

Grounds for the exemption from criminal responsibility under the Criminal Code of the Russian Federation

Motivos para la exención de la responsabilidad penal en virtud del Código Penal de la Federación de Rusia

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ABSTRACT:

The article reveals the concept, types and the essence of the grounds for the exemption from criminal liability and their features under the Criminal Code of the Russian Federation. The analysis of the grounds for the exemption from the criminal responsibility has been carried out with the respect to the latest changes in the criminal law and criminal procedural legislation of the Russian Federation and materials of judicial practice.

Keywords: exemption from criminal responsibility, criminal responsibility time limitation, court fine, effective regret, reconciliation with the injured party, Criminal Code of the Russian Federation.

RESUMEN:

El artículo revela el concepto, los tipos y la esencia de los motivos de la exención de la responsabilidad penal y sus características en virtud del Código Penal de la Federación de Rusia. El análisis de los motivos de la exención de la responsabilidad penal se ha llevado a cabo con respecto a los últimos cambios en el derecho penal y la legislación procesal penal de la Federación de Rusia y los materiales de la práctica judicial.

Palabras clave: exención de responsabilidad penal, limitación de tiempo de responsabilidad penal, multa judicial, arrepentimiento efectivo, reconciliación con la parte perjudicada, Código Penal de la Federación Rusa.

1. Introduction

The vector of modern criminal policy in the field of illegal behavior prevention is aimed at reducing the punitive potential of state constraint for small and medium gravity crimes. At the 9th All-Russian Congress of Judges of the Russian Federation, held from December 6 to 8, 2016 in Moscow, the issues of the humanization of legislation, the decriminalization of certain socially dangerous acts and the extension of the practice of applying restraint measures by courts, not related to detention, were again updated. The expediency of establishing the institution of a

criminal offense, not forming a criminal record and, as a consequence, various kinds of legal restrictions, were substantiated. Legislative innovations awaiting executor of law in the short term are mainly due to the positive dynamics of the number of people sentenced to real deprivation of liberty, as well as defendants for whom criminal cases that did not have a judicial perspective were terminated.

According to the data of the Judicial Department under the Supreme Court of the Russian Federation in 2012 there were 205,471 people released from criminal liability; in 2013 there were 208 233 of people; in 2014 there were 205,890 of people; in 2015 there were 220 630 of people; in 2016 there were 182 990 of people. Thus, according to absolute indicators, annually (excluding 2016) more than 200 thousand people are released from criminal liability (in 88-90% of cases it is connected with reconciliation with the injured party).

The criminal law regulates a number of legal grounds for the termination of protective legal relations that have been interpreted in Resolution of the Plenum of the Supreme Court of the Russian Federation dated by June 27, 2013 No. 19 "On the application by courts of legislation regulating the grounds and procedure for the exemption from criminal responsibility". They also include the exemption from criminal liability in connection with active repentance (article 75 of the Criminal Code of the Russian Federation), the reconciliation with the injured party (article 76 of the Criminal Code of the Russian Federation), the expiration of criminal responsibility time limitation (article 78 of the Criminal Code), and also in cases of crimes in the sphere of economic activity (article 76.1 of the Criminal Code). The Federal law dated by July 3, 2016 No. 323-FZ, has supplemented these grounds by another types such as the institution of judicial penalty (article 76.2 of the Criminal Code of the Russian Federation).

The Institute for exemption from criminal responsibility is one of the incentive institutions of criminal law.

The purpose of the encouragement is "to induce the offender to assist the state bodies in the detection of crimes, compensation for harm caused by the crime, restoration of the violated rights and interests of the victim" (Monakhova, Musina, 2016).

The issues of the exemption from criminal responsibility were repeatedly investigated by representatives of criminal science (Golovko, 2002, Matveeva, 2016, Aleksandrov, Anoshchenkov, Boyko, Vlasenko, 2017, etc.).

At the same time, there is a necessity to further study the institution of exemption from criminal responsibility in order to minimize mistakes in law enforcement.

2. Opinion and discussion

At various stages of the Russian criminal law development the state practiced the refusal to apply measures of state coercion. This was expressed in such alternative ways of resolving a criminal-legal conflict as payment of compensation, reconciliation with the injured party. Since in prerevolutionary Russia there was no separation of the concepts of criminal responsibility and punishment and the policy of criminal law was aimed at the primary use of the punitive potential of criminal legislation, the institution of liberation from criminal responsibility was not distinguished as an independent one. Recognition of an independent institute of exemption from criminal liability became possible in connection with the differentiation of the concepts of "criminal responsibility" and "punishment" in the Soviet period. This process was gradual and it was completed only in the Criminal Code of the Russian Federation in 1996.

Today most types of exemption from criminal liability (articles 75-76.2 and 78) are regulated by chapter 11 of the General Part of the Criminal Code of the Russian Federation.

Looking through some sources of the criminal law of foreign countries we can conclude that the institutions for exemption from criminal responsibility, fixed in the criminal codes of the countries of the post-Soviet space, are in many respects similar to the analogous institutions of Russian criminal law. The sources of the criminal law in foreign countries do not distinguish the

types of exemption from criminal responsibility and the types of exemption from criminal punishment. They treat the institutions for exemption from criminal responsibility and the exemption from criminal punishment as a single whole.

According to part 1 of article 75 of the Criminal Code of the Russian Federation a person who first committed a small or medium gravity crime may be exempted from criminal responsibility if after the commission of the crime he voluntarily acknowledges his guilt, if he facilitates the discovery and investigation of this crime, if he reimburses or otherwise redresses the harm caused by this crime, and due to active penitential such a person is ceased to be socially dangerous.

The procedural features of the application of article 75 of the Criminal Code are regulated by article 28 of the Code of Criminal Procedure ("Termination of criminal prosecution in connection with active penitential").

Article 75 of the Criminal Code of the Russian Federation lists several actions the commission of which means the loss of a public danger by a person and it gives the right to release from criminal responsibility. However, as an exception it permits the exemption from criminal responsibility in the case of the objective impossibility of the culprit to perform some positive post-criminal actions.

The grounds for exemption from criminal responsibility in connection with active repentance are divided into general (part 1 of article 75 of the Criminal Code of the Russian Federation) and special (part 2 of article 75 of the Criminal Code of the Russian Federation).

Part 2 of article 75 of the Criminal Code of the Russian Federation provides the persons who have committed other crimes (in addition to the crimes of small or medium gravity) with the possibility of exemption from criminal liability in cases specifically set in the relevant notes to the articles of the Special Part of the Criminal Code of the Russian Federation. Such an exemption is mandatory if the relevant conditions are met.

Article 76 of the Criminal Code of the Russian Federation sets: "A person who has committed a crime of small or medium gravity for the first time may be exempted from criminal responsibility if he has reconciled with the injured person and has effected restitutions to the injured person".

The procedural features of the application of article 76 of the Criminal Code are regulated by article 25 of the Code of Criminal Procedure ("Termination of the criminal case in connection with the reconciliation of the parties").

Starting from the dispositive nature of article 76 of the Criminal Code of the Russian Federation the data on the identity of the person who has committed a crime or the specific circumstances of the alleged offense are significant. Thus, judicial discretion is fully manifested when assessing the criminal experience of the defendant which does not entail the legal consequences at the time of the trial. We are talking about repaid and removed convictions, the termination of criminal cases on non-rehabilitating grounds, bringing a person to administrative responsibility, convictions for crimes committed after the crime incriminated in the criminal proceeding. In addition, the specific features of criminal motivation, the consequences resulting from a socially dangerous act (for example, the death or injury of the victim) are taken into account as well as information from health care institutions about the presence of behavioral disorders caused by the use of psychoactive substances, characterizing the material at the place of residence, study or work.

Judicial practice shows that the average defendant, who is subject to exemption from criminal responsibility in connection with reconciliation with the injured person has not previously entered into a protective legal relationship with the state. Such a person is characterized positively (mediocrely). He or she has stable social ties, is often employed. Such a person is not on the accounts of doctors of a psychiatrist and expert in narcology. He or she does not suffer from sociopathy, fully recognizes guilt, repents of what he or she has done. That person actually compensates for the damage caused by his act by the time of the petition that has no

adverse effects. The practice of stopping criminal cases against persons of this category is very extensive and has no fundamental differences.

In 2011 the Criminal Code of the Russian Federation was supplemented with the norm on exemption from criminal responsibility in cases of crimes in the sphere of economic activity (article 76.1) which since that time has been subjected to editing three times.

The procedural features of the article 76.1 of the Criminal Code application are regulated by article 28.1 of the Code of Criminal Procedure ("Termination of criminal prosecution in cases of crimes in the sphere of economic activity").

Part 1 of article 76.1 of the Criminal Code of the Russian Federation refers to tax crimes by committing which a person is released from criminal liability when the conditions specified in it are fulfilled. The condition for exemption is the requirement to compensate the damage caused to the budgetary system of Russia in full.

Part 2 of article 76.1 of the Criminal Code lists the offenses in which the subject is exempted from criminal liability when the conditions presented in the form of alternatives are fulfilled. The listed conditions are quite tough since they are based not only on compensation for harm (real or perceived) but also on a several-fold increase of such harm.

Part 3 of article 76.1 of the Criminal Code of the Russian Federation also can be applied to certain types of crimes in the economical sphere and only to declarants and persons specified in a special declaration submitted in accordance with the Law on "Amnesty of Capital". In condition of western sanctions the fundamental purpose of that law is the legalization of assets aimed at returning the displaced assets back to Russia and "slowing" their withdrawal from the country. This Law provides individuals who have legalized their assets with guarantees related to their exemption from criminal, administrative and tax liability.

It is not an obstacle to the termination of a criminal case on the basis that the accused has an unexpunged or unexpired judgment for the crime imposed by another article of the Special Part of the Criminal Code of the Russian Federation than a crime from responsibility for which this person is exempted under this criminal case.

In the light of the continuing humanization and liberalization of criminal legislation the Federal Law date by July 3, 2016 No. 323-FZ has supplemented the Criminal Code of the Russian Federation with the article 76.2 "Exemption from criminal responsibility with the appointment of a judicial fine". By the same Law, part VI of the General Part of the Criminal Code of the Russian Federation ("Other measures of a criminal-law character") was supplemented with chapter 15.2 "Judicial fine" (Articles 104.4 and 104.5). Simultaneously, the Code of Criminal Procedure of the Russian Federation was supplemented with article 25.1 "Termination of a criminal case or criminal prosecution in connection with the appointment of a measure of a criminal nature in the form of a judicial penalty", as well as with chapter 51.1 "Proceedings on the designation of a measure of a criminal character upon release from criminal liability" (Article 446.1-446.5) which regulate the procedural issues of applying this type of exemption from criminal responsibility. The initiative to improve the system of exemption from criminal responsibility for the introduction of a new foundation belongs to the Supreme Court of the Russian Federation.

An exemption from criminal responsibility with the appointment of a judicial fine is carried out exclusively by the court unlike other types of exemption from criminal responsibility are set in Chapter 11 of the Criminal Code of the Russian Federation. In that chapter such an authority is also possessed by the investigator with the consent of the prosecutor or the investigator with the consent of the head of the investigative body. This is due to the fact that, simultaneously with the release of criminal responsibility the perpetrator is assigned a measure of the criminal law character the application of which is possible like other similar measures only by the court.

The studied type of exemption from criminal responsibility is non-rehabilitating. This means that a person is found guilty of committing a crime for which he is released from criminal liability and that is why he has no right to rehabilitate, i.e. to compensation by the state for

harm caused to a citizen as a result of criminal persecution (article 133 of the Code of Criminal Procedure of the Russian Federation).

The Criminal Code of the Russian Federation contains cases of exemption from criminal liability only on the formal expiry of the limitation period for bringing to criminal responsibility (article 78).

The exemption from criminal liability in connection with the expiry of the limitation period for criminal prosecution is carried out in the form of the termination of criminal proceedings and (or) criminal prosecution on the basis of clause 3 of part 1 of Article 24 of the Code of Criminal Procedure ("Grounds for refusing to initiate criminal proceedings or stop criminal proceedings").

The legal time limitation in criminal law means the expiration of the terms specified in the law after the commission of a crime so that the bringing of the guilty person to criminal liability is excluded. The statute of limitations is made dependent on the category of the committed crime.

3. Conclusions

Recognition of an institute of exemption from criminal liability as an independent subject of matter has become possible in connection with the differentiation in the Soviet period of the concepts of "criminal responsibility" and "punishment". This process was gradual and was completed only in the Criminal Code of the Russian Federation in 1996. Today most types of exemption from criminal liability (Articles 75, 76, 76.1, 76.2 and 78) are regulated by chapter 11 of the General Part of the Criminal Code of the Russian Federation.

Articles 75, 76 and 76.2 of the Criminal Code of the Russian Federation contain substantially identical conditions for the application of these normative provisions. These are: 1) the co-perpetration of a person for a criminal offense for the first time; 2) referring the act to the category of small and medium gravity crimes; 3) compensation by the person of damage or otherwise smoothing of harm caused by him. In contrast to the appointment of a judicial fine for a person released from liability for non-rehabilitating reasons, the completion of the proceedings in connection with reconciliation with a victim or active repentance has equivalent legal consequences, however, in the law enforcement practice, the cessation of the case in accordance with Article 25 of the Code of Criminal Procedure is widely spread.

Unlike article 76.1 of the Russian Criminal Code which obliges people to be released from criminal liability the court can refuse the exemption on the grounds stipulated in articles 75, 76 and 76.2 of the Criminal Code of the Russian Federation. If such an exemption contradicts the principle of justice and the criminal law task to prevent the commission of new crimes.

The grounds for exemption from criminal liability in connection with the imperfection of the criminal law are in need further clarification.

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