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CRIMINAL ATTEMPT IN THE POLISH PENAL CODE

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Purpose: *to carry out an analysis of the provisions of Article 13, Article 14 and Article 15 of the Polish Penal Code (PC), governing the institution of criminal attempt, liability for attempted offence and active repentance.* ***Methods:*** *the basic method used in the analysis is the dogmatic method.* ***Results:*** *pursuant to Article 13 § 1 PC, the elements of criminal attempt are: the intent to commit a criminal act, the conduct directly aimed at carrying out a criminal act and the lack of accomplishment. In respect of the offender who is attempting, in accordance with the wording of Article 14 § 1 PC, the court imposes a penalty within the statutory limits provided for the offence. Article 13 § 2 PC distinguishes the so-called inept attempt, which occurs when it was impossible (for objective reasons) to commit a crime from the very beginning of the offender's conduct, and the offender was not aware of this. The punishability of inept attempt has been limited to two cases: the absence of an object suitable for being a target of the criminal act or the use of a means that is not suitable for committing the offence. In other cases, inept attempts will remain unpunished. For an inept attempt, the offender shall be liable on a general basis (as in the skilful attempt), but the difference is that the court may apply an extraordinary mitigation of penalty or refrain from imposing the penalty. The institution of active repentance referred to in Article 15 PC gives the offender, in the stage of attempting, the legally guaranteed possibility of being unpunished if he voluntarily gives up the commission or prevents the effect which constitutes a statutory criterion of a criminal act (§1). According to § 2, the court may apply an extraordinary mitigation of penalty to the offender who voluntarily sought to prevent the effects of a criminal offence.* ***Discussion****: the most doubt arises in the context of distinguishing between the preparation and the attempt and between the skilful attempt and the inept attempt.*

Keywords*: stages of commission; criminal attempt; inept attempt; active repentance.*

Introduction. The institution of criminal attempt is governed in Chapter II entitled "Forms of Commission of an Offence" in the general part of the Polish Penal Code (Act of 6 June 1997; consolidated text Journal of Laws of 2019, item 1950, hereinafter referred to as PC). In accordance with the wording of Article 13 § 1 PC: "Whoever with the intent to commit a prohibited act, directly attempts its commission through his conduct which, subsequently however does not take place, shall be held liable for an attempt." The second section of that provision, specifying the conditions for an inept attempt, provides that "An attempt also occurs when the perpetrator is not himself aware of the fact that committing it is impossible because of the lack of a suitable object on which to perpetrate the prohibited act or because of the use of means not suitable for perpetrating this prohibited act." Therefore, in addition to the skilful attempt, the statutory criteria of which are contained in § 1, the legislature also defined the scope of liability for the inept attempt, in which only an error as to the object suitable for committing an act, as well as an error of measure to be used by the offender to commit a criminal offence, are relevant. In other cases, inept attempts shall be unpunished [1, p. 73; 2, p. 215].

Criminal attempt is a form of stage of

committing a crime. Unlike the forms of complicity that relate to possible ways in which the offence is accomplished and extend the scope of liability in terms of actors involved (they include not only a single-perpetrator commission and complicity, but also directing the commission, perpetration by order, inciting and aiding/abetting), the stages of commission extend this scope in terms of object and are associated with the so-called advance of crime (*iter delicti*), i.e. with stages occurring through the implementation of an offence. The first one is the intention, which, according to the principle *cogitationis poenam nemo patitur*, if not externalized, does not give rise to criminal liability and is not classified as a stage of commission. The second stages of the implementation of an offence constitute the preparation, which under the Polish Penal Code is punished only exceptionally when the statute clearly provides for so. Another is the attempt, while the last one is the accomplishment of an offence, which is the meeting of all its statutory criteria [3, pp. 344-346, 359].

At this point, it is worth recalling the concepts that provide reasons for the punishability of criminal attempt. In this regard, the following approaches may be mentioned: subjective, objective and the hybrid one (subjective/objective). The first one consists in justifying the punishability of the attempt with the bad will of the perpetrator, which may be implemented another time. The second assumes that it is the risk of infringement of a legal interest that justifies the punishability of the attempt. The last concept, also called the subjective/objective concept, combines the two approaches presented above [3, pp. 347-348].

Analysis of research and publications. As A. Liszewska points out, an attempt, within the framework of *iter delicti,* is a stage of commission after the completion of preparations, but before the accomplishment, therefore its limits have been defined by both the defining of preparatory activities, as well as by indicating the realisation of all the criteria of a given type of prohibited act, and also by listing in Article 13 PC the criteria of attempt, the meeting of which determines the conditions of the perpetrator's liability [4, p. 763]. It is worth noting at his point that the stages preceding the accomplishment (intention, preparation, attempt) are only possible in the case of intentional crimes. In the case of unintentional crimes it will be impossible to prepare or attempt them, due to the fact that the necessary element of these stages of commission is the intention on the part of the offender [3, p. 345] (which is not the case in unintentional crimes). In order to determine what kind of behaviour of the perpetrator constitutes an attempt under the Polish penal statute, constitutive elements of this stage of commission should be established. Pursuant to Article 13 § 1 PC, the elements of criminal attempt are: the intent to commit a criminal act, the conduct directly aimed at carrying out a criminal act and the lack of accomplishment [1, p. 70; 2, p. 209; 5, p. 107; 6, p. 279].

Regarding the subjective side of crime, it is worth pointing here to the issue of the intention with which the perpetrator of the attempt acts. The use by the legislature of the phrase "with the intent to commit a prohibited act" in Article 13 § 1 POC, and not, for example, "in order to commit a prohibited act", seems to indicate that it may concern the conduct with both direct intention (*dolus directus*) and legal intention (*dolus evenualis*). As M. Mozgawa notes, it is now widely accepted that it is possible to attempt not only with a direct intention, but also with a legal one [1, p. 70; 2, p. 209; 6, pp. 279-280]. It is, therefore, not necessary for the perpetrator to want to commit a particular crime. It is sufficient for him to agree, in the voluntary sphere, to fulfil the criteria of a specific prohibited act. The scholars in the field also hold different views on the admissibility of attempt with *dolus eventualis* [4, p. 765 et seq.]. Without losing sight of the differences in the individual authors' approach to the possibility of criminal attempt *cum dolo eventuali*, it should be stated that in the light of the wording of Article 13 § 1 PC, it is impossible to accept the fulfilment of the criteria of attempt without showing the intention by the perpetrator. Therefore, the literature indicates that it is impossible to attempt committing unintentional crimes as well as types of crime having a combined subjective side (subjective side of an offence covers alls aspects related to the perpetrator) [5, p. 108; 6, p. 281]. At this point, it is

worth stressing the fact stated by some scholars that it is the subjective side of a specific crime that determines the form of the subjective side of the attempt [7, p. 379]. When the subjective side of a specific type of a prohibited act requires the existence of a direct intention on the part of the offender, resulting from the purpose or motive, then these indications should also be referred to the attempt [1, p. 70]. For example, if a given offence described in the specific part of the penal statute can only be committed with a direct intention (e.g. theft of someone else's movable property - Article 278 § 1 PC), this form of intention should also be referred to an attempt.

The next component of the stage of commission under consideration, the existence of which must be determined to conclude that the perpetrator's behaviour has met the conditions of attempt, is to strive directly towards the accomplishment of the prohibited act [4, p. 771]. A. Liszewska states that this "directness is referred to the criteria describing the perpetrator's behaviour (so-called verb criteria) in this particular type of prohibited act whose perpetrator had intended to commit" [4, p. 772; 7, p. 370]. This means that in order to determine whether the perpetrator's behaviour is in fact directly aimed at the attempt to commit a given crime (e.g. theft), it should be referred to the verb criterion of this crime (in this case it will be the seizure of someone else's movable property for the purpose of appropriation). Scholars in the field formulate various ways of defining the criterion of directness, supported by both theoretical justifications [4, pp. 772-778] and judicial decisions (Judgement of the Supreme Court of 8.08.2018, VII KK 2/18, LEX no. 2558548; Judgement of the Supreme Court of 10.03.2006, V KK 278/05, LEX no. 180767; as regards the issue of lack of making dependent the existence of attempt on the commencement of fulfilling the criteria of offence, and as regards the manner of distinguishing attempt from preparation, see Judgement of the Supreme Court of 8.03.2006, IV KK 415/05, LEX no. 183071). An example is the transformation of a threat to a legal good from abstract to actual [6, p. 282] or referring the perpetrator's actions to the preparation referred to in 16 § 1 PC [6, p. 283; 5, pp. 110-111]. According to T. Sroka, directness of aiming occurs when the intention is clearly externalised and expressed in undertaking a behaviour that goes beyond preparatory activities and which, from an objective point of view, is the last stage before the accomplishment. This author also points to, among others, the fact that this condition will be met for sure when the perpetrator begins the implementation of the statutory criteria of the offence or some of them has already implemented, as well as in the event of leading to an actual threat to a legal good [7, p. 372]. The Polish Supreme Court has repeatedly spoken about the interpretation of the criterion of direct aiming, as well as the difference between the attempt and preparation. As stated in the judgement of 9 September 1999: "Explaining the difference between preparation and attempting boils down to identification whether the perpetrator's behaviour was an abstract or a specific threat to the good protected by law. Preparation is the "creation of conditions for undertaking an act directly aimed at its implementation", which may take various forms, such as, for example, collecting funds, gathering information, entering into agreement with another person, or drawing up an action plan. Attempt is more than that, because the perpetrator, "with the intent to commit a prohibited act, directly attempts its commission". Attempt is therefore more specific than preparation, and the threat of the protected good becomes actual" (Judgement of the Supreme Court of 9.09.1999, III KKN 704/98, LEX no. 39096). In its judgement of 22 January 1985, the Supreme Court ruled on the matter of qualifying as an attempt a situation where the perpetrators, equipped with appropriate tools, arrive at the house of the potential victim. As noted in the judgement, "Appearing at a house with the intention of robbing a specific person living in this house - according to a previously developed plan - and with the tools used to commit this crime, and then withdrawing from this intention for reasons independent on the offenders, exceeds the scope of preparatory activities and is an action directly aimed at achieving this intention " (Judgement of the Supreme Court of 22.01.1985, IV KR 336/84, LEX no.20064). This ruling was criticized by some scholars. For example, they argue that the mere appearance at a given place and time by the

perpetrator is only the creation of conditions enabling direct strive towards the perpetration [7, p. 373]. Also it is being pointed out that in the discussed judgement, when interpreting the criterion of directness, the subjective concept adopted was "too far-reaching" [8, p. 54]. Regardless of the adopted concept, the legislature indirectly indicates, by precise statutory definition of what preparation is (Article 16 § 1 of the Penal Code), how the attempt should be interpreted. What goes beyond the boundaries of preparation (indirect aiming at accomplishment [9, p. 13 et seq.]), but which is not yet accomplishment, should be considered an attempt [10, pp. 308-335].

The last element constituting a criterion of the subjective side of attempt, which is necessary for the assuming the offender's liability for the commission of an offence in this stage form, is the failure to commit a particular type of offence to which the offence towards which the offender was directly striving. Although this statement looks clear, seemingly not causing greater difficulties in its interpretation, it is worth pointing out what actually means to "accomplish" an offence under the applicable Polish criminal law. What is important is the moment when we can conclude that all the criteria of a particular type of prohibited act have been met. Differences exist between formal offences (not characterised by their effect) and material offences (characterised by their effect). As argued by some scholars in the field, a formal offence is committed when the verb criterion is met, while material offences are committed when the effect laid down in the provision occurs [1, p. 72; 7, p. 378]. Therefore, referring this division in the question of attempt, it must be noted that an offence characterised by its effect will not be accomplished if the effect which constitutes a criterion of a particular type of criminal offence does not occur. In formal offences, in the absence of an indication of the effect in the description of its statutory criteria, only the lack of meeting a verb criterion provided in the description of the act may be concerned. T. Sroka states that, in the case of formal offences, failure to accomplish will take place if the offender has not yet taken up a behaviour meeting the criterion of the perpetration activity, or the performance of that behaviour is not completed, while the lack of accomplishment in material offences will occur where the offender has not completed his conduct, and when he has completed it, but the effect has not yet occurred [7, p. 378].

Punishment imposition. In respect of the offender who is attempting, in accordance with the wording of Article 14 § 1 PC, the court imposes a penalty within the statutory limits provided for the offence. As it is used to point out, this applies to penalties, penal measures, but also forfeiture and compensatory measures [1, p. 74]. It is worth noting, particularly in the perspective of aligning the limits of the statutory range of penalty for the accomplishment and attempt of the offence, that the court, when imposing a penalty on the offender, takes account i.a. the degree of social harmfulness of the act, and this degree is generally lower in the attempt than accomplished commission [1, pp. 74-75; 2, p. 216].

Inept attempt. Article 13 § 2 PC distinguishes the so-called. inept attempt, which is a kind of attempt, it must therefore meet all the criteria of attempt, only with a modification resulting from the inept nature of the offender's conduct (See the judgement of the Appellate Court of Białystok of 21.01.2014, II AKa 259/13, Lex no. 1496372). Inept attempt occurs when it was impossible (for objective reasons) to commit a crime from the very beginning of the offender's conduct [11, pp. 124-125], and the offender was not aware of this (Pursuant to Judgement of the Appellate Court in Lublin of 29.11.2001, II AKa 241/01, Prok. i Pr. 2002, no. 12, p. 26: "It cannot be said of an inept attempt where, at the time of starting the offender's action, it was objectively possible to commit the offence and only subsequently, as a result of occurrence of unfavourable circumstances, the implementation of the offender's intention proved to be impossible due to the absence of an object suitable for carrying out the offence or because it appeared that the offender had used a measure not suitable to be used to produce the intended effect. In such cases, the attempt is "skilful" and only for objective reasons the offender has failed to fulfil his intention" (see also Judgement of the Supreme Court of 29.11.1976, I KR 196/76, OSNKW 1977, no. 6, item 61). It must be assumed, however, that there is no objective threat to the legal good in this

case, but rather a situation in which the offender has proved dangerous to the legal order by undertaking an act which, in his view, constitutes a start of criminal action [3, p. 352]. The problem of justifying the punishability of inept attempt is quite complicated [12, p. 382]. According to A. Zoll, there is a "potential danger to the good" in the situation thus created, allowing to treat inept attempt on a par with the offences of abstract exposure to danger. A potential danger will occur if, according to the findings made by the model observer, it can be concluded that the offender has planned the act in a real way that threatens the legal good, while during its implementation an error occurred, ruling out the possibility of implementing it [6, pp. 292-293; 4, p. 763]. According to J. Giezek, an attempt to justify the punishability of an inept attempt boils down to considering the offender's conduct to be objectively socially harmful (negatively valued) if he starts a causal chain which, according to causal experience reflected in the rules of behaviour towards a good representing a social value, usually leads to a violation of that good, even if, due to the circumstances of the specific facts predictable for the offender, such behaviour proved to be an inept attempt [11, pp. 127-128].

The punishability of inept attempt has been limited to two cases: the absence of an object suitable for being a target of the criminal act or the use of a means that is not suitable for committing the offence. In other cases of inept attempt, e.g. related to the use of an inappropriate method of action or to superstitions, there are no grounds for criminal prosecution [11, p. 126]. The notion of an object on which the perpetrator intends to commit a prohibited act means the object of the perpetration act, that is an object or a person with regard to which he performs the perpetration act specified in the type of the offence (e.g. movable property in the case of theft; a person in the case of homicide) [13, p. 179]. A. Wąsek was of a different opinion, according to which this term should be understood broadly and also include the subject of criminal-law protection [14, p. 203]. The lack of an object suitable for committing a prohibited act on it will occur e.g. when the perpetrator, aiming at committing homicide, shoots at a dummy a person previously deprived of life by someone else or deceased; or, aiming at pocket theft, puts his hand in an empty pocket; or breaks into a safe which is empty.

The notion of a means unsuitable for committing a prohibited act is understood in the literature in two ways. In the narrow sense, it includes a tool, an instrument, as well as the behaviour of other people, animals, natural phenomena [14, p. 203]. The unsuitability of a means to achieve a goal may result not only from its qualitative unsuitability, but also from its use in an insufficient quantity, of which the perpetrator is not aware. However, this will be the case if the amount of the means held by the perpetrator to achieve his intention cannot cause any threat to the legal good under attack as early as at the moment of commencement of the action [15, p. 43]. According to J. Raglewski, "the inability of a measure to perform a prohibited act must be assessed solely in view of its properties" [16, p. 36]. The narrow sense of the measure stresses on the use of an object which, due to its quantity or quality, cannot lead to crime commission (e.g. the use of an unloaded firearm, a neutral liquid instead of a corrosive substance, a foodstuff instead of a poison, an too small dose of a substance harmful to health, or an explosive device of very weak power) [5, p. 112]. The broad sense of the measure also includes the "manner" and "methods" of implementation of a criminal intent (The same view expressed in Judgement of the Supreme Court of 11.09.2002, V KKN 9/01, OSNKW 2002, no. 11-12, item 102).

The Penal Code does not differentiate between absolutely inept attempt (e.g. administering to someone a harmless substance while considering it a poison) and an attempt that is relatively inept (e.g. administering to someone a poison in too small a dose), but the degrees of ineptness should be reflected in the amount of the penalty imposed (when considering the possibilities provided for in Article 14 § 2 PC).

The purpose. There are many doubts about the demarcation between the inept and skilful attempt. The Supreme Court has addressed this matter on several occasions (even though not always rightly). An example can be the judgement of 14 June 1973 (Judgement of the Supreme Court of 14.06.1973, I KR 91/73, OSNKW 1973, no. 12, item 157. See also Judgement of the Supreme Court of 3.09.1964, V K 517/64, OSNPG 1964, no. 11, item 113), in which the Supreme Court assumed that there was

an inept attempt (due to the unsuitability of the measure taken) where the son, with the intention of killing his father, had poured into his cup of tea of a poisonous chemical compound in the form of copper sulfate pentahydrate (so-called bluestone), but failed to achieve the intended effect both due to its quantity and the properties causing an immediate defensive reaction of the body. In this case, this offender's act proved to be unsuccessful, but the offender's actions created an objective threat to the victim's life, and therefore it was not a case of inept attempt. Another wrong view was expressed in the judgement of 11 September 2002 (Judgement of the Supreme Court of 11.09.2002, V KKN 9/01, OSNKW 2002, no. 11-12, item 102), in which the Supreme Court stated that: "If a movable property is protected by an electronic safeguard which allows access to it only by providing the correct access code, then an attempt to take this property with the use of another access code is the use of a measure that is not suitable for the burglary and prejudges that such an act is considered an inept attempt within the meaning of Article 13 § 2 PC". The case concerned a situation of attempting to collect cash from an ATM using a stolen ATM card. The offender did not know the PIN code and after the third wrong attempt the card was blocked. It should be noted that in this situation, the offender used the correct measure (a valid ATM card), the ATM contained money (and therefore it was the subject of the act of perpetration) and the case concerned using the wrong method (which is not covered by Article 13 § 2 PC), which was wrongly considered by the Supreme Court as tantamount with the measure. However, in the given factual state, the crucial element was that the accomplishment was possible (although unlikely) from the outset, and the offender was well aware of this. Therefore, it should have been deemed a skilful attempt [3, p. 354; 5, p. 114; 13, p. 180].

In the event of an inept attempt, the offender shall be criminally liable on general terms (as for a skilful attempt), but with the proviso that the court may apply an extraordinary mitigation of penalty or even refrain from imposing it. The differentiation of liability (i.e. liability within the limits of the statutory range of penalty, extraordinary mitigation, waiver of the penalty) is justified by, inter alia, the degree of ineptness of attempt. On the one hand, the attempt may prove extremely inept and, but on the other it can be very close to skilfulness. The above should be reflected in the gradation of liability. It is proposed that the degree of ineptness of the offender's action should be taken into account as one of the criteria determining the possibility of exceptional mitigation or withdrawal from imposing a penalty [7, p. 394; 6, p. 300], and sometimes generally as one of the directives for imposing a penalty for inept attempt (See the judgement of the Appellate Court in Łódź of 24.09.2015, II AKa 169/15, Legalis). T. Sroka points out that the decision on the application one of those institutions to the inept offender should be based on an analysis of the degree of ineptness of the offender's conduct, the nature of the error underlying the inept attempt and other conditions for imposing the penalty [7, p. 394].

A distinction should be made between the case of so-called delusional crime, which occurs when the perpetrator commits an act wrongly assessed by him as a crime. In the case of an inept attempt, the objective the perpetrator is striving to achieve is in fact prohibited, but only impossible to be achieved under certain conditions. According to the *nullum crimen sine lege* principle, a delusional crime does not entail criminal liability.

Types of attempt. Within the general shape of the construct of attempt in the Polish penal law system, the division into completed attempt and non-completed attempt, which exists in the established scholarly opinion, is not without significance. A completed attempt occurs when everything necessary to carry out a prohibited act has been done, while a non-completed attempt is when not all the activities necessary to carry out a given type of a prohibited act have been performer [5, p. 115]. As the literature notes, the non-completed attempt refers to an attempt to commit both a formal and material offence while the completed attempt can only take place for material offences [6, p. 291; 7, p. 398]. Thus, a completed attempt will occur when the perpetrator striving to achieve his criminal goal, who has completed his direct pursuit to do so, expects only the result. When the perpetrator is in the process of fulfilling the criteria of a given prohibited act, or is only striving towards this fulfilment, there is a non-completed attempt. This division is important when applying the institution of active repentance to the offender's behaviour, which will be discussed

below.

Another type of attempt is the so-called qualified attempt, which includes situations in which the perpetrator, in an attempt to commit a certain prohibited act commits another prohibited act as a "side effect" (e.g. the perpetrator, in an attempt to kill a human being and harm his or her body, has not caused a fatal effect, but serious bodily harm). The qualified attempt refers to two groups of cases. The first one comprises cases where an attempt to commit a crime goes through the stage of completion (accomplishment) of another crime (e.g. attempted murder may go through the stage of bodily harm), while the second group is associated with active repentance (e.g. the perpetrator of an attempted murder, voluntarily given up, is only liable for what he "did on the way", i.e. for the bodily harm).

When discussing the institution of attempt, it is impossible not to mention the institution contained in Article 15 PC, commonly referred to in the scholarly opinion as active repentance. It gives the offender, at the stage of attempting, the legally guaranteed possibility of being unpunished if he voluntarily gives up the commission or prevents the effect which constitutes a statutory criterion of a prohibited act. (§1). According to § 2, the court may apply an extraordinary leniency to the offender who voluntarily sought to prevent the effects of a criminal offence. In the first case, the perpetrator can expect that he will not be punished if his voluntary efforts prove to be successful (so-called effective active repentance). In the second situation, when he voluntarily tried to prevent the effect, however, despite this effect occurred (the so-called ineffective active repentance [7, p. 397; 5, pp. 122, 124]), the court may apply extraordinary mitigation of penalty. The voluntary nature of the perpetrator's behaviour is usually defined by scholars in the field as taking by the perpetrator appropriate actions under his own free will, not because he was forced to do so by the circumstances [1, p. 76]. Also, they point to the voluntary giving up the commission of the offence, understood as abandoning the intention to commit a crime "as a result of the dominant effect of internal causes" [6, p. 303], as well as issues such as the lack of requirements defined by the legislature for the perpetrator's abandonment to be motivated by ethically positive considerations [6, p. 303]. Regarding the previously described division of attempt into completed and non-completed, the literature points to the fact that giving up the commission of a prohibited act can occur only in the case of non-completed attempt, whereas prevention of effect can only take place in the case of completed attempt [5, pp. 122-123; 7, p. 398; 17, p. 344]. Importantly, the perpetrator does not have to prevent the effect personally himself, as it is sufficient for him to initiate such actions effectively [5, p. 123].

Conclusions. To sum up, it should be stated that the views in both the scholarly opinion and case-law regarding the interpretation of the attempt under the Polish Penal Code seem to be uniform. The most doubt arises in the context of distinguishing between the preparation and the attempt and between the skilful attempt and the inept attempt.

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ЗАМАХ НА ВЧИНЕННЯ ЗЛОЧИНУ ЗА КРИМІНАЛЬНИМ КОДЕКСОМ РЕСПУБЛІКИ ПОЛЬЩА

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Мета: *аналіз положень статей 13, 14 та 15 Кримінального кодексу Республіки Польща (ККРП), що регулює інститут кримінальної відповідальності за замах на вчинення правопорушення та дієве каяття.* ***Методи:*** *основним методом, що використовується в статті, є догматичний метод.* ***Результати:*** *відповідно до статті 13 § 1 ККРП, елементами замаху на правопорушення є: намір вчинити кримінальне правопорушення, вчинення дій, безпосередньо спрямованих на вчинення кримінального правопорушення шляхом дії або бездіяльності, тобто невиконання обов'язку, який має виконати суб'єкт. На суб'єкта правопорушення, який вчинює замах, відповідно до положень статті 14 § 1 ККРП, суд накладає встановлений законом штраф у межах, які передбачені у санкції статті щодо відповідальності за те правопорушення, яке намагався вчинити суб'єкт. Стаття 13 § 2 ККРП вирізняє, так званий, невдалий замах, який має місце, коли з об'єктивних причин було неможливо вчинити злочин із самого початку суспільно небезпечної поведінки суб'єкта, і суб'єкт не знав про це. Невдалий замах обмежується двома випадками: відсутність об'єкта, придатного для того, щоб бути об'єктом кримінального правопорушення або використання засобів, що не підходять для вчинення правопорушення. В інших випадках невдалих замахів вони залишаться безкарними. При вчиненні невдалих замахів суб'єкт підлягає відповідальності на загальних підставах (як і при замаху на правопорушення). Різниця полягає у тому, що суд, у даному випадку, може застосовувати пом'якшення покарання або утримуватися від призначення покарання. Інститут дієвого каяття, який регулюється нормами статті 15 § 1 ККРП, дає можливість суду не накладати на правопорушника покарання, якщо він на стадії замаху добровільно відшкодовує шкоду або запобігає наслідкам злочину. Відповідно до статті 15 § 2 ККРП, суд може застосовувати пом'якшення покарання щодо суб'єкта, який добровільно намагався запобігти наслідкам кримінального правопорушення.* ***Обговорення:*** *найбільші проблеми виникають в контексті розмежування готування до злочину і замаху на злочин, та замаху на злочин і невдалого замаху на злочин.*

Ключові слова: *стадії вчинення злочину; замах на злочин; невдалий замах на злочин; дієве каяття.*