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## **EXEMPTION FROM CRIMINAL LIABILITY FOR CRIMES IN SPHERE OF ECONOMIC ACTIVITIES**

### **ЗВІЛЬНЕННЯ ВІД КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ЗЛОЧИНИ У СФЕРІ ЕКОНОМІЧНОЇ ДІЯЛЬНОСТІ**

У статті визначено сутність та основні ознаки інституту звільнення від кримінальної відповідальності, особливості його застосування, здійснено аналіз деяких аспектів кримінального законодавства у сфері економічної злочинності європейських країн.

*Ключові слова:* звільнення від кримінальної відповідальності, злочин, альтернативні заходи, законодавче регулювання, мотивація.

В статье определена сущность и основные признаки института освобождения от уголовной ответственности, особенности его применения, проведен анализ некоторых аспектов уголовного законодательства в сфере экономической преступности европейских стран.

*Ключевые слова:* освобождение от уголовной ответственности, преступление, альтернативные меры, законодательное регулирование, мотивация.

The article defines the essence and main features of the Institute of exemption from criminal responsibility, the peculiarities of its application, the analysis of some aspects of criminal legislation in the sphere of economic crime European countries.

*Key words:* exemption from criminal liability, the offence, alternative measures, legal regulation, motivation.

Crimes in the sphere of economic activity in conditions of unstable market economy prevailing in the country, represent a socially dangerous act that require increased attention of the legislator. This is due, firstly, the number of committed criminal acts; and secondly, some of these crimes (especially the actual acts in the sphere of economic activity) in the overall structure of crime may be small, but fixed the damage from them is negligible; thirdly, studies show that the latency of crime in this area is quite high. In conditions of imperfect legislation, the lack of unity in the theoretical views are highly relevant is the search for optimal ways of criminal and legal impact on crime in the sphere of economic activity.

Exemption from criminal liability is an alternative penal measure to counter crime. It is interesting the fact that the Institute was developed along with other institutions of the criminal law throughout the history of domestic criminal law. The current Criminal code of Ukraine provides for the first time an independent section IX of the General part, which is dedicated to the Institute of exemption from criminal responsibility.

We like the position P. V. Grapelike, who quite rightly observes that in modern conditions of law-making and enforcement the principle of inevitability of criminal responsibility undergoes sustainable modernization. To the mechanism of criminal legal protection are increasingly involved measures based not on coercion, but on encouraging, promoting positive postcriminal behavior [1]. One such alternative measures to encourage positive postcriminal the behavior of the person who committed the crime, is the Institute of exemption from criminal responsibility.

The study of the problems of exemption from criminal responsibility, paid attention to such scholars as Y. V. Baulin, M. E. Grigorieva, O. O. Zhitniy, O. M. Lemeshko, N. O. Lopashenko,

M. I. Melnik, O. M. Targatv, V. Y. Tatsiy, M. I. Havronyuk, A. K. Khachatryan, P. V. Chrapinski and others.

It should be noted that since the adoption of the current Criminal code of Ukraine there has been a steady increase in the number of special rules on exemption from criminal responsibility, which indicates that the legislator considers the institution an effective measure of criminal and legal impact and countering criminal manifestations of certain types of crimes. So, the Criminal code of Ukraine (hereinafter – CC of Ukraine) provided 20 promotional regulations according to which a person is subject to mandatory exemption from criminal liability subject to the fulfilment of certain positive actions after the crime, which may occur, for example, the voluntary message of a law enforcement Agency on the committed, active assistance in detecting the offence and voluntary items of criminal activity. The fact that the awareness of individuals that they may be exempted from criminal liability for the Commission of certain crimes, encourages them to prevent the possible socially dangerous consequences, and also to assist the bodies of preliminary investigation and court in solving crimes (if a criminal offence has already taken place). The current criminal code of Ukraine provides for several criminal law provisions, allowing to release the person from criminal liability for Commission of economic crimes, provided for by article 175, article 212 and article 212-1 of the criminal code of Ukraine. The grounds for exemption from criminal liability provided for in part 4 of article 212 and part 4 of article 212-1 of the criminal code of Ukraine, in fact, allow for involuntary and compulsive behavior of the person after committing the crime of paying taxes, duties (mandatory payments), as well as damages caused to the state as a result of their late payment (financial sanctions, fines), insurance contributions for obligatory state pension insurance and the indemnification, caused to the Pension Fund of Ukraine of their delayed payment. There is a distinct difference between the requirements of tax crime and socio-legal nature of incentive norms of the criminal code of Ukraine. The only justification for this state of Affairs can only be the pragmatic focus of these standards on the content of the budget, offloading the law enforcement resources of the state, continue normal financial and economic activity of the taxpayer [2, p. 114]. The problem of

improving the incentive of criminal law provisions for crimes in the sphere of economic activity lively debated in the scientific community [3, p. 53]. Quite logical is the proliferation of special dismissal on the grounds specified in part 4 of article 212-1 of the criminal code of Ukraine for abuse if it led to actual uncollected funds to the budgets or state trust funds or insurance premiums on obligatory state pension insurance in especially large sizes. Removing barriers the exemption from criminal liability, depending on the size of the caused material damage of economic or other non-violent property crime is a promising direction distribution of promotional requirements of the Special part of criminal code of Ukraine. Exemption from criminal liability of persons who voluntarily paid the damages in large or especially large size, will effectively contribute to the full compensation for material and moral damage to victims of a crime, return a lot of money into the legitimate public address will make their criminal use, for example, to Finance the shadow, illegal, fictitious and other socially dangerous types of economic activity [4, p. 22].

According to A. K. Khachatryan, there is a separate, specific socio-political motivation in the allocation of separate grounds of exemption from criminal responsibility for crimes in the sphere of economic activity, which is manifested in the system of factors: first, the restoration of violated crime economic interests, which is achieved by voluntary compensation of the caused damage in full, with possible recovery of some semblance of a penalty in favor of the state. This leads to a significant reduction in absolute public danger of the crime and persons who committed it; second, the exemption from criminal liability should be beneficial to the person who committed the crime. Possible penalties should "outweigh" the size of the damage both in terms of penalty and in respect of other forms of punishment, including imprisonment; third, the exemption from criminal liability should serve to save energy state [5].

Highly relevant, in our view, is also the implementation of the foreign experience on this issue, because legal systems of different countries are combined in the so-called "legal family", that is, a group "of national legal systems United by common historical origins, the similarity of the distinguishing characteristics of the

system of law practice, legal institutions and socio-legal ideology" [6]. At the same time, the number of selected families varies, including in connection with criminal law [7].

Let us analyze some aspects of the criminal law in the field of economic crime European countries. In particular, in Germany, in accordance with section 46a of the Criminal code of 1871 "Compensation by the victim, compensation of damage," ... if the contractor: 1) efforts aimed at compensation of the caused harm to the victim (compensation by the victim), made wholly or mostly action or seriously tried to achieve this goal; 2) in a situation in which the damages demanded from him a substantial individual costs or losses reimbursed by the victim is completely or mostly caused harm, the court may mitigate the punishment pursuant to § 49 (par. 1) or to abstain from punishment if the perpetrator shall be punished by deprivation of liberty for a term not exceeding one year or monetary fine up to three hundred sixty daily rates" [8]. In addition, comments on the situation of the deduction from sentence indicates that "the content of punishment means, in respect of the contractor although were convicted, and he shall bear the obligation to bear the costs of this process (§ 465, para. 1, offers. 2 of the Criminal procedure code...), but in the sentence, the court shall issue a ruling on the refusal of sentencing. In the procedural stage of the criminal investigation, the Prosecutor may, if the conditions under which the court could refrain from punishment, with the consent of the court to refrain from submission to the court indictment. In the procedural stage of pre-trial proceedings, the court, in the presence of the above prerequisites may, with the consent of the Prosecutor and the accused make the decision on the termination of the production (§ 153b of the Criminal procedure code..." [9]. Thus, although in the criminal law says, if we draw Parallels with the Ukrainian law on exemption from punishment, the criminal procedure law allows, speaking the same language, the exemption from criminal liability. This norm of the criminal law is of a General nature, and the special grounds applicable to economic crimes, the criminal law does not provide.

The Penal code of France of 1992, he suggests a few interesting rules. Thus, article 132-59 provides that "exemption from punishment may occur in the case where the social rehabilitation of the perpetrator is reached, the damage compensated and the harmful

consequences caused by the criminal act ceased to have effect" [10]. Is of interest the approach of the French legislature's "deferral of sentencing in financial regulation". In particular, according to article 132-66 of the code: "in cases provided for by laws or regulations, ... the court for deferment of sentencing could predict the physical or legal person recognised guilty of fulfilment of one or more of the requirements for payment of penalties provided by the said laws or regulations. To fulfil these requirements the court establishes a deadline" [10]. The following provision of the law allows for a penalty for such delay, but only provided that it provided by law or regulation. Article 132-68 code allows a single application of deferral. However, according to article 132-69 code, the execution of the monetary claims in itself does not entail the release of the perpetrator from punishment, because the court retains the right to assign it, except in those cases when the time delay has passed.

According to section 167, section 6 of the Austrian Penal code of 1974 "Criminal acts against another's property" [11] in the case of remorse precluded the punishment for such offences as damage to property, damage to data, theft, theft of electric power, embezzlement, misappropriation, confiscation of things for a long time, the violation of another's hunting rights or fishing, kidnapping, things of little value, fraud, fraudulent misuse of data processing, obtaining benefits by deception, criminal breach of trust acceptance of gifts by representatives of the authorities, abuse of resources, usury, imaginary failure, causing damage to the creditor, the granting of privileges to the creditor, causing damage to the interests of the lender committed gross negligence, combating forced collection and concealment. Pursuant to par. 2 p. 167 [11] remorse is allowed only in case when the person before bodies conducting criminal prosecution, learn about his criminal activities, even at the request of the victim, but without coercion fully reimburse the damage incurred or because the contract will take the responsibility to pay the victim for a certain time such compensation damages. The punishment is also impossible if the person will pay the relevant amount of money at the time of his surrender to the relevant body. In addition, the act permits the indemnification by a third party on behalf of the perpetrator, provided that the latter is seriously trying to compensate

caused by a crime damage.

Analyzing the criminal legislation of these European countries with a developed economy, we came to the conclusion that the exemption from punishment for crimes in the sphere of economic activity in a General sort of criminal law; technical and legal aspects related to whether the dismissal is conditional or unconditional, occurs in the pre-trial or trial stage of the criminal process, it does not have fundamental importance; as a condition of parole, the law certainly makes a requirement about compensation of the harm caused. In some criminal codes of the legislator additionally offers to pay a certain amount in favor of the state or of penalties provided for by law (France). It allowed the damages by a third party, provided that the offender makes an effort to make amends, and does not behave passively (Austria); the legislator does not impose high demands for damages, limited to the harm actually caused, and sometimes reimbursement for exclusively the competence of the court (Germany), there is also the installment of redress (France, Austria).

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