vehicles, and many different tools.

Even the development of the technique has perfected the tools and methods, the ways in which the offenses are committed, in our case, Attempted Murders.

For this, it is very important to qualify as right and based on evidence, the criminal offense of Attempted Murder.

The criminal offense of Attempted Murder can best be described through concrete examples, and therefore some descriptive examples of Attempts to Murder that are most commonly described will be described.

Once attempted killings are most often carried out by the use of a firearm, the examples to be treated will have the firearm as a tool for committing the offense.

According to police practice, Attempted Murder in most cases is difficult to detect in time because of the reasons that are hidden by the injured victim.

Often, cases that are initially reported as such end up in courts with bodily injuries, even with light bodily injuries or just gunshot wounds (*in cases when the criminal offense was committed with a firearm and no hit-fired victim*).

Since it is a difficult task to detect this attempted murder, it is often insignificant on the part of certain persons, shooting itself with a firearm, car, house.

Motives are different. There may be motives for obtaining asylum-related documentation in the outside world for the purpose of escaping various debts by accusing the person to whom it is owed, as well as accidental injuries by cleaning and shooting the gun, shooting with it.

Attempted murder, or ordinary attempted murder, is a lesser offense than other offenses, as the circumstances of the manner of commission of the offense, the motives and consequences that appear in these offenses, immediately qualify the offense as grave.

These criminal offenses are less common, as ordinary homicides are less common and usually occur immediately, without major planning, occurring in circumstances that were not preceded by any motive that would qualify the work criminal, the consequences are smaller, the risk of a lower intensity.

example 2:

If person A starts a fight for a parking in the city center with person B, whom he has not known before. Person A takes the knife and hits her chest twice, causing serious bodily injuries, life threatening. After that he gets out of there, leaving the person B lying on the ground.

In this case we are dealing with the criminal offense of Attempted Murder.

IV. TYPES OF ATTEMPTED MURDER

Based on the consequences of the commission of the criminal offense of Attempted Murder, we may define some types of Attempted Murders. Thus, we have these types of Attempted Murders:

1. *Attempted murder with bodily injuries and material damage,*
2. *Attempted murder with bodily injury and without material damage,*
3. *Attempted Murder without bodily injury and material damage,*
4. *Attempted murder without bodily injury and without material damage*

Below we will talk separately for each of these Attempted Murder.

1. Attempted murder with bodily injury and material damage

They are the criminal offenses which, in the case of commission, caused bodily injuries as well as material damage. These acts are carried out in such a way that when the perpetrator of the offense caused the injured person bodily injury, light or severe, but caused material damage, both small and large, as material damages victim-victim but also others.

In these cases, the attempted murder was committed when the intent to cause the death of the person was committed in particularly severe circumstances where it was possible to cause injury to various parts of the body, severe poisoning or other injuries, up to a little scratch.

Material damage can be caused as a result of attempted murder, when the damaged property is damaged during the execution of the work, it is burned, shot by bullets, poisoned by the water well, etc. Likewise, material damages may also be incurred to other persons, when the car or bus in which the person to whom the attempt is made is damaged, the general property at the place where the works, shops, restaurants, etc. are damaged, such as private property also public property.

In these cases, we have more damages, and the perpetrator's criminal responsibility is much greater, as well as the sanction it will take.

example 3:

If Person A goes to kill Person B at the workplace where he works, at the supermarket "X" in the center of Prishtina. He wants to commit the murder by using automatic weapons. He goes and keeps it at 15:00 when he is expected to leave the workplace, the time of the change. As soon as the person B goes out of the door, person A begins to shoot at the raft, from a distance of about 30 meters. Person B is shot several times in different parts of the body and falls to the ground. The person escapes from the scene thinking he killed the person B. As a result of the gunshot, person A damaged the "X" supermarket, breaking the advertising windows, damaging the fridges, and jeopardizing many other people .

With these actions, Person A has committed the criminal offense of:

1. *Serious Attempted Murder,*
2. *Severe Body Injury,*
3. *Illegal Weaponry and*
4. *Immovable Property Damage.*

2. Attempted murder with bodily injuries and without material damage

Attempted murders can also be carried out in circumstances where it can only be caused by bodily, light or severe injuries, and material damage may not be caused at all.

These cases mostly occur when people who want to commit the killing person for a long time follow the person they want to kill and commit the offense in secret places, in meadows, in their home, at the bus station , etc.

example 4:

Person A was supposed to deprive person B of his life, and keep him at the door of his home, at 19:00 when person B is usually returned from work. As soon as you get out of the garage door in which the car is put, the person A shoots firearm in person B, striking him in the arm, and person B gets out of there and hid. After this person A escapes from the scene.

In this case, Person A has committed the criminal offense of Attempted Aggravated Murder and Illegal Weaponry.

3. Attempted murder without injury and without material damage

Attempted murders, contrary to the serious manner of committing, the circumstances of the perpetrator, the victim, the place where he lives and where the crime of murder is attempted, often based on police practice, we have to do with such cases that the offense is

committed without there was no consequential, physical or material cause (*except for the psychological consequence that is always caused*).

These cases are very common, and are carried out when the perpetrator who takes action to commit the murder fails to materialize the purpose, as the victim succeeds in getting rid of them without hurt. Many factors can be influenced here as a subjective factor of the perpetrator but also the objective, place, time, different precipitation, visibility, etc.

example 5:

Person A, armed with a gun, walking in the city park, sees the person B with whom he has earlier disagreed and intends to kill him. Person B, sees person A from a distance of some 30 meters and when he finds that person A has thrown the gun and directed it to him, he starts to run in the opposite direction. Person A, shoots several times in person B, but he fails to hit him.

In this case, Person A has committed the criminal offense of Attempted Murder and Illegal Weaponry.

4. Attempted murder without bodily injury and material damage

Even cases of attempted Murder, which result without consequences to people but with material damage are very common in practice. Such cases occur in such circumstances where the perpetrator commits actions to cause the consequences of the murder, but as a consequence of various factors he fails to perform, but in such cases causes only material damage to the person who wants to kill him or other people who have not been targeted by the attack.

These cases usually occur as a result of the creation of objective external circumstances (where the victim is located, distance, etc.) but also the subjective circumstances of the perpetrator (his uncontrolled emotional state, etc.).

example 6:

Person A, armed with a firearm, goes to the brink of the bridge and is set there in wait to wait for Person B, when he comes out of his neighborhood, to kill him. Person B, who is in his Golf 4, when he arrives at the bridge, shoots gunshot from person A and as a result hits the car, while the person is not hit.

In this case, Person A has committed the criminal offense of Attempted Murder and Illegal Weaponry.

V. CONCLUSION

I know that it is very difficult for such a sensitive and delicate issue, and so extensive to make precise definitions not to be left unnoticed.

But it is self-evident that the development of society, the emancipatory technical and cultural development of people will condition the emergence of new ways of attempted Murders. Likewise, it will also condition the application of new methods in the identification, probation and possible prevention of these criminal offenses.

The great problem of Attempted Murders and its testimony before the court is a dilemma and great work that the prosecuting authorities must do in this regard. Attempted murders, day by day, is much more difficult, because the perceived knowledge of the perpetrators, their professionalism, is proceeding far ahead of the judiciary, which, unfortunately, has lagged behind and developed along with the rapid and great development, as a technical, as inter-state problems at the interstate crime level.

The out-of-court prosecution, which has no professional and human courage to fight crime, does not help at all in the uninterrupted police investigative work that has filled the prosecution's premises with left over, with criminal reports that are not even browsed. But a light is still on the horizon by the new generations.

ABBREVIATIONS

CC	The Constitution of Kosovo
CCK	Criminal Code of Kosovo
CPCK	Criminal Procedure Code of Kosovo
CCA	Criminal Code of Albania
GDHR	The General Declaration of Human Rights
CPHRFF	Convention for the Protection of Human Rights and Fundamental Freedoms
ICCPR	International Covenant on Civil and Political Rights
CLD	The Kanun of Lekë Dukagjini

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