

Conciliation and Compensation for Damage Caused as a Condition for Exemption from Criminal Liability: Current State, Problems, and Prospects

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ABSTRACT

This article deals with current issues of legislation, theory and practice related to the regulation and implementation of the institution of exemption from criminal liability in terms of such conditions of the latter as conciliation and compensation for damage caused by a crime. The authors research the current state, problems and prospects of this institution through the prism of the relationship between conciliation and compensation of damage caused among themselves and with other conditions of exemption from criminal liability, emerging law enforcement practice and existing doctrinal positions in this area. Based on the conducted research, directions for resolving the identified problems are proposed and substantiated, aimed at improving the effectiveness of the institution of exemption from criminal liability in general and its conditions such as conciliation and compensation for damage caused, in particular.

Keywords: *compensation for damage caused, exemption from criminal liability, conciliation, criminal policy of the state*

1. INTRODUCTION

Exemption from criminal liability is an integral part of the criminal policy of the state, one of its main areas that contribute to saving criminal repression and restoring the rights and interests of victims of crime without applying coercive measures to persons who have committed the corresponding criminal offenses. The criminal and legal, criminal procedural rules that form the corresponding comprehensive institution provide for the conditions and procedure under which the state, through its bodies and officials, refuses to prosecute a certain person, which is one of the most striking manifestations of the principle of humanity. In this case, we are talking about the formation of alternative ways of resolving conflicts arising in connection with the commission of a crime, not limited solely to the criminal prosecution of the perpetrators, but aimed at encouraging the latter to compensate for the damage caused, assist in crime solving, etc. [5, 3-4]. Such alternative methods are actively used in individual foreign countries [9, 49-68; 10, 578-595], the positive experience of which should be borrowed while improving the Russian legislation and the practice of its application.

However, for the effective application of this institution, it is necessary at the legislative level to ensure legal certainty and consistency in the regulation of exemption from

criminal liability and termination of criminal prosecution, and at the law enforcement level - a consistent and uniform interpretation of the relevant provisions of the law. It is also important to take into account that the principle of humanity has two equivalent sides, one of which, as directly follows from the content of part 1 article 7 of the Criminal Code of the Russian Federation, is the focus of criminal law on ensuring human security, which implies, in particular, proper criminal and legal protection of the rights, freedoms and legitimate interests of citizens from criminal encroachments. This is also consistent with the objectives of the criminal law provided for by part 1 article 2 of the Criminal Code of the Russian Federation and involves the use of criminal and legal means not only for protection, but also for the restoration of the rights, freedoms and legitimate interests of victims violated as a result of committing crimes. Therefore, when regulating and implementing the grounds for exemption from criminal liability, a certain balance of interests of the state itself, interests of crime victims and persons who committed them should be observed [1, 138-140].

2. MATERIALS AND METHODS

Currently, the institution of exemption from criminal liability within the framework of substantive law is regulated by articles 75-78, 84, 90 of the Criminal Code of the Russian Federation (hereinafter referred to as the CC of the RF), as well as notes to individual articles of its Special Part, which mainly deal with special cases of such exemption in connection with active repentance (for example, notes to articles 126, 222, 2221, 3223 of the CC of the RF).

Except for the expiry of periods of limitations (article 78 of the CC of the RF), all other general grounds (types) of exemption from criminal liability provided for by the norms of Chapter 11 of the CC of the RF imply certain positive post-criminal behavior of the person who committed the crime, containing the necessary conditions for the institution researched. One of these conditions is compensation for damage or other remediation caused by the crime. This condition is named as one of the alternative positive post-criminal acts in art. 75 of the CC of the RF on exemption from criminal liability in connection with active repentance, and is also indicated as an integral part of conciliation with the victim (article 76 of the CC of the RF) and exemption from criminal liability with the imposition of a court fine (article 762 of the CC of the RF). In addition, art. 761 of the CC of the RF provides for exemption from criminal liability in connection with compensation for damage caused as a result of the commission of the types of crimes referred to in this article.

3. RESULTS AND DISCUSSION

The combination of conciliation with the victim and remediation to him is provided only in art. 76 of the CC of the RF, according to which exemption from criminal liability in the presence of such conditions is possible in cases where a person first committed a crime of minor or medium gravity.

The extension of this ground of exemption from criminal liability exclusively to acts relating to categories of crimes of minor and medium gravity is a completely justified legislative measure, moreover, in the structure of criminal cases submitted to the courts every year, the same or even an increase in the proportion of persons held criminally liable for such crimes is observed.

In particular, the proportion of persons accused of crimes of minor gravity in criminal cases brought to the courts in 2016 reached 53.4%, maintaining the corresponding trend in 2017 – 53.9% and in 2018 – 54.5 %. In relation to persons accused of crimes of medium gravity, a similar situation is observed:

in 2016 their share in criminal cases submitted to the courts amounted to 24.5%, in 2017 – 24.9%, in 2018 – 24.8%.

We also draw attention to the fact that conciliation with the victim in practice is the most common ground for

exemption from criminal liability. So, in 2018, courts for reasons other than exoneration terminated criminal cases against 188,084 people, of which 66.9% of the defendants were exempt from criminal liability precisely in connection with conciliation with the victim, 17.7% of the defendants were sentenced to a fine, 6.4% of the defendants – due to active repentance.

As M.T. Ashirbekova reasonably notes the introduction of the concept of conciliation into the criminal and criminal procedure legislation marked the beginning of the implementation of a “human-centered” approach to resolving emerging criminal and legal conflicts on the basis of respect for the will of victims of crimes. The termination of the criminal case in connection with such a conciliation, in fact, involves citizens in the process of implementing the criminal policy of the state in terms of reducing criminal and legal repression in cases of crimes of minor and medium gravity. At the same time, this author draws attention to such a lack in the regulation of this ground for exemption from criminal liability as the lack of the obligation to express the will of the victim and the suspected (accused) of committing a crime, conciliated among themselves, for officials investigating or considering the corresponding criminal case [2, 9-11].

A.V. Endoltseva also supports the introduction of conciliation as a basis for exemption from criminal liability and termination of a criminal case, and suggests expanding its borders, including with regard to the criminal process, extending the obligation of conciliation to terminating not only private, but also public and private charges [6, 7-8].

At the same time, from our point of view, in order to legislatively consolidate the full dependence of the application of the grounds for exemption from criminal liability provided for by art. 76 of the CC of the RF, from the will of the conciliated persons, it is necessary that the regulation and interpretation of the above grounds at the level of the resolution of the Plenum of the Supreme Court of the Russian Federation provide uniform practice on this issue, excluding wide discretion in adopting relevant issues.

We believe that currently the legislative regulation of the institution of exemption from criminal liability in general and its individual types (grounds) does not fully comply with the principles of legal certainty and systematic legal regulation of relevant public relations.

In particular, in relation to the type of exemption from criminal liability under consideration in connection with conciliation with the victim in art. 76 of the CC of the RF, as well as in other articles of Chapter 11 of the CC of the RF, the concept of the person who committed the crime for the first time is not defined, the concept of compensation for damage or other remediation is not disclosed. Also, in the theory of criminal law, attention is rightly drawn to the fact that significant difficulties in practice arise in cases where a decision is made to exempt from criminal liability on the grounds considered when a person commits a multidimensional crime of minor or medium gravity [3, 52-55; 4, 16-21], because, for example, conciliation with a victim of hooliganism, provided for by part 1 art. 213 of

the CC of the RF, leaves questions as to whether to take into account the fact that the perpetrator at the same time violated public interest - public order. A similar problem often arises in relation to other multidimensional crimes, in particular, in cases of crimes against traffic safety and the operation of vehicles, when, along with causing harm to health or death of the victim, the perpetrator primarily encroaches on this safety.

In cases of crimes against traffic safety and other crimes, as a result of which death is caused to the direct victim through negligence, a problematic moment arises that can be resolved in practice by referring to the criminal procedural law, which makes it possible to recognize as a victim in one of the close relatives of the deceased persons. Meanwhile, as E.L. Sidorenko reasonably notes it is necessary to take into account the special status of the victim in criminal law [7, 26-31; 8, 77-84], which, in our opinion, requires the addition of art. 76 of the CC of the RF with a provision clarifying the possibility of conciliation with a person to whom the procedural rights and obligations of the direct victim in the corresponding criminal case have passed.

In addition, the problem of how to be a law enforcer in a situation when the first committed crime of minor or medium gravity was interrupted at the stage of the attempt and did not cause the victim any harm remains unresolved in the criminal law, which excludes the possibility of compensation, whereas the latter is a prerequisite for exemption from criminal liability under art. 76 of the CC of the RF.

Note that many of these questions were tried to answer by the Plenum of the Supreme Court of the Russian Federation, which adopted resolution No. 19 dated June 27, 2013 "On the application by the courts of legislation regulating the grounds and procedure for exemption from criminal liability", in which, in particular, it clarified the concept of the person who committed the crime for the first time, as well as the concept of remediation for the purposes of art. 76 of the CC of the RF. However, in our opinion, in the interests of full observance of the principle of legality (article 3 of the CC of the RF), these and other key concepts of the institution of exemption from criminal liability should be determined directly in the criminal law.

With further improvement of the institution under consideration, ensuring systematic legal regulation of the relevant social relations both at the level of criminal and criminal procedure legislation is equally important. For example, part 1 art. 75 of the Criminal Code of the Russian Federation currently refers to compensation for damage or other remediation, whereas art. 76 of the Criminal Code refers to remediation; in criminal law, the application of these rules is the right of a judge or law enforcement

4. CONCLUSION

In summary, we note that conciliation is not only one of the conditions for exemption from criminal liability under art. 76 of the Criminal Code of the Russian Federation, but also reflects the essence of the institution in question as a

official, while the criminal procedure law mandates the termination of private prosecution cases upon reaching conciliation, whereas it prohibits termination of a public-private prosecution case upon application of the victim.

It should be noted that the lack of consistency in the legal regulation of interconnected social relations also takes place in relation to other general grounds for exemption from criminal liability.

So, during the project development, on the basis of which on November 26, 2019 the decision of the Plenum of the Supreme Court of the Russian Federation No. 48 "On the practice of the application of the legislation on liability for tax crimes by the courts" was adopted, the issues of exemption from criminal liability for tax crimes were actively discussed. At the same time, the Plenum of the Supreme Court of the Russian Federation drew attention to the problem associated with the imperfection of legal regulation in this area.

This problem is that currently Part 1 art. 281 of the Code of Criminal Procedure of the Russian Federation established an unjustified procedural restriction for the application of the provisions of the criminal law (article 761 of the Criminal Code of the Russian Federation), which establish the grounds for exemption from criminal liability of persons accused of tax crimes who have complied with all claims for damages in the course of court proceedings. Today, the court is entitled to make this decision only before the appointment of the case for consideration. Moreover, such a restriction is not justified by anything and contradicts a material law, which does not contain a corresponding restriction.

In order to eliminate the above problem, the Supreme Court of the Russian Federation developed a draft federal law, if adopted, the procedural possibilities for exempting persons accused of tax crimes will be expanded and the court will be able to take the appropriate decision up to removal to the deliberation room following the results of the case consideration.

Thus, the institution of exemption from criminal liability is one of the most relevant and in demand in the formation and implementation of modern criminal policy of the state. Whereby, in practice, this type (basis) of exemption from criminal liability is used more often than others, such as conciliation with the victim, achieved by remediation. The problems highlighted in the work can mainly be resolved by making changes and additions to the relevant articles of Chapter 11 of the Criminal Code of the Russian Federation, aimed at clarifying the wording contained in them and determining the concepts used.

whole, since when it is formed and further developed, the state, represented by the legislative bodies, comes to some compromise in the fight against crime, that is, it expresses its readiness to conciliate with the fact of the commission of a crime, as well as with the person who committed it, while there are a number of conditions. In addition, conciliation has steadily entrenched in criminal proceedings, not only regarding the termination of

criminal prosecution, including in cases of private prosecution, but also in criminal cases in a special manner with the consent of the accused with the charge, since the transition to such a procedure for considering the case requires, in particular, the consent of the victim.

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