



UDC 343.2

## LEGAL NATURE OF EXEMPTION FROM CRIMINAL LIABILITY

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### SUMMARY

The article is devoted to the analysis of legal nature of exemption from criminal liability. The primary areas of contemporary research regarding the notion of exemption from criminal liability are analyzed. The definition and features of exemption of criminal liability are defined. It is concluded that exemption from criminal liability is an independent criminal law institute that is realized beyond criminal liability institute, an incentive measure of criminal law nature, display of a compromise within the framework of criminal justice and an alternative to criminal coercion.

**Key words:** exemption from criminal liability, criminal liability, measures of criminal law character.

## ПРАВОВАЯ ПРИРОДА ОСВОБОЖДЕНИЯ ОТ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ

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### АННОТАЦИЯ

Статья посвящена анализу правовой природы освобождения от уголовной ответственности. Проанализированы основные направления современных исследований касательно определения сущности освобождения от уголовной ответственности. Определено понятие и признаки освобождения от уголовной ответственности. Сделан вывод, что освобождение от уголовной ответственности являются самостоятельными уголовно-правовым институтом, который реализуется вне института уголовной ответственности, поощрительной мерой уголовно-правового характера, проявлением компромисса в рамках уголовной юстиции и альтернативной уголовному принуждению.

**Ключевые слова:** освобождение от уголовной ответственности, уголовная ответственность, меры уголовно-правового характера.

**Relevance of the topic.** Institution of exemption from criminal liability has always drawn attention of researchers. In a number of cases scholars analyze issues of legal nature and notion of exemption of criminal liability, its place within the system of criminal law, additionally, certain types of exemption of criminal liability as well as specificities of their application are researched. For instance, the issue of exemption of criminal liability was a subject of research of the following scholars: Kh.D. Alikperova, P.P. Andrushko, O.F. Bantyshev, Yu.V. Baulin, V.I. Borysov, L.V. Holovko, O.M. Hotin, M.Ye. Hryhorieva, O.O. Dudorov, A.V. Yendoltseva, O.O. Zhytnyi, S.H. Kelina, O.V. Kovitidi, O.S. Kozak, O.M. Lemeshko, A.A. Muzyka, O.V. Naden, R.O. Sabitov, V.P. Tykhyi, S.S. Yatsenko etc.

However, still there is an ongoing debate on key issues relating to the institute of exemption of criminal liability, and one of them is its legal nature. That's why **the goal of the research** is to examine formulated approaches of legal nature of exemption from criminal liability.

**Results and discussion.** There are several approaches in the scientific literature that could be identified as regards to legal nature of exemption from criminal liability.

For example, several scholars find exemption from criminal liability as a form of realization of criminal responsibility. The approach is backed by V.K. Hryshchuk [1, p. 96–97]. In contrast, Yu. A. Ponomarenko argues that it is impossible to support such approach as in case of exemption of criminal liability none of its measures are applied to a person that committed a crime. The person is not even subject to government condemnation, let alone other measure of criminal liability [2, p. 71]. Yu.V. Baulin also argues that if a person is exempted from criminal liability and real criminal liability starts at the same point, then it's unclear how exemption from criminal liability could serve as one of its forms. In such case it should be either regarded as beginning from earlier period of time, or declare that exemption from criminal liability is neither the form nor the stage of criminal liability realization [3, p. 192].

Besides that, O.O. Dudorov and Ye.O. Pysmenskyi state that there are no grounds to consider exemption from criminal liability as a form of realization of criminal liability. In case of exemption from criminal liability while its grounds are non-rehabilitative, the state for various reasons waives its right to judge and condemn the person that committed a crime, much less coercion provided for by criminal law.

Additionally, it should be noted that there is an approach in the scientific literature according to which person's exemption from criminal liability is the exemption from real criminal liability [5].

We, accordingly, back the approach suggested by Yu.V. Baulin that the person is exempted from potential liability as exemption from such liability takes place before the starting point of real criminal liability, which is before the moment the judgement of conviction becomes final. No judgement of conviction – no real criminal liability, thus the person is exempted from potential criminal liability [3].

One more position present in scholars' works on legal nature of exemption from



criminal liability is the approach that sees exemption from criminal liability as measure of differentiation of criminal liability. Scholars supporting the approach argue that the institution of exemption of criminal liability is a measure of differentiation because:

- Provided by the law, applies to all cases of commission of relevant offences; has the same content for any crime of certain type; is obligatory for application; has a significant impact on society's peril of infringement [6, p. 302–303].

- All types of exemption of criminal liability are aimed to create different measures responsibility in the law; the criminal liability itself should be the subject of exemption from criminal liability; grounds and conditions for every type of exemption are set out in the law and based on them a court decides on the issue of exemption of a particular person from criminal liability [7, p. 180].

- The lawmaker provides Criminal Code of Ukraine (CC of Ukraine) with the circumstances under which the volume of adverse impact on the offender not only increase but also decrease till 'zero' level when the government waive the application of criminal law measure of coercion to the offender [8, p. 1–2];

Additionally, there are a number of scholars that oppose such view and provide the following arguments:

- Criminal liability could be viewed as a real measure of criminal liability but not a exemption from it. Consequently, it is impossible to differentiate something that is not present [9, p. 177].

- The current CC of Ukraine established a considerable variety of criminal law consequences of offence commission. Some of them provides realization of criminal liability for criminal offence commission (punishment, exemption from a punishment, exemption from serving a sentence), whereas other are only a threat of criminal liability without real punishment (exemption from criminal liability) [10].

- The actor of differentiation of criminal liability is the lawmaker which differentiates potential criminal liability for various categories of crimes and offenders in advance in rules embodied in CC of Ukraine. Exemption from criminal liability is the prerogative of a court, which instead of applying the whole scope of criminal liability differentiation laid out by the lawmaker, does

not impose restrictions of the person's rights and freedoms set out for the commission of an offence [3, p. 192].

When analyzing these approaches it could be noted that based on the mentioned position, according to which released from criminal liability could not be considered as the form of criminal responsibility realization and thus, nor as the measure of its differentiation.

The scientists' view on the above-mentioned approaches is quite different; however there is one thing they all agree: exemption from criminal liability is the measure of criminal-law character.

It should be pointed out that there are several approaches in the scientific literature as to the classification of measure of criminal-law character. For instance, some distinguish 1) incentive (exemption from criminal liability; absence of a victims demands and other forms of a compromise; sentencing under Articles 69, 69<sup>1</sup> of CC of Ukraine; exemption from punishment under Article 74 Para. 4 and Article 81 of CC of Ukraine; substitution of unserved part of the sentence with more lenient); 2) coercive (sentence; probation and it analogues; criminal record; coercive measures of educational character; coercive measure of medical character; others); 3) quasi-measures (exemption of criminal liability under Articles 48, and 49 of CC of Ukraine; exemption from a sentence under Article 74 Para. 2, and Articles 84, 86, 87 of CC of Ukraine; substitution of a punishment with a more lenient one due to inability to apply the rule of limitations; exemption of legal entities from measure of criminal-law character) [11, p. 290–302]. O.V. Kozachenko highlights the following types of measure of criminal-law character: 1) coercive (punitive – punishment and criminal record; other criminal-law coercive measures – coercive measures of medical character, compulsory treatment, coercive measures of educational character, measure to legal entities); 2) incentive (exemption from criminal liability and exemption from punishment) [12, p. 38–41].

Scholars consider exemption as an incentive measure or quasi-measure. Incentive criminal-law rule provides exceptions, exemption, commutation of punishment or sentence in case of com-

mission of socially dangerous act that constitute element of lawful conduct provided for by criminal legislation. Incentive rule is incorporated into the system of criminal legislation, is a part of legal system of Ukraine. Rules of CC of Ukraine is the expression of will of both society and state, aimed to crime combat, resolution of criminal-law conflict by the means of law. Incentive rules along with prohibitive ones within the system of criminal law seek to contribute to the implementation of the main security task [13, p. 105].

Therefore, the essence of exemption of criminal liability as either an incentive measure of quasi-measure is that the elements of a criminal offence are present, however the government considers possible to demonstrate an incredible act of humanism and to excuse the offender on the stage which precede the sentence of a court, however the goals of the law are achieved or could be achieved without punishing the person.

There is other view, according to which the institute of exemption from criminal liability is of compromise nature. Suggested by Kh.D. Alikperov, the compromise theory holds that a bunch of rules of criminal law guarantee for the person that committed a crime, a possibility to avoid criminal coercion measures in exchange for that person taking actions provided in the law that ensures realization of primary tasks of criminal law fight against crime [14, p. 65].

H.O. Usatyi shifts the focus to the idea of compromise between the state and the person that committed a crime, and argues that incentive rules in criminal law could exist only in a case of a parole, commutation of sentence provided that the person's guild is proved. All other cases of positive post-criminal attitude the researcher considers to be compromise rules which should be confused with incentive rules as it is 'terrible and unacceptable mistake' [15].

We, in our turn, believe that is reasonable to back ideas of V.P. Khriapinskyi which holds that advocates of compromise rules hyperbolize the compromise as measure of resolution of criminal law conflict. Imperative method highlights the importance of state in criminal-law relations, unquestioning obedience of one actor of relations to tasks of legal regula-



tion of protection of rights and freedoms of a person and a citizen, property etc. Thus, the authority represented by the state has no need in compromising with an offender in exchange for some actions taken by him/her. However, it's a different story for the state to establish incentive rules where the state as dominant actor of legal relations stimulates other actors to lawful, generally beneficial conduct in a way that clearly defines mutual rights and duties in arising relations [13, p. 102]. Certainly, in order to avoid serious negative outcomes, when it comes to special types of exemption, one could speak of a compromise. Nevertheless, one should not forget that within the institute of exemption of criminal liability principles of justice, humanity, reasonableness, and criminal-law repression economy.

Some scholars reasonably hold that exemption from criminal liability is 'the alternative to criminal prosecution'. For instance, L.V. Holovko, in particular identify exemption of criminal liability as a mechanism of resolution of criminal-law conflicts [16].

Having analyzed approaches of legal nature of exemption from criminal liability we do not draw some generalized conclusion and consider it necessary to examine scholars ideas on definition of 'exemption from criminal liability'. We believe that once the definition is established we can deal with the formulation of key features and address the notion and purpose of the criminal law institution in complex.

Considering the absence of formulation of exemption from criminal liability in the law there are many thoughts on this topic in the academic literature, so let's place them in chronological order so that we can see how understanding of the institute have changed.

S.H. Kelina provides us with a quite concise definition of exemption from criminal liability; she argues that the institution is the waiver of the state to give negative assessment to a person who committed a crime in cases stipulated by law [17, p. 31]. Accordingly, V.V. Skybytskyi shifts the emphasis to the realization of expediency principle within the area of the institute of criminal law and defines exemption from criminal liability as an elimination provided by criminal law

of criminal liability of a person who committed a socially dangerous act if objectives of punishment and criminal law could be met (or have been met) without use of criminal-law coercion [18, p. 25].

In contrast, A.V. Yendoltsova holds that the state excuses the person who committed a crime, thus has confidence in him/her and counts on law-abiding behavior in the future. Exemption from criminal liability reflects the tolerable attitude towards the person, possibility to meet the objectives of criminal justice without sentencing the guilty person [19, p. 30].

However, the considerable number of scholars, though indirectly indicating about achieving objectives of criminal liability without applying it, however they do not include it in the definition of 'exemption from criminal liability' and highlight other aspects of it. For example, V.S. Yehorov holds that exemption from criminal liability is a non-application of negative legal outcomes provided by the law to a guilty person due to elimination or considerable reduction of social dangerousness of criminal act or the person who committed it [20, p. 50].

Yu.V. Baulin, whose papers on the issue are one of the most authoritative, argues that exemption from criminal liability is provided by the law waiver of the state to apply restrictions to rights and freedoms to a person who committed a crime provided for by CC of Ukraine [3]. O.S. Kozak complements the definition of Yu.V. Baulin by stating that such waiver is made according to the requirements of substantive and procedural criminal law and does not lead to criminal law consequences [21, p. 18–19]. O.F. Kovitidi believes that exemption from criminal liability is the waiver of punishment application to an offender, whose action consist of element of a crime, made by the state in cases provided by law [22, p. 107]. P.V. Khriapinskyi holds that exemption from criminal liability is an incentive reaction of the state to positive post-criminal conduct of a person that demonstrates full or partial elimination of social dangerousness and consist of unconditional or conditional waiver of application of restrictions of person's rights and freedoms provided for by CC of Ukraine [23].

Based on the analysis of the above-mentioned views the exemption from criminal liability could be defined as state's waiver of application (non-application) of restrictions, provided for by CC of Ukraine, of rights and freedoms of person who committed a criminal offence (regulated by substantive and procedural criminal law) that leads to criminal law consequences if objectives and goals of criminal legislation may be (or have been) achieved without use of criminal-law coercion.

Features of exemption from criminal liability are the following: waiver of application of restrictions of rights and freedoms to person who committed a crime; absence of official condemnation of a person from the state in the form of a judgement of conviction; suspension of all criminal-law relations between the state and released person; absence of consequences of criminal law character; achievement of objectives and goals of criminal legislature without application of application of criminal-law coercion.

Several conclusions may be drawn as regards to the legal nature and definition of exemption from criminal liability:

- Independent criminal-law status.
- Is realized beyond the institute of criminal liability, a person is exempted from potential criminal liability.
- Is an incentive measure of criminal-law character. States by stimulating person who committed crimes to socially valuable, right behavior, waives the application of restrictions of person's rights and freedoms.
- Display of compromise within criminal justice. A person guilty in commission of a crime has to meet all requirements stipulated by the law. For example, in case of exemption from criminal liability due to reconciliation between an offender and a victim, an offender has to reconcile with a victim and for the losses concerned.
- Is the alternative to criminal coercion. Plays a key role as it provides an opportunity to meet objectives and goals of criminal liability without its application.

#### References:

1. Гришук В.К. Доктринальне розуміння форм реалізації кримінальної відповідальності людини. *Актуальні проблеми кримінальної*



відповідальності : матеріали міжнар. наук.-практ. конф., 10–11 жовт. 2013 р. / ред. кол. : В.Я. Тацій та ін. Харків : Право, 2013. С. 93–98.

2. Пономаренко Ю.А. Форми реалізації кримінальної відповідальності за кримінальним законодавством України. *Збірник наукових праць Харківського національного педагогічного університету імені Г.С. Сковороди. Право*. 2013. № 20. С. 65–72.

3. Баулін Ю.В. Звільнення від кримінальної відповідальності. *Вісник Асоціації кримінального права України*. 2013. № 1 (1). С. 185–207.

4. Дудоров О., Письменський Є. Звільнення від кримінальної відповідальності і звільнення від покарання та його відбування: порівняльно-правова характеристика. *Вісник Національної академії прокуратури України*. 2010. Вип. 3. С. 46–52.

5. Григор'єва М.Є. Звільнення від кримінальної відповідальності у зв'язку з її дійовим каяттям : автореф. дис. ... канд. юрид. наук : 12.00.08 / Нац. юрид. акад. України ім. Ярослава Мудрого. Харків, 2007. С. 20.

6. Навроцький В.О. Основи кримінально-правової кваліфікації : навчальний посібник / наук. ред. В.С. Ковальський. Київ : Юрінком Інтер, 2009. 511 с.

7. Лесниевски-Костарева Т.А. Дифференциация уголовной ответственности. Теория и законодательная практика. Москва : Изд-во НОРМА, 2000. 400 с.

8. Ремизов М.В. Основание дифференциации уголовной ответственности при освобождении взяточдателей от ответственности согласно примечанию к ст. 291 УК РФ. URL: <http://defence-line.ru/useruploads/files/publik.pdf>.

9. Каплин М.Н. Сущность дифференциации уголовной ответственности. *Юридические записки Ярославского государственного университета им. П.Г. Демидова* / под ред. В.Н. Карташова, Л.Л. Крутликowa, В.В. Бутнева. Ярославль, 2001. Вип. 5. С. 172–182.

10. Золотарьов А.І. Звільнення від кримінальної відповідальності, від покарання та його відбування за злочини у сфері господарської

діяльності : автореф. дис. ... канд. юрид. наук : 12.00.08. Київ, 2008. 23 с.

11. Дудоров О.О., Хавронюк М.І. Кримінальне право : навчальний посібник / за заг. ред. М.І. Хавронюка. Київ : Ваіте, 2014. 944 с.

12. Козаченко В.О. Кримінально-правові заходи в Україні : підручник. Миколаїв : Іліон, 2015. 216 с.

13. Хряпінський В.П. Доктринальне розуміння заохочувальних норм у кримінальному праві. *Вісник ЛДУВС ім. Е.О. Дідоренка*. 2017. № 1 (77). С. 97–107.

14. Аликперов Х.Д. Преступность и компромисс. Баку, 1992. С. 65.

15. Усатий Г.О. Кримінально-правовий компроміс. Київ : Атіка, 2001. 125 с.

16. Головка Л.В. Альтернативы уголовного преследования в современном праве. Санкт-Петербург : Юрид. центр Пресс, 2002. С. 251–253.

17. Келина С.Г. Теоретические вопросы освобождения от уголовной ответственности. Москва : Наука, 1974. 232 с.

18. Скибицкий В.В. Освобождение от уголовной ответственности и отбывания наказания : монография. Киев : Наукова думка, 1987. 184 с.

19. Ендольцева А.В. Институт освобождения от уголовной ответственности: теоретические, законодательные и правоприменительные проблемы : дис. ... докт. юрид. наук : 12.00.08; 12.00.09. Москва, 2005. 396 с.

20. Егоров В.С. Теоретические вопросы освобождения от уголовной ответственности : монография. Москва : Моск. психол.-социал. ин-т, 2002. 279 с.

21. Козак О.С. Ефективність звільнення від кримінальної відповідальності в Україні : монографія. Київ : Освіта України, 2009. 204 с.

22. Ковітіді О.Ф. Звільнення від кримінальної відповідальності за нормами Загальної частини КК України : навчальний посібник. Сімферополь : ВД «Квадранал», 2005. 224 с.

23. Хряпінський П.В. Заохочувальні норми у кримінальному законодавстві України: теоретичні, законотворчі та правозастосовні проблеми : автореф. дис. ... докт. юрид. наук : 12.00.08. Харків, 2010. 39 с.

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