

COMPARISON OF THE RUSSIAN LEGISLATION OF DIFFERENT PERIODS GOVERNING RELEASE FROM CRIMINAL LIABILITY IN CASES ON CRIMES IN ECONOMIC ACTIVITY

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This paper makes an attempt to identify the norms on release from criminal liability in cases on crimes in economic activity in the Russian legislation of various historical periods. The said norms have significance for national economic development being one of the indicators of business freedom. The paper analyzes and compares the sources of the Russian law since the Ancient Russia and up to the Russian Federation regulations. Prerequisites for some or other norms are outlined along with their implementation specifics followed by comments of law scholars.

Keywords: release from criminal liability, crimes in the sphere of economic activity, historical analysis, Russian law.

INTRODUCTION

Beginning the study of historical aspects of regulations on release from criminal liability in cases on crimes in the sphere of economic activity in the Russian criminal law, it is required to focus on the following condition: crimes in economic activity were separated from economic crimes on the legislative level only in the current Criminal Code of the RF dated 1996. Nevertheless, back in the Soviet epoch there were many approaches to divide economic crimes into various groups depending on the object of criminal infringement.

Also, it should be noted that division of the notion 'release from liability' and 'release from punishment' in the Russian criminal law began to be established in the second half of the XX century. Before, the Russian criminal law did not use the notion of criminal liability, so the focus will mainly be on release from punishment.

Release from criminal liability on crimes in economic activity has many common features with the other reasons for release from criminal liability as it provides for compensation of material damage as a mandatory condition. In that connection, in the course of studying the prerequisites for emergence of this reason for exemption from liability, other reasons for exemption from liability will be covered, including active repentance and settlement with the injured party.

THE RUSSIAN LAW OF THE MIDDLE AGES (THE XI – THE XVII CENTURIES)

The criminal law of the Ancient Russia, not being integrated into a single regulation, sourced from *Russkaya Pravda* in two editions – *Short Pravda* and *Full Pravda*,

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church Canons of Russian princes, Book of the Helmsman. Governing some areas of public relations by imposing a few penal prohibitions, the said acts along with customs made up a rather strict system of criminal norms meeting the level of social and state development (Zhuk, 2013).

Doing doctrinal interpretation instead of strict construction of the ancient Russian regulations, in some norms of *Russkaya Pravda* certain features of release from liability within the contemporary paradigm may be seen, so, according to clause 32 of Full Pravda such a crime as concealing a serf in someone's house was punished by a fine of three grivnas (Chistyakov, 1984, pp. 64-80). Meantime, the same norm provided for release from such punishment in case if the person who concealed that surf within two days' term returned the runaway serf to his/her master, which may be regarded as release from criminal liability associated with transparent confession of the act and full compensation of damage to the injured party.

Further in the Russian law a foretype of settlement with the injured party may be observed. For instance, in compliance with Dvinsk charter of 1397, fighting persons were not prosecuted in court if they would make peace with each other then and there (Chistyakov, 1985, pp. 181-182). Pskov court charter provided for an opportunity to make settlement with parties in case of bodily blows (Chistyakov, 1984, p. 346).

Settlement was initially allowed only at pre-trial stage, in particular this is evidenced by clause 53 of the Code of justice of 1497. Settlement was allowed in cases on blows, offences or failure to pay debts (Chistyakov, 1985, pp. 54-62).

In general, it may be stated that the ancient Russian law allowed release from punishment (and from liability) in case of settlement with the injured party and compensation of damage. However, it referred to cases of private prosecution not covering public interests. It is connected with the fact that the ancient law was built on declared insult of the injured party, and therefore in case of settlement and expiation of that insult no criminal proceeding could arise. Nevertheless, in future there was a trend to decrease the scope of acts for which it was permitted to make settlement with the injured party.

Later Codes of justice and the Council code of 1649 did not contain any norms on release from liability after committing a crime.

THE LAW OF THE RUSSIAN EMPIRE (THE XIX – THE XX CENTURIES)

The approaches to the contemporary understanding of the institution of release from criminal liability were laid in the first half of the XIX century by the Code of laws of 1832 and the Penal criminal and correction Code of 1845.

The initial edition of the Code of laws of 1832 virtually did not contain provisions on the opportunity of release from criminal liability and, otherwise, did contain imperatives on compensation of the damage caused. So, clause 59 of the

Code, commencing the second part *On reimbursement for damage, harm and insults* of chapter II *On punishments* reads: Those guilty in crimes which caused any damage to anyone or any harm in excess of punishment shall pay for such damage or harm out of their personal property by strict court resolution (the Code of laws of the Russian Empire, 1832).

Nevertheless, the General part of the Code of penal and penitentiary sanctions of 1845 contained article 160 which provided for release from punishment in connection with criminal's death, limitation period and settlement with the offended party (the Code of penal and penitentiary sanctions, 1845, p. 54).

The provisions of Special part of the Code of penal and penitentiary sanctions did not contain the norms eliminating personal liability, although there were some norms commuting punishment. For instance, article 2170 of the Code provided for commuting punishment for theft if the guilty person returned back the stolen before the proceedings initiation.

At that time, the system of crimes in economic activity, or business crimes as they have been called since the XIX century began to gradually emerge. As noted by I.A. Klepitsky, *the system of business crimes begins to emerge at the moment when socioeconomic functions of state are re-conceptualized. State should actively get involved in the economic sphere seeking to prevent crises, to ensure public welfare and to eliminate social conflicts* (Klepitsky, 2005, p. 7).

The Code of 1845 did not contain a special section on respective crimes. Meantime, in sections VII *On crimes and offences against property and public treasury*, VIII *On crimes and offences against public order and discipline* and XII *On crimes and offences against property of individuals* contained, as noted by M.O. Akopdzhanova, over 500 casuistic articles on crimes/offences in economic activity (Akopdzhanova, 2009).

The next stage in development of punishment release institution was the adoption in 1864 of the Code of punishments imposed by justices of peace. Article 20 of the Code contained a norm on settlement with the injured party (Chistyakov, 1991, p. 397). It is notable that settlement under this article was possible solely in connection with private prosecution crimes.

A novelty of that Code was also a norm on liability for violating use of forests which may be classified as a crime in economic activity. In accordance with article 201 of the Code of punishments introduced in 1867 by Act on protection of private forests, a person accused of any offence committed in a public or private forest for which he/she was subject to money penalty only, was granted a right to terminate case proceedings *upon paying penalty in the amount set forth by the law and the amount payable to forest owner after returning back the timber stolen or illegally cut or its cost* (Tagantsev, 2001, p. 488).

Further that provision was extended for cases on violations in connection with excises on sugar, burning oil and matches with the sole provision that release from

punishment was possible only if punishment was in the form of money penalty only (Tagantsev, 2001, p. 488).

So, it was the Code of punishments imposed by justices of peace of 1864 where the first prerequisites for emergence of the institution of release from criminal liability for wrongful acts in economic activity were introduced.

The finalizing regulation of the Tsarist Russia's criminal law was the Criminal Code of 1903 which also contained rather little norms in the aspect interested for us. General part of the Code, Section 8 *On circumstances eliminating punishability*, only crime limitation was specified while no other common reasons were contained therein (Chistyakov, 1994, pp. 271-321). A negative effect of the Code of 1903 was that its Special part did not contain any special norms on release from liability.

THE LAW OF THE RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC (1918-1991)

Further development of the institution of release from criminal liability and from punishment is connected to the Soviet period of the national history.

The Criminal Code of the RSFSR contained a separate chapter *Economic crimes* (Chapter IV), so focusing on the economic background of wrongful acts concentrated in the said chapter (the Criminal Code of the Russian Soviet Federative Socialist Republic, 1922). General part of the Criminal Code of the RSFSR of 1922 did not contain any provisions on release from liability or punishment in connection with post-criminal positive acts by criminal.

In 1926 the next Criminal Code of the RSFSR was adopted which in many aspects inherited the provisions of the preceding one and brought into practice a kind of release from criminal liability (punishment) which may conventionally be deemed release from liability in connection with change of conditions (article 8 of the CC of the RSFSR of 1926) (the Criminal Code of the Russian Soviet Federative Socialist Republic, 1926).

Special part of the CC of the RSFSR of 1922 and 1926 contained only articles on bribery (clause (a), article 114 of the CC of the RSFSR of 1922 and article 118 of the CC of the RSFSR of 1926), pursuant to which the guilty would be released from liability in case if they immediately after bribery willfully declared that fact.

It should be noted that in 1958 the institution of release from criminal liability was established by law, when Criminal Legislation Fundamentals of the USSR introduced article 43, separating the two institutions: release from punishment and release from criminal liability (Act of the USSR *On approval of Criminal Legislation Fundamentals of the USSR and the Union Republics*, 1958). So, the sequence 'crime – punishment' was transformed into the formula 'crime – liability – punishment' (Kozubenko, 2014), making punishment a form of criminal liability realization.

General part of the Criminal Code of the RSFSR of 1960, as distinct from preceding codes was added with provisions on release from criminal liability (the Criminal Code of the Russian Soviet Federative Socialist Republic, 1960).

So, General part of the CC of the RSFSR of 1960 provided for release from criminal liability and punishment due to change of conditions (article 50); release from criminal liability due to case transfer to comrades' court (article 51); release from criminal liability due to admission by bail (article 52). However, the chapter on business crimes did not contain any special reasons for release from liability.

THE LAW OF THE RUSSIAN FEDERATION (1991-NOWADAYS)

Changing socioeconomic conditions and Russia's transition towards market economy caused the need for great update of the criminal law.

The initial edition of the Criminal Code of the RF of 1996 provided for four general kinds of release from criminal liability in Chapter 11 (articles 75–78), and besides there was strict separation of notions 'release from criminal liability' and 'release from punishment' by their content which was rather consistent with the development of the Russian criminal law (the Criminal Code of the Russian Federation, 1996).

Nevertheless, special norms on release from criminal liability in the new Code had the same *corpus delicti* that was contained in the CC of the RSFSR of 1960 (high treason; bribery; storage, manufacture and sale of weapons and drugs). The new Code did not initially contain any special reasons for release in connection with crimes in economic activity.

Foundation was laid in 1998 when article 198 of the CC of the RF was supplemented with a note in compliance with which a taxpayer became able to avoid criminal liability if he/she assisted in crime exposure and made full repayment of damage caused, i.e., payment of all the debts in connection with taxes and duties. The note covered on article 198 *Evasion by an individual of the payment of a tax or an insurance premium into state non-budget funds* and on article 194 *Evasion of the payment of customs duties collected from an organization or an individual* and article 199 *Evasion from the payment of taxes or insurance premiums into state non-budget funds by an organization*.

According to D.A. Cherepkov, the emergence of that norm was reasoned by the fact that prior to its introduction there was some practice of release from criminal liability for the said crimes in connection with change of conditions (article 6 of the Criminal Procedure Code of the RSFSR) as a person who committed that crime was no more injurious to the public after full payment of the required taxes and duties (Cherepkov, 2002, p. 8).

There is an assumption that note to article 198 of the CC of the RF was introduced along with simultaneous strengthening of sanctions of articles 198,

199 seeking to actively replenish the state budget when the national economy was pre-default (Vlasenko, 2014, p. 169).

This novelty was perceived ambiguously by the scientific community but its positive nature was acknowledged by the fact that after its exclusion in 2003 it was restored in 2009.

Respectively, in 2009 the tax articles of the CC of the RF (articles 198, 199 as well as article 199.1 which has been effective since 2003 and covers on the execution of liabilities of the tax agent) again acquired the norms on release from criminal liability for tax crimes. Release was provided for in the event of full repayment of outstanding debts and respective penalties as well as fines in accordance with the Tax Code of the RF.

Besides, since 2009 Special part of the CC of the RF was supplemented by a few other reasons for release from criminal liability for economic crimes.

According to note to article 178 of the CC of the RF *Prevention, limitation or elimination of competition* added in the Code in 2009, *a person shall be released from criminal liability if he is the first of accomplices who willfully informed of that crime and actively assisted in its exposure and/or investigation, compensated the damage caused by that crime or otherwise effected restitution* (the Criminal Code of the Russian Federation, 1996).

That novelty was supported but was also opposed by some, however it did not enjoy much attention due to the absence of precedents of applying clause 178 of the CC of the RF.

In 2010, article 184 of the CC of the RF *Illegal influence on results of an official sports competition or a commercial contest show* was also supplemented by a note pursuant to which a person who committed that act provided for by the first or second parts of that article shall be released from criminal liability if against him/her there was a racketeering or that person willfully informed of bribery to an authority entitled to initiate a criminal case.

The absence in article 184 of the CC of the RF of a special reason for release from criminal liability was a fault of that article as articles covering on similar *corpus delicti* (article 204 *Commercial bribery*, article 291 *Giving bribe*) such reasons for release from criminal liability are provided for (Spiryev, 2006). Amendments to article 184 of the CC of the RF have corrected the situation.

In 2013, the CC of the RF was supplemented with article 200.1 *Contraband of cash and/or money instruments*. The new article contains a note on release from criminal liability of persons who willfully surrendered cash and/or money instruments illegally carried across the customs border of the Customs Union.

It should be noted that previously only administrative liability was provided for in connection with non-declaring or false declaring of cash/instruments. In 2013, the sanction for that crime was strengthened and criminal liability was introduced for contraband of the said items.

The goal of that novelty was to ensure control over carrying cash abroad, to improve the efficiency of fighting laundering of crime-earned money or money which may be used for criminal and other purposes, undermining economic and sociopolitical foundations of the state (Urda, 2014, p. 139).

In 2009, by order of D.A. Medvedev who was the President of the Russian Federation at that time, a concept was developed to provide for new reasons for release from liability for economic crimes (The concept of the modernization of criminal law in the economic sphere, 2010, p. 50). That concept contained many contradictory moments but the general trend forwards liberalization was stated.

The consequence was the emergence of a norm covering release from criminal liability for crimes in economic activity in 2011 in General part of the Criminal Code. It covers on a great number of *corpus delicti* contained in respective chapter of the CC of the RF.

The first part of the article provides for release from the liability for tax crimes, the second part – from other economic crimes directly listed in the article. Such structure of the article was conditioned by various terms and conditions in connection with release from liability for tax and other crimes in economic activity.

Within the deoffshorization campaign of the Russian economy in 2015, article 76.1 was supplemented by part 3 in accordance to which a person shall be released from criminal liability for a number of crimes in economic activity if they had been committed before January 1, 2015 and if a guilty person willfully declared foreign assets and bank deposits.

It should be noted that attempts to carry out a financial amnesty have been made since the virtually failed tax amnesty of 1993. Furthermore, the issue on legalization of offshore capital was raised on top level but those initiatives did not come close to implementation in practice.

Meantime, striving to strengthen the liability for disinvestment and to make the residents pay taxes into the budget of the state in which they operate but not in countries with flags of convenience – this is a common trend (Council of Europe, 2001). For instance, in 2014 the US Foreign Account Tax Compliance Act (FATCA) was enacted, and over 50 countries including all the EU members signed an agreement on annual automated data exchange about non-residents' deposits (Multilateral Competent Authority Agreement). Russia in 2014 ratified Convention on mutual administrative assistance in tax matters.

In that connection, as the first step to call the capital back from offshores the Criminal Code was supplemented by a norm enabling to avoid criminal liability for crimes related to disinvesting capital abroad and use of assets in foreign jurisdictions and on foreign deposits.

CONCLUSION

Such are the prerequisites and background for the emergence in the Russian law of norms on release from criminal liability and crimes in economic activity.

Summarizing the analysis of historical sources of law and the contemporary regulations we may do the following conclusions.

In the sources of the Ancient Russia some features of the institution of release from criminal liability could be seen despite that there was no such a notion like crimes in economic activity. Meantime, formal separation of notions 'release from liability' and 'release from punishment' in the Russian criminal law began to form only in the second half of XX century.

The system of crimes in economic activity began to gradually form in the XIX century which was caused by the development of industry and therefore, that of economic turnover. Meantime, the Code on punishments imposed by justices of peace of 1864 does contain some special norms on release from liability/punishment for economic crimes.

Meantime, only the CC of the RSFSR of 1960 along with special norms on release from liability provided for separate kinds of release from liability contained in the general part of the Code. Nevertheless, the regulations of the Soviet period did not leave any room for special norms on release from liability for business crimes.

Situation began to change with the adoption of the Criminal Code of the RF of 1996. Some inconsistency of the legislative policy on that matter at the early stages of the CC's effect transformed into active humanization of the criminal regulations, following which since 2009 the Criminal Code was supplemented by a number of special norms on release from criminal liability for crimes in economic activity and a common norm covering a wide range of *corpus delicti* in the above sphere.

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