

Nikolaienko Tetiana,

Doctor of Juridical Sciences, Associate
Professor, Professor at the Criminal Law
and Criminal Procedure Department,
National Academy of the State Border
Guard Service of Ukraine,
Khmelnyskyi, Ukraine
ORCID ID 0000-0002-4587-2561

FEATURES OF IMPLEMENTATION OF CRIMINAL LIABILITY EXEMPTION DUE TO THE LEGAL REGIME CHANGE IN THE STATE

The author of the article analyzes the scientific approaches to the implementation of the institution of exemption from criminal liability on the grounds of situation change through the prism of changing the legal regime in the state.

In keeping with the position of integrity between the inevitability of responsibility, the justice of punishment and the humanity of its implementation, taking into account the current legal regime in the country, the author of the article has updated the issue of the implementation of criminal liability exemption in case of its legal regime change.

Based on the analysis of the current legislation on criminal liability and the positions of scientists as well, the author has concluded that the change of legal regime in the state affects the implementation of the criminal liability exemption institution.

It has been proved that in case of its intensification (in particular as the introduction of a special period), the majority of grounds for exemption from criminal liability will be restricted, but termination of such regime creates legal opportunities for the implementation of criminal liability exemption due to the changing situation.

While outlining the specificity of the legal regime, its impact on the institution of criminal liability exemption, the author has formulated proposals on the implementation of the criminal liability exemption due to the changing situation.

It is established that the termination of a special period should not be regarded as an absolute ground for the implementation of the criminal liability exemption in view of the changing circumstances.

It is proposed to consider the change of situation in the totality of circumstances of public danger change or loss of the situation itself, the committed act, the guilty person and the expediency of its implementation in a particular situation.

On the basis of the conducted analysis, it has been grounded that it is expedient to define the essence of the “change of the situation” as an objective reality of the criminal liability exemption institution realization.

Keywords: criminal liability exemption, change of situation in the state, legal regime in the state, special period.

REFERENCES

1. Tendentsii i protydia zlochynnosti. “Trends and counteraction to crime. Analysis of the general state of crime in Ukraine by 2018 (compared to statistics for 2013-2017 years)”. (2019). URL: <https://lexinform.com.ua/dumka-eksperta/tendentsiyi-i-protydiya-zlochynnosti-analiz-zagalnogo-stanu-zlochynnosti-v-ukrayini-za-2018-rik-u-porivnyanni-zi-statystychnymy-danymy-za-2013-2017-roky/> (date of application: 25.12.2019) [in Ukrainian]. <https://lexinform.com.ua/dumka-eksperta/tendentsiyi-i-protydiya-zlochynnosti-analiz-zagalnogo-stanu-zlochynnosti-v-ukrayini-za-2018-rik-u-porivnyanni-zi-statystychnymy-danymy-za-2013-2017-roky/> (date of application: 25.12.2019) [in Ukrainian].
2. U 2019 rotsi riven zlochynnosti znyzyvsia na 11 vidstokiv porivniano iz 2018 rokom – pershyi zastupnyk hlavy Natsionalnoi politsii. “In 2019, crime rates are down 11 percent from 2018 - the first deputy head of the National Police”. (2019). [in Ukrainian].

3. Zvit pro sklad zasudzhenykh: Sudova statystyka. (2014). “Report on the composition of prisoners: Forensic statistics”. Form No. 7. (2014). URL: https://court.gov.ua/inshe/sudova_statystyka/ lkflghkjlh (date of application: 25.12.2019) [in Ukrainian].

4. Zvit pro sklad zasudzhenykh: Sudova statystyka. “Report on the composition of prisoners: Forensic statistics”. Form No. 7. (2018). URL: https://court.gov.ua/inshe/sudova_statystyka/rik_2018. (date of application: 25.12.2019) [in Ukrainian].

5. *Bekkariia Chezare* (1995). O prestupleniakh i nakazaniakh. “About crimes and punishments”. Moskva: Stels, 304 p. [in Russian]

6. *Nikolaienko T.B.* (2019) Teoretyko-pravovi zasady pryznachennia ta vykonannia spetsialnykh pokaran shchodo viiskovosluzhbovtziv. “Theoretical and legal principles of infliction and execution of special punishments to servicemen”. Kharkiv: Pravo, 2019. 520 p. [in Ukrainian].

7. Pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy shchodo posylennia vidpovidalnosti za okremi viiskovi zlochyny: Zakon Ukrainy vid 12.02.2015 r. № 194-VIII. “On Amendments to the Criminal Code of Ukraine on Increasing Responsibility for Certain War Crimes: the Law of Ukraine of 12.02.2015 No 194-VIII”. URL: <https://zakon.rada.gov.ua/laws/show/194-19#n5> (date of application: 25.12.2019) [in Ukrainian].

8. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo posylennia vidpovidalnosti viiskovosluzhbovtziv, nadannia komandyram dodatkovykh prav ta pokladennia oboviazkiv v osoblyvyi period: Zakon Ukrainy vid 05.02.2015 r. № 158-VIII. “On amendments to certain legislative acts of Ukraine on strengthening the accountability of servicemen: the Law of Ukraine of 05.02.2015 No 158-VIII”. URL: <https://zakon.rada.gov.ua/laws/show/158-19#n64> (date of application: 25.12.2019) [in Ukrainian].

9. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo posylennia vidpovidalnosti viiskovosluzhbovtziv ta deiakykh inshykh osib: Zakon Ukrainy vid 16.03.2015 r. № 1958-VIII. “On amendments to some legislative acts of Ukraine on increasing the accountability of servicemen and some other persons the

Law of Ukraine of 16.03.2015 No 1958-VIII”. URL: **Ошибка! Недопустимый объект гиперссылки..** (date of application: 25.12.2019) [in Ukrainian].

10. *Kovitidi O.F.* (2005). *Zvinnennia vid kryminalnoi vidpovidalnosti za normamy Zahalnoi chastyny KK Ukrainy*. “Exemption from criminal liability under the norms of the General part of the Criminal Code of Ukraine”. Simferopol: KK “Kvadrantal” 224 p. [in Ukrainian].

11. *Lutsenko Yu.V.* (2014) *Zmina obstanovky yak pidstava zvinnennia vid kryminalnoi vidpovidalnosti za zlochyny proty derzhavnoi bezpeky Ukrainy*. “Changing the situation as a basis for the release from criminal responsibility for crimes against the national security of Ukraine” *Nashe pravo*. No 7. P. 127–131. [in Ukrainian].

12. *Ehorov V.S.* (2002) *Teoretycheskie voprosy osvobozhdeniia ot uholovnoi otvetstvennosti*. “Theoretical issues of criminal liability relief”. Moskva: Moskovskiyi psikhologo-sotsialni instytut. 279 p. [in Russian].

13. *Alikperov Kh.D.* (2001) *Osvobozhdenie ot uholovnoi otvetstvennosti*. “Exemption from criminal liability”. Moskva: Moskovskiyi psikhologo-sotsialni instytut; IPK RK Heneralnoi Prokuratury RF; Voronezh: Publ. NPO «MODEK». 128 p. [in Russian].

14. *Bozhev V.* (1996). *Prekrashchenie del na dosudebnykh stadiiakh uholovnoho sudoproizvodstva*. “Termination of cases at the pre-trial stages of criminal proceedings”. *Rossiskaia yustitsiia*. No 5. 20–28 p. [in Russian]

15. *Panov M.I.* (2019). *Pro spivvidnoshennia i vzaiemozviazok poniatiinykh aparativ nauk kryminalnoho tsyклу*. “On the relation and interrelation of conceptual apparatus of the sciences of the criminal cycle”. *Problemy zakonnosti*. Vyp. 146. 158–170 p. [in Ukrainian].

16. *Baulin Yu.V.* (2004). *Zvinnennia vid kryminalnoi vidpovidalnost* “Exemption from criminal liability”. Kyiv: Atika, 296 p. [in Ukrainian].

17. *Hroshevoi Yu.M.* (1979). *Osvobozhdenye ot uholovnoi otvetstvennosti v stadyi sudebnoho razbyratelstva*. “Exemption from criminal liability at the stage of trial” Kharkov: Kharkov Juridical Institute. 82 p. [in Ukrainian].

18. *Khriapinskyi V.P.* (2006). Spirni pytannia shchodo zvilnennia vid kryminalnoi vidpovidalnosti. “Controversial issues regarding criminal liability relief”. Bulletin of the Academy of Advocates of Ukraine. Iss.6. P. 120–128 [in Ukrainian].

19. *Ponomarenko Yu.A.* (2019). Kryminalno-pravovi naslidky zaprovadzhennia v Ukraini voiennoho stanu. “Criminal consequences of martial law in Ukraine”. Problems of legality. No 145. P. 179–191 [in Ukrainian].

20. *Karpenko M.I.* (2018). Zlochyny proty vstanovlenoho poriadku nesennia viiskovoi sluzhby (viiskovi zlochyny): teoretychni ta prykladni aspekty: monohrafiia. “Crimes against the established order of military service (war crimes): theoretical and applied aspects”. Kyiv: VPZ «Natsionalna akademiia upravlinnia». 420 p. [in Ukrainian].