



LEGAL REGULATION OF EXEMPTION FROM CRIMINAL LIABILITY

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ABSTRACT

This article examines the emergence of exemption from criminal liability in the legal aspect, what is the expression of an action or omission regarded as a criminal act, which aspects are covered by the material basis of criminal liability, procedural mechanisms for the release of persons from criminal liability, legal regulation of circumstances excluding proceedings, refusal to initiate criminal proceedings, termination of criminal proceedings cases, etc. concepts have been researched in practice. The article also provides other types of exemption from criminal liability in developed foreign countries that are not provided for by our national legislation and analyzes their advantages. The article puts forward a proposal to introduce a new type of pardon of exemption from a criminal liability into our national legislation, it is emphasized that the basis for exemption from criminal liability is to prevent conflict of law cases in legislation. The article expresses opinions on the need to reflect the rehabilitated grounds in the Criminal Procedure Code in a separate chapter. These grounds should be defined in the norms of circumstances excluding office work. The article also discusses the content and advantages of grounds for refusal and termination of criminal cases, reflected in the criminal procedure legislation of foreign states.

Introduction.

The application of dispositive norms in case of refusal to initiate criminal proceedings worldwide and the introduction of international standards in ensuring human rights and freedoms upon the termination of a criminal case, improving the termination of a criminal case on certain grounds, obtaining the consent of the victim to terminate a criminal case on unsolved grounds, termination of a criminal case upon inquiry and preliminary investigation



with the consent of the prosecutor, exemption from responsibility, criminal law studies are conducted in areas of significance.

Comprehensive measures are being implemented in our country to ensure human rights and interests, and to develop grounds for refusing to initiate and terminate a criminal case in order to return to society persons who have committed a socially dangerous act without bringing them to criminal responsibility. In particular, the 14th goal of the "Strategy for the Development of New Uzbekistan for 2022-2026", is indicated as "to ensure the rule of law and constitutional legality, as well as to establish the human value as the main criterion of this process. [1]"

In order to achieve this goal, the tasks of "consistent continuation of the policy of improving criminal and Criminal procedure legislation, the widespread introduction of the principle of humanity into the system of criminal penalties and their execution" have been identified, the implementation of which will contribute to the development of guarantees of the rights and freedoms of every person in our country.

Material and methods.

The article uses scientific methods of cognition – historicism, logical-legal, formal, observational, comparative legal and system analysis, statistical methods, analysis and synthesis, induction and deduction, questionnaires, systematic analysis of statistical data, analysis of direct criminal investigation and investigative practice, as well as other methods.

Analysis and discussion.

The issue of exemption from criminal liability is primarily the issue of persons committing a criminal act, and while the criminal act has not been committed, criminal liability and its negative consequences are also absent.

M.X.Rustambayev defines that, "the criminality of an act is expressed in the composition of an action or inaction, which is the basis for assessing it as socially dangerous. The degree of damage caused or possible damage to public relations protected by the Criminal Code is expressed as a consequence of the public danger of a criminal act. The absence of a sign of criminality in the act is the basis for not bringing a person to criminal responsibility, without committing a criminal act, criminal liability also cannot occur. [2, p 29]"

N.S.Tagantsev believes that a criminal act as a legal attitude reflects two aspects: the attitude of the criminal to the interests protected by law is a crime; the attitude of the state to the criminal for committing a criminal act is punishment. For this reason, the structure of criminal law can also be of two types: either a criminal act is put in the first place, in which the punishment for the act is considered as an inevitable consequence, or the punitive activity of the state is put in the first place, in which the criminal act is considered only as the basis of this punitive activity[3, pp 15-16]"

According to A.A.Rusman, a criminal act is characterized as a type of legal relationship. At the same time, the State declares that it has the right to a negative assessment of the person on the basis of this act[4, p 12]"

Although the scientist's opinions are somewhat banal, we believe that a criminal act is not enough to describe the legal relationship that arises between the state and the individual

The word deed is defined in legal encyclopedias as a socially dangerous, unlawful act or inaction[5, p 609], and a criminal act is also called an act directed against society and



deviating from the norms of human morality, threatening public relations protected by criminal law[6, p 154].

In accordance with the opinion of the above-mentioned scientists, we found it necessary to give the following definition of a criminal act, namely:

A criminal act – is a culpable socially dangerous act or omission, which at the time of its commission creates a real danger of harming public relations established and protected by the Criminal Code.

So, only those who have committed a criminal act can be released from criminal liability, and this is carried out on the basis of criminal and Criminal procedure legislation, i.e. in the process of pre-trial investigation and consideration of the criminal case of those who committed such an act, it is provided that it can be carried out in the form of refusal to initiate criminal proceedings on forged documents in regarding them or the termination of the criminal case.

According to B.R.Tursunov, M.H.Rustambaev, and D.M.Mirazov, “Since the refusal to initiate a criminal case is a refusal in procedural activity and has a final, not intermediate character, it is carried out on the basis of reliable information about the absence of signs of a crime or on the basis of the conclusion that it is sufficient to apply public influence as early as possible stage his initiations [7, p238]”.

F.Yu.Vasiliev claims that the institution of refusal to initiate criminal proceedings is understood as a set of interrelated legal norms regulating the activities of the preliminary investigation bodies on the procedural decision on the impossibility of initiating criminal proceedings due to the absence of grounds provided by law for initiating criminal proceedings or due to the presence of circumstances [8, pp 14-18].

In this regard, agreeing with the opinion of the Russian scientist about the similarity between the criminal procedure legislation of the Russian Federation and our national criminal procedure legislation, it should be recognized that the decision to refuse to initiate a criminal case is characterized not only by the absence of elements of a crime in it but also by the totality of criminal procedure rules covering circumstances precluding the initiation of the criminal case.

Therefore, in our opinion, the refusal to initiate a criminal case without resolving the issue of guilt (on non-rehabilitating grounds) is understood as the refusal of an authorized official to initiate a criminal case due to the fact that in the actions of a person according to the evidence collected as a result of an inquest – investigative actions, there are necessary elements of the corpus delicti, but one of the grounds has been established that exclude the proceedings in the case, provided for by the criminal procedure legislation, refusal to initiate is a set of procedural actions consisting in making a decision.

At the same time, this concept needs to be studied due to the fact that the procedure for exercising exemption from criminal liability in the process of investigating a criminal case is carried out with the decision to terminate the criminal case.

B.Murodov defines “the termination of a criminal case is the final stage, which consists in the fact that the authorized official, by evaluating the evidence collected in the case, comes to the conclusion about the termination of the criminal case, making sure that all the circumstances



have found their proof in order to apply to the current situation one or another ground fixed in the law, and termination cases by making a procedural decision or resolution [9, p 12].

According to A.A.Rusman[4, pp 12-14] and E.A.Khabarova[10, p 18], termination of a criminal case is a form of completion of a preliminary investigation, in which an official completes the proceedings by his decision, without sending the case to court.

In part, one can agree with the definitions of scientists on the termination of the case, but when a criminal case is terminated within the framework of the case, the criminal case against all suspects and accused is not always terminated with the admission of their innocence.

S.V.Ilyukhina emphasizes that the termination of a criminal case is a vision of the completion of the preliminary investigation, which is considered the final stage of pre-trial proceedings and includes a whole range of procedural actions [11, p 11].

According to Filimonov S.A., the termination of a criminal case is a procedural decision of an inquirer, investigator, or court (judge), made in a criminal case, on the termination of proceedings in the case or on the involvement of a person in the commission of a crime [12, p7].

Reviews and analyses of scientists show that the termination of a criminal case is a multifaceted concept, and in its perception, it is advisable to go from the general to the particular through a certain classification, and therefore describe it in accordance with the result.

Termination of a criminal case without resolving the issue of guilt (on non-rehabilitating grounds) is a procedural decision of an authorized official made after the decision to initiate a criminal case, if there are facts about the commission of a crime based on the evidence collected in the case or the presence of corpus delicti in the actions of a person excluding, according to Criminal Procedural legislation, further proceedings in the case or the application of punishment by the court. a set of procedural actions consisting in making a decision or ruling on the termination of a criminal case for a reason.

Refusal to initiate a criminal case is considered a procedural action and excludes further proceedings in the case. The criminal procedure legislation also provides for cases excluding clerical work, according to which article 84 of the Criminal Procedure Code of the Republic of Uzbekistan refers to the grounds for terminating a criminal case without resolving the issue of guilt. That is, if there are obvious signs of a complete crime in the actions of a person, however, the presence of the grounds specified in this norm requires a decision to refuse to initiate criminal proceedings, except, of course, in cases where it is necessary to obtain the consent of the person.

It is known that in the theory of law, the division of law into substantive and procedural law is accepted. The material basis for exemption from criminal liability is the Criminal Code, and the procedural basis is the Criminal Procedure Code.

Today we want to draw attention to several cases that are established by the Criminal Code, but the procedure for implementing these criteria is not provided for in the Criminal Procedure Code. In particular, in Chapter IX of the Criminal Code, when establishing circumstances precluding the criminality of an act, the procedure for resolving them is not established by the criminal procedure legislation.



Since the concept of circumstances precluding the criminality of an act is enshrined in article 35 of the Criminal Code of the Republic of Uzbekistan, it is advisable to refer to it first. That is, according to the norm, “an act is recognized as circumstances precluding the criminality of the act, although formally it has the signs provided for by this Code, but is not socially dangerous, illegal or guilty.

The following circumstances, that is, less significant acts; necessary defense; extreme necessity; causing harm during the detention of a person who committed a socially dangerous act; execution of an order or other assignment; the reasonable risk associated with the professional or economic activity; commission of an act as a result of physical or mental coercion or intimidation, are recognized as exceptional circumstances of the crime [12].

Judging by the experience of foreign countries in this matter, article 27 of the Criminal Procedure Code of the Kyrgyz Republic [14] states that it is decriminalization that excludes the criminality of the act, and in each case of voluntary return from the commission of a crime to the proceedings, should be refused, and the initiated criminal cases are subject to immediate termination.

Based on the above considerations and judicial and investigative practice, as well as as a result of the analysis of advanced foreign experience in this area, it is advisable to fix in the Criminal Procedure Legislation such grounds as the exclusion of an act from criminal law and voluntary return from committing a crime.

As part of the exemption from liability established by the criminal legislation of foreign states, but not provided for by our national legislation: in the exemption from criminal liability during reconciliation, not on the basis of a list, but on the basis of the category of all crimes that are not socially dangerous and less serious (Russia, Kazakhstan, Tajikistan, etc.), the same is observed when a person is released from responsibility on the basis of a similar act or loss of public danger.

At the same time, exclusion of exemption from liability through fear and interference from the border of necessary defense, the release of a person who fulfilled the terms of a procedural agreement, personal surety (Kazakhstan, Ukraine, Georgia) [15], voluntary return from a crime (Turkmenistan) [16], compensation for material damage caused (Russia) [17], compensation for damage caused to a victim of economic crimes, and compensation for state damage from said damage. money transfers in the amount of 25% and 50% in favor of (Azerbaijan) [18], there are other types of release of the accused from responsibility on the basis of cooperation with the investigating authority (Georgia) and pardon (UAE, Saudi Arabia, Estonia, Georgia [19].

In the norms of the procedural legislation of foreign countries that exclude office work, private, private-public, and public-accusatory types of criminal prosecution are distinguished, and at the same time the interests of the victim are at a high level, even if the victim has the right to participate in criminal prosecution, in the process of proceeding on private-public prosecution, the prosecutor has the right to refuse the victim's claim even in case of refusal of the charge. office work does not stop if the damage is not compensated [20].

We also believe that in our legislation it is necessary to introduce a new type of exemption from liability – pardon.



There are 3 types of pardons in the world, the first type is the release of a person convicted by a court without punishment [21, p 2], and the second type is absolution (*abbolitio*), that is, the type of release from criminal prosecution or responsibility, the third type is static (*stitutio*), that is, full or partial release from punishment or replacement of punishment [22, p 22].

In recent years, in our country, persons are released from punishment not by an act of amnesty, but on the basis of pardon, which is the essential difference between pardon and amnesty, as well as its advantage, is that within the framework of this institution, an individual approach is applied to the release of persons from punishment, which will be useful in the institute of exemption from responsibility when assessing the most important approach is the loss of the social danger of the individual.

The Institute of Pardons from foreign countries in Germany, the Russian Federation, Estonia, Georgia, the United Arab Emirates, Saudi Arabia, and Belarus has a successful experience of exemption from liability.

Results.

The above analysis of the criminal procedural aspects of exemption from criminal liability allows us to draw the following conclusions.

Firstly, a criminal act should be understood as a criminal socially dangerous act or omission, which at the time of commission causes harm to public relations established and protected by the Criminal Code, or creates a real danger of harm.

Secondly, the refusal to initiate a criminal case to release from criminal liability is a procedural action consisting in making a decision to refuse to initiate a criminal case in connection with the identification of one of the grounds excluding the proceedings in the case provided for by the criminal procedure legislation, although there are essential elements of the corpus delicti in the actions of a person, according to evidence collected as a result of the investigative actions of the authorized official of the complex.

Thirdly, exemption from criminal liability by the termination of a criminal case is understood as exemption from criminal liability – after the decision of an authorized official to initiate a criminal case, if there are facts about the commission of a crime based on the evidence collected in the case or the presence of elements of a crime in the actions of a person, according to Criminal Procedural legislation, with the exception of further proceedings on the case or the application of punishment by the court. a set of procedural actions consisting in making a decision or ruling on the termination of a criminal case.

Fourth, the Criminal Procedure Legislation should include such grounds as the exclusion of an act from criminal law and voluntary return from committing a crime, which excludes the criminality of the act.

Fifthly, a new type of exemption from liability – pardon - should be introduced in our Criminal and Criminal Procedure legislation.

Conclusions.

We believe that the changes that should be made to the above-mentioned legislative acts contribute, firstly, to the legal regulation of cases in this regard, and secondly, contribute to a deeper penetration of the principle of humanity into the laws and consciousness of citizens, as well as the responsibility of citizens for guilt.



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