

On the Civilian Limits of State Charges of Crimes and Criminals: Reflections on the “Other Cheek”

Lopashenko N.A.

Saratov State Law Academy, Saratov, Russia
Email: lna2004@yandex.ru

ABSTRACT

The article is devoted to clarifying the circumstances that form the basis of state forgiveness (or semi-forgiveness) of criminals and crimes. Moreover, the author interprets the state forgiveness concept very broadly: and as mitigation of criminal liability for criminal acts, in the presence of certain circumstances (conditions), which entails a much milder criminal liability, and even exemption from it; and how to establish independent grounds for exemption from criminal liability for such acts; and as regulation in the law of new grounds for mitigating the assigned criminal punishment for them; can go on. Recognizing the justice, reasonableness, and morality of some criteria of state forgiveness of criminals and crimes (in the presence of excusable circumstances, for example, the state of necessary defense beyond its limits), it is necessary to state the unreasonableness, injustice, and immorality of others. For example, Russia has established preferential liability for a mother who killed her newborn child during or immediately after childbirth, although other persons are prosecuted for such acts for the most serious murder. The latest trends in state forgiveness are associated with additional cash payments to the state, which does not meet the moral principles of the release of the criminal from criminal liability.

Keywords: *state forgiveness of criminals, criteria for exemption from criminal liability*

1. INTRODUCTION

Despite the ambiguity, even, I would say, the odiousness of changes in the criminal law of the last decade (at least), one trend of these changes can be clearly distinguished: the expansion of legal opportunities for avoiding the criminal liability of persons who committed crimes, or substantially mitigating this responsibility. At high levels, this is called liberalization of the criminal law, although in my opinion one can speak of a tendency towards state forgiveness (or semi-forgiveness, in which there is conditional forgiveness or partial forgiveness with a decrease in the punitive potential of criminal liability) of criminals and crimes. Far from being a supporter of toughening criminal law and criminal liability - they are, in fact, very tough (in some cases even cruel), – at the same time, I believe that the appointment by election of state forgiveness of criminals and crimes in conjunction with those goals that can be traced during the legislative establishment of “excusable” circumstances (or conditions) of such forgiveness, has long been balancing on the brink of moral foundations, and often goes beyond them.

And the economy of criminal repression, which is often talked about in connection with the expansion of the scope of state forgiveness of criminals, should hardly be put at the forefront here.

2. MAIN PART. RESEARCH METHODOLOGY

Before proceeding to the study of the issue, it is necessary to determine the basic concepts that will determine the direction of analysis.

State forgiveness (semi-forgiveness) of criminals and crimes includes, in my opinion, mainly: 1) mitigation of criminal liability for criminal offenses, in the presence of certain circumstances (conditions); 2) the establishment of independent grounds for exemption from criminal liability for such acts; 3) the establishment of independent grounds for mitigating the assigned criminal punishment for such acts. Quite often in the doctrine, state forgiveness of criminals is associated with encouraging norms.

Any kind of state forgiveness (semi-forgiveness) of crimes and (or) criminals not only has the right to exist, but also must exist in a reasonable and democratic society. Criminal liability is, of course, not an end in itself in the fight against crime. It is important – why it is used and whether it can fulfill the tasks assigned to it by law. It is unreasonable to establish the same criminal liability, for example, for murder in the state of affect caused by the unlawful behavior of the victim, and simple murder, without this condition. Moreover, equalization of responsibility for such acts is immoral. Likewise, it is unreasonable and immoral to deny a criminal who is serving a fair sentence impeccably the right to be released on parole from serving his penalty. For non-serious

crimes, obviously, given the reconciliation of the offender and the victim, it is reasonable and moral to exempt the former from criminal liability. This may be continued.

But there are examples of state forgiveness – semi-forgiveness of criminals and crimes, which can not be explained neither rationality nor morality. We single them out, designating for each case the so-called formula of state forgiveness, in which we will include the factors that served as the basis for establishing preferential liability or for exemption from it.

3. MAIN PART. STUDY RESULTS AND DISCUSSION

Since the adoption of the current criminal law, privileged criminal liability has been established for mother killing a newborn child if the mother is sixteen years old, with a maximum sentence of imprisonment of up to five years (Art. 106 of the Criminal Code; the sanction is open, that is, the minimum terms of punishment are not indicated, they are equal to the minimum terms adopted for this type of penalty). At the same time, almost the same murder of a baby committed without the circumstances of Art. 106 of the Criminal Code, completely falls under the signs of a qualified murder - the murder of a minor (Clause "c" Part 2 of Article 105 of the Criminal Code), which entails a sentence of imprisonment for a term of eight to twenty years, or even life imprisonment. The act is criminal for persons over 14 years old. What is an excusable circumstance that makes it possible to fundamentally differently resolve the issue of criminal liability for the murder of a newborn? - The offender must be the mother who gave birth to the child (mandatory condition), and - alternatively - either commit the murder during or immediately after the birth, or carry out the crime under the influence of a traumatic situation (in this case this situation is by no means connected with the victim's illegal behavior, the latter - completely helpless, she is not even a month old), or have signs of a mental disorder, not excluding sanity, at the time of the murder. Some apology – if to use this term here – can be seen in the last two situations – in the presence of a traumatic situation or mental disorder. And then – questions arise: why do these circumstances “work” only in relation to murder and can only mitigate responsibility in case of intentional infliction of, for example, grievous bodily harm or in the commission of other crimes? But what actually caused the half-forgiveness or even the forgiveness of a woman who killed her newborn or just born child, cannot be explained by any reasonable reasons. In the doctrine, the apology of such a murder is often explained by the suffering bore by a woman during childbirth and the severity of the burden of pregnancy. However, the law does not speak of anything like this, and law enforcers to apply the provisions of Article 106 of the Criminal Code follow only the establishment of objective circumstances: the mother committed the murder, she was already 16 years old, the child was deprived of life during or immediately after

childbirth. Thus, typical examples of sentencing in this category of cases are that women who often gave birth earlier, often deprived of parental rights in relation to their first children, often leading an immoral lifestyle, who committed the murder of their child immediately after childbirth, and often – under the circumstances of manifestation of special cruelty (buried in the snow, crushed her head, thrown into the fire, etc.) the court imposes a minimum sentence, sometimes not at all connected with imprisonment. That is, the state forgiveness of the killers of defenseless minors is carried out only on the basis that the killers are mothers.

The state forgiveness formula here consists of three components and none of them testifies not only to the necessity, but also to the forgiveness possibility for this crime: the murder victim – a child of the first minutes or hours of life; the guilty – the mother who gave birth to this child; time of the murder – during and immediately after birth. Legislative decision has neither rationality, nor justice, nor morality

A few examples of economic crime.

Notorious fraud. The Constitutional Court of the Russian Federation spoke out about the unconstitutionality of the norm provided for in Art. 159.4 of the Criminal Code, – entrepreneurial fraud. In July 2017, the article was deleted from the Criminal Code. But at the same time, the independent composition of entrepreneurial fraud was introduced into the Criminal Code again, for which it was necessary to supplement Article 159 of the Criminal Code in three new parts – Parts 5-7. Already the new norm, in addition to the most privileged establishment of qualifying features related to the amount of fraud, declared fraud unacceptable with minor damage, up to ten thousand rubles inclusive. Accordingly, fraud for this amount of criminal liability does not entail. In fact, fraud in the field of entrepreneurial relations is legalized: it is possible to deceive, if for a small amount. In all other areas – it is impossible, immoral and criminally punishable. What is the specificity (or vice, as you like) of entrepreneurial relations, that they dictate their moral standards? On the basis of what does the state forgive fraudsters - entrepreneurs? And why entrepreneurial fraud in the amount of more than one million rubles entails the maximum penalty of imprisonment for up to five years, that is, is considered a crime of medium gravity, while household fraud for the same amount is a serious crime with the maximum punishment up to ten years in prison?

The state forgiveness formula here includes three components and none of them testifies to the need for forgiveness of this crime: victim and criminal – both individual entrepreneurs and (or) commercial organizations (for the guilty party – his representative); fraud committed at least ten thousand rubles; the fraud lies in the deliberate failure to fulfill contractual obligations in the field of entrepreneurial activity. Indulgence by occupation, it turns out. Well, since we have a lot of pleasant activities in all respects, let's set for their representatives privileges on the thresholds of criminal and punishable. For example, for attorneys who are quite nice to me, or for teachers.

In general, the attitude of the legislator towards entrepreneurs suffers from paradoxes. On the one hand, as has just been shown, the scope of the criminal is narrowed for them, compared with other categories of citizens. And on the other hand, the protection of entrepreneurs from official arbitrariness is substantially reduced. If official abuse of entrepreneurs consists in obstructing any form of legitimate entrepreneurial activity, even if it caused major damage (over one and a half million rubles), then the maximum sentence under Part 2 of Art. 169 of the Criminal Code will be imprisonment for up to three years (a crime of minor gravity). If official abuse of these same persons takes other forms, then under Part 3 of Art. 285 of the Criminal Code (grave consequences, from the point of view of a systematic interpretation, can be expressed, in particular, in an amount exceeding one and a half million rubles) the guilty official can be punished by imprisonment for up to ten years (that is, a serious crime). But in the case of a misconduct against entrepreneurs according to Art. 169 of the Criminal Code, two objects of criminal law protection suffer at once - the normal activity of the authorities and the principle of restricting state interference in the economy, while when committing a crime under Art. 285 of the Criminal Code, only one is violated – the first – the object of criminal law protection. Logically, economic malpractice should be punished more severely than just malpractice. But here, the moral limits of criminal liability for reasons unknown to me are significantly narrowed, and the limits of state forgiveness of criminals – officials, on the contrary, are expanded. And the formula of state semi-forgiveness of officials is the presence of only one component: the act shall be expressed in official abuse of economic or other activity in the forms listed in the law.

Unfortunately, the limits of morality in state forgiveness of criminals are often formed depending on the economic interests of the state. The Constitution speaks of the highest value of a person, his rights and freedoms. And further in Art. 2 of the Constitution of the Russian Federation recorded: “The recognition, observance and protection of the rights and freedoms of man and citizen is the duty of the state”. In the criminal law, these priorities are largely shaken in favor of the state economic interests. A few examples to develop.

It is known that the alcohol business is one of the most profitable, and the state is striving to establish the greatest control over it. Therefore, the elements of economic crimes, devoted to various violations in this area, by the efforts of the deputy corps, are multiplying (there are already four of them in Chapter 22 of the Criminal Code “Crimes in the Field of Economic Activity”, although there were not one at the time of adoption of the Criminal Code). And even if with them, the state thinks about its economic interests, which means that I hope about ours too, it has the right. If a significant bias in the criminal law protection of the economic interests of the state and other values, beginning with the individual, were not evident, in favor of the former.

So, Art. 171.1 of the Criminal Code, after numerous changes, is devoted to responsibility for the production,

acquisition, storage, transportation or marketing of goods and products without marking and (or) applying information provided for by the legislation of the Russian Federation. It contains three close on the objective side, but varying in the subjects of crime, compositions. Accordingly, this is the turnover of unlabeled goods and products (Parts 1-2), the turnover of unmarked food products (Parts 3-4), the turnover of unlabelled alcohol products, as well as unlabelled tobacco products (Parts 5-6). Any act is criminal only when committed on a large scale. But the concept of a large size is different, different for each type of crime. For alcohol and tobacco – this is an excess of one hundred thousand rubles, for food – an excess of four hundred thousand rubles, for other goods and products (obviously, including goods for children, technically sophisticated products, various household chemical goods, etc.) – an excess of two million two hundred and fifty thousand rubles. Thus, the state forgiveness formula is as follows: the turnover of unlabelled products is excusable for the greater amount, the farther these products are distant from alcohol and tobacco products.

Common truths: What is the purpose of product labeling? – To confirm compliance of goods with regulatory requirements and quality and establish control over these processes, to exclude, in connection with this, “left” products and goods. Left-wing products, in addition to not generating revenue for the state, because they are not taken into account, are also dangerous by the harm that can be caused to life, health, and other personal benefits. Of course, public safety and public health are protected by the norms of another section of the Criminal Code, but cannot be completely ignored in the rules on liability for economic crimes. Therefore, the border with which the large size of unlabelled products necessary for criminal liability is established, from the standpoint of morality and common sense, should be equal and not different at times (four times compared with foodstuffs and 22.5 times for other goods and products), for profitable alcohol and less profitable other goods in this sense. The principles and limits of the state forgiveness of such activities should be the same. If at all, such responsibility is needed (for me – no, it’s enough to establish administrative responsibility while retaining criminal liability for the release of dangerous goods and/or products).

But, in my opinion, in recent years, the new norms on the exemption from criminal liability under the condition of payment for exemption, moreover, not paying the victim as compensation for the harm done (it’s not enough and it’s not enough), are the most moral boundaries in state forgiveness of criminals and crimes – not the main thing), but the state bribe for the evil done. We are talking about modern and previous editions of Part 2 of Art. 76.1 of the Criminal Code and Art. 76.2 of the Criminal Code; both provide for the exemption from criminal liability, the first – in connection with compensation for damage, the second – in connection with the appointment of a judicial fine.

In fact, compensation for damage to the victim is provided for by both standards, but it is only one of the conditions for the application of these standards, which is not specific

to these situations, but traditional, since it is understood in exactly the same way as on other grounds for exemption from criminal liability, provided for in most norms (except for the expiration of the limitation period) Chapter 11 of the Criminal Code. The main condition is connected with additional material charges that are assigned to the state guilty of the perpetrator of the crime. The state forgives the offender, subject to the payment of a certain indemnity, or monetary gain. This cash payment is called differently and is calculated differently for Art. 76.1 and Art. 76.2 of the Criminal Code. For two infringements of the constitutional rights of citizens and a number of crimes against property and crimes in the field of economic activity, in order to be released from liability, a person must transfer to the federal budget a monetary compensation in the amount of twice the amount of damage or income received, or losses that were avoided, or twice the amount of the committed act (and here, after five years of the existence of the article, in 2016 the state's appetites were moderated to a large extent, initially compensation in paid in five times the amount). Thus, the mandatory components of state forgiveness are: committing a crime for the first time; compensation for damage caused to a citizen, organization or state; payment to the state of monetary compensation in double amount. To release a person from liability under Art. 76.2 of the Criminal Code, the offender for the first time committing a crime of small or medium gravity must pay a court fine of up to half the maximum fine stipulated by the relevant article of the Special Part of the Criminal Code, and if no fine is provided for in it, then up to two hundred and fifty thousand rubles (Article 104.5 of the the Criminal Code). At the same time, in order to assess the breadth of possible state forgiveness, it's enough to say that the assault on life and health, for example, contains 26 crimes of minor gravity and 13 – the average, in the assault on the constitutional rights of citizens – 27 and 15, respectively, in crimes against property – 12 and 14, in environmental crimes – 24 and 15; can go on. The state forgiveness formula here consists of three components: the commission for the first time of a crime of small or medium gravity; indemnification or otherwise smoothing out the harm caused by the crime; payment of a court fine. If to look at these components of state forgiveness in the last two examples, it is possible to notice that the commission of a crime for the first time is hardly an

4. CONCLUSIONS

For centuries, the whole theological, philosophical, and even the whole enlightened world has been arguing about the famous statement of Christ: "Do not resist evil. But whoever hits you on your right cheek, turn to him another". And further: "and whoever wants to sue you and take a shirt from you, give him your outer clothing" (Art. 40). In the nineteenth century in Russia, the great L.N. Tolstoy, creating his theory of non-resistance to evil by violence.

excusable circumstance, although compensation for damage to such, of course, can be attributed. But the "weight" of this component should not be exaggerated, otherwise it was necessary to forgive, for example, all theft and all destruction of property, in case of compensation for damage. It can act as a mitigating punishment, but this – in the vast majority of cases, will be the maximum of its impact on the punishment of the offender. But the levy of money for a crime committed under no circumstances can serve as a basis for the forgiveness of the offender. Moreover, among the consequences of these crimes, the death of a person caused by negligence is often indicated. And forgive in this case, you can neither a crime nor a criminal

In my opinion, such measures are nothing more than undisguised criminal liability trading: if you don't want to be involved, pay the state, and it will forgive you. Is that morality?

You can compare the above formula with the one that characterizes the close procedural institute in the Code of Criminal Procedure of the Federal Republic of Germany , §153a: the performance of certain actions to compensate for damage caused by the deed; payment of monetary compensation in favor of a charitable organization or to the state budget; the commission of other socially useful actions; payment of alimony in a certain amount; serious efforts are made to compensate for the harm caused to the victim, as a result of which he makes amends for the act committed by him in full or in large part or seeks to achieve this goal. Such a list of actions that are socially useful in nature and are beneficial not only to the state, removes all questions about the moral potential of such an institution.

One of the topics of the panel discussion of the Kovalev readings in 2020 is "The price of state forgiveness: responsibility or redress?" - formulated quite correctly and correctly. Only here the interests of the victim and the compensation of damage in reality do not worry the legislator or the state. If to indicate the current state of the problem, then it is as follows: "Pay the state for your crime - and it will forgive you".

And in the 21st century, this theory will take the most ugly forms where it should not be at all: in the criminal law. The main principle of combating crime is the inevitability of responsibility. Exceptions to it, and even with many conditions and reservations, are possible only if there are excusable (exceptional) circumstances, but even there, these exceptions should remain precisely the exceptions that confirm the rule. And do not create a new rule, according to which when committing certain (and

sometimes many) crimes, you can buy yourself freedom from criminal liability.

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