

THE GENERAL CHARACTERISTIC OF THE EXEMPTION FROM CRIMINAL LIABILITY FOR CORRUPTION CRIMES IN UKRAINE

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The relevance of the theme of the study is related to the change in the direction of world and national criminal policy in the direction of the primary protection of the rights, freedom and interests of the victim, individualization of criminal responsibility and punishment. New forms and methods of state response to a crime committed to prevent or reduce the consequences of a crime are looked for. Considerable attention has been paid to changes and additions to the institute of release from criminal liability in the new criminal legislation. The existence in the CC of Ukraine of special cases of release from criminal liability is substantiated by the desire to compromise with the offender in order to achieve a more significant result than bringing the criminal responsibility of the perpetrator.

The problems in determining the grounds and conditions for exemption from criminal liability were paid attention by domestic and foreign scholars such as Kh. Alikperov, Yu. Baulin, V. Horzhey, E. Dadakayev, V. Yegorov, O. Zhytnyi, V. Kyshnaryov, I. Petrukhin, V. Tertyshtnyk, D. Filin, P. Khryapynskyi and etc.

There are different views on the definition of exemption from criminal liability in the theory of criminal law. The objective necessity of the existence of this institution in legal science is explained in different ways. The basis of exemption from legal liability is its humanization in the general theory of law; institute of dismissal from liability see as a means of implementing the principle of individualization in the legal mechanism.

As a manifestation of the principle of humanism, the Institute for the exemption from criminal liability is also considered in the science of criminal law. The exemption from criminal liability for corruption crimes is regulated by criminal and criminal-procedure legislation, the refusal of the state through the competent authorities from the appointment of a person who committed a corruption offense, punishment and the imposition of criminal legal measures against legal entities. The considerable experience is already accumulated considerable experience in the application of the norms that provide for the release of a person from criminal responsibility in the science of criminal law, but significant changes in anti-corruption legislation have made many innovations in the norms of the Criminal Code of Ukraine [1, p. 185].

The above changes are related to the fact that since October 2014 a number of extremely important laws have been passed which can be considered the largest legislative reform in the field of combating corruption during the existence of a new independent Ukrainian state, such as: Laws of Ukraine «On Amendments to the Criminal and Criminal Procedural Codes of Ukraine Regarding the Inevitability of Punishment for Certain Crimes Against the Basics of National Security and Corruption Crimes (the Law on conviction in absentia)» (dated 07.10.2014), «On the Principles of State Anti-Corruption Policy in Ukraine (Anti Corruption Strategy) for 2014–2017»; «On the National Anti-Corruption Bureau of Ukraine»; «On Prevention of Corruption»; «On Amending Certain Legislative Acts of Ukraine Concerning the Definition of Final Beneficiaries of Legal Persons and Public Figures» etc.

Speaking about the general characteristics of the exemption from criminal liability for corruption crimes, the grounds and conditions of application of this legal institution are subjects to study, first of all. In view of this, let's dwell on the formulation of the essence of the concepts of «ground» and «condition». The condition is inextricably linked with the essence of the grounds for exemption from criminal liability. The condition is a thing, which forms the cause or creates the possibility of its action, and this connection is conditioned with the consequence; the condition is a requirement, a proposal put forward by one party, negotiating about something, as well as when entering into an agreement, a contract, by an academic explanatory dictionary. Under the notion of «cause» understand the thing that determines directly, generates another thing – the consequence.

Taking into account the clarified interpretation of these basic concepts of «grounds» and «conditions» for exemption from criminal liability for corruption crimes, we can outline their general characteristics [2, p. 254–255]:

– the normative basis is availability, where the incentive legal rules of criminal law is contained in art. 354 of the CC of Ukraine;

– the factual basis is the presence taken together provided for conditions for exemption from criminal liability in Part 5 of Art. 354 of the Criminal Code of Ukraine 1) after a proposal, a promise or an unlawful benefit; 2) before obtaining information about this crime from other sources by the relevant body; 3) a voluntary of crime report; 4) active assistance in disclosing a crime;

– the procedural basis is the norms of law, in particular the CPC of Ukraine, which determine the procedure for exemption from criminal liability.

Speaking about the grounds for exemption from criminal liability, there are many controversial views about the conditionality of their existence in criminal law among scientists. The search for new, effective methods and ways of combating corruption is an urgent problem for modern Ukraine. Over the past few years, the number of changes taking place in the field of fighting corruption has exceeded the measures taken over the past ten years. However, qualitative transformations have not become visible to every citizen yet.

The results of such reforms can be felt under the condition of radical innovations in preventing such a socially dangerous thing as corruption. At the same time, the principles of criminal law, which are fundamental for the given branch and basic for the state in general, must remain inviolable. General principles are inherent not only in criminal law, but also in other branches of law. They are: rule of law, legality, equality of citizens before the law, inevitability of liability, principles of justice, humanism and democracy.

The specified norms of exemptions are directly in line with international standards, in particular the Council of Europe Convention on Criminal Liability for Corruption 1999, The UN Convention against Corruption 2003, the United Nations Convention against Transnational Organized Crime 2000, the Convention of the Organization for Economic Co-operation and Development on combating the bribery of officials of foreign states in conducting international business operations in 1997.

Summarizing everything, we note that the domestic criminal law operates the principle of inevitability of liability, the essence of which is that the person who committed the crime must be brought to the criminal or other responsibility that is associated with the using criminal nature actions against such persons. However, the analysis of the norms of art. 51 of the CC of Ukraine, as well as the characteristics of special types of exemption from criminal liability, gives grounds for refusing from this principle and developing more flexible forms of exemption liability for the committed crime.

Let's consider the compliance of special types of exemption from criminal liability for crimes to the special principles of criminal law:

– the principle of the legislative definition of a crime (there is no crime not provided for by the Law) – one of the most important general principles of criminal law. It is defined in articles 1, 2, 3 and 11 of the CC of Ukraine.

– the principle of personal responsibility – criminal liability is possible only for their own actions (inaction). No one can be held accountable for a crime committed by another person. This principle follows directly from the contents of part 2 of art. 2 CC.

The analysis of the concepts of exemption from criminal liability for crimes in general has determined the need for the formulation of this concept directly for corruption crimes. The difference in understanding is related to the changes that have already been made to the Criminal Code of Ukraine for the implementation of international obligations to combat corruption [3, p. 284].

Consequently, the exemption from criminal liability for corruption crimes is refusal regulated by the criminal and criminal-procedural of the state, in the person of the competent authorities, about the appointment to the person who committed the corruption crime, the punishment and the application measures of a criminal nature against the legal entities.

Analyzing the general and special principles of criminal law, we can note that in the field of combating corruption, each of them undoubtedly has a manifestation. During the study, there were no direct contradictions between the special types of exemption from criminal liability for corruption crimes and the fundamental ideas of criminal law. However, the principles that are key to these incentive norms deserve special attention, about what we have already said here.

References:

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