AUTHORITY OF INTERNATIONAL LEGAL POSITIONS DURING THE EXEMPTION FROM CRIMINAL LIABILITY

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Abstract. The article classifies the institution of exemption from criminal liability on the basis of international legal acts on the functions performed by participants in criminal proceedings. The current legislation of foreign countries in Europe is analyzed, the grounds for determining the main provisions of the criminal process for establishing the guilt of the accused and the possibility of his release from criminal liability or the application of a criminal punishment for his further education in the conditions of society are provided. An analysis of procedural form of exemption from criminal liability in Western countries indicates elements, which are related firstly with not determining of the circumstances of a criminal offense and exemption from criminal liability. Secondary, release of a suspect, accused of criminal responsibility in the case of his cooperation with the criminal justice authorities and the court. Thirdly, it’s exemption from criminal liability in the case of unreasonable verdict during the trial of the criminal proceedings in the absence of the accused. The analysis of the documents examined allows us to conclude that in the United Nations there is a tendency for the transition from the development of foundations (principles) to their standardization in relation to the participants in criminal proceedings, which establishing the creation of specific security measures based on the mechanisms of their implementation in practice.

We propose to classify the institute of exemption from criminal liability on the basis of international legal acts by function; which participants in criminal proceedings are performing. Functions in the criminal process can be defined as regulatory, namely the prescriptions, which establish rights, duties and interests of participants in criminal legal relations. The second element of the functional activities of participants in criminal proceedings is security functions, which are aimed at protecting the violated subjective rights of participants in the process. Has been developed proposals and recommendations on improving the current legislation in the sphere of exemption from criminal liability and practice of its application.

Keywords: criminal procedure, institute of release from criminal responsibility, guarantees of human rights, principles of criminal proceedings, law enforcement, protection of a person, criminal offense.

Problem statement

The main role of the criminal process in any state, according to its purpose, should ensure protection of a person from unlawful and groundless prosecution, conviction, restriction of rights and freedoms. The judgment of the European Court of Human Rights plays an essential role in this regard. In its practice, during the past decades, criteria have been developed which must satisfy the criminal proceedings.

The main provisions of this institute are defined on the basis of the construction of legal institutions. All legal institutes of law exist and operate within the branches of law; in particular, we consider criminal and criminal procedural institutes which are release from criminal liability. Relative independence and stability of the functioning of legal norms within the institute is the possibility of
its legal regulation of social relations. Legal institutes grow into independent branches of law on the basis of objective and subjective reasons. Objective reasons include the material, social conditions of society, which determine the process of the origin and existence of the system of law, its objective necessity during the legal functioning. To subjective is include the legal activities of the law. The right classification provides institutions of law on the basis of field. Besides, all institutions can be divided into groups. The first group involves the existence of an institution in the field of law, the second within a single field.

**The main material of the research**

In the criminal proceedings institute of a separate branch we propose to classify according to the functions which are performed by participants in criminal proceedings. Functions in the criminal process can be defined as regulatory, namely regulations that establish rights, obligations and interests of participants of criminal legal relations. The second element of the functional activity of the participants in criminal proceedings is the guard functions, which are aimed at protecting the violated subjective rights of the participants in the process.

On the basis of the definition of the Institute exemption from criminal liability, let’s consider the international legal documents that define, on the one hand, the protection of the rights and freedoms of the participants in criminal proceedings, and, on the other, establish the provisions for exemption from criminal punishment.

Retrospective analysis of the current legislation of foreign countries of Europe provides grounds for determining the basic provisions of the criminal process regarding the determination of the accused’s guilt and the possibility of his exemption from criminal liability or the application of a criminal punishment for his further education in a society [1].

The first way, which is defined by law of the European Union and Anglo-Saxon legal system, is represented by the US and the UK have the opportunity to release the accused in the case of cooperation with the investigation.

The state give guarantees the safety of the participants in the process. These scientific and practical provisions were introduced in the «The Code of Human Rights Standards for Law Enforcement Officials». This document is a kind of International Code of law enforcement. The main idea of this law is that law enforcement officials, while performing their duties, must respect and protect human rights, their dignity.

The Code requires the preservation of secret information of a confidential nature, which may relate to privacy or potentially harm the interests or reputation. It is prohibited to carry out, illegal acts that may harm a person during pre-trial investigation.

To achieve the goals and objectives set forth in this document, the international community has been developed «Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials», which should be guided by the implementation of police functions, as well as the selection, during basic training and all subsequent training courses and professional development and training of law enforcement.

The second is the definition of standards of exemption from criminal liability. Analysis of the theoretical provisions of the criminal process in the western countries provides grounds for the formation of standards for exemption from criminal liability. The first aspect is includes to itself, established by the current legislation a list of rights, duties and freedoms of participants in criminal proceedings. The state is determines this list on the basis of which it provides protection, legal and law protection against criminal offenses and establishes the measure of criminal punishment or exemption from it on the basis of effective repentance, cooperation with the body of pre-trial investigation and the court, etc. The second one is composed and can be formulated on the basis of rights, freedoms and interests defined in the Constitution of the state, regulations and departmental regulations. The law enforcement system provides legal force and guarantees the criminal law punishment established in the current legislation in case of violation of the law.

The main international legal body that provides legal order defines the violation of law during collegial discussion of international law and is essential for the international activities is the United Nations (UN). The normative definition of the legal status of the United Nations is its Statute, with the help of
which the rule of law, law and legal provisions for the observance of human and civil rights and freedoms are determined. [2].

UN Legal activities built on the basis of the program that defines the means to combat criminal offenses, crime prevention, establishing criminal liability under the Criminal Justice judgment.

The main legal document of the United Nations is «Universal Declaration of Human Rights», which establishing «standards of legal, international activity» and points out that cruel, inhuman, degrading acts of dignity of human rights must be punished with legal remedies.

On the basis of this declaration and its further development, it was possible to determine the provisions relating to the protection of human rights and freedoms. It should be noted that on the basis of «International Pact on Civil and Political Rights» developed international human rights standards. The difference between the Universal Declaration of Human Rights and the Pact is manifested in the quest for the fullest possible guarantee of human rights. Particular attention deserves Art. 14 of this document, which allows a closed trial of criminal proceedings based on the norms of morality, state security, private life, as well as in circumstances where publicity can violate human interests [3].

Article 2 of the Pact indicates, that every state should safeguard the rights, duties and freedoms through the establishment of protection in case of suspect of having committed a criminal offense, choose of a preventive measure, restriction of rights and freedoms, and during trial criminal proceedings, the adoption and pronouncement of the verdict, adoption of a procedural decision by a collegial court of appellate instance.

Despite the fact that the UN legal documents have a general, abstract meaning, but their developed regulations and standards of legal activity are important for the criminal process.

A.D. Boykov noted, that the International Pacts on Human Rights «it is, as a rule, either an abstract person or an accused person. However, the procedural status of the victim, which remains in these documents as a procedural figure, it is never indicated» [4].

UN legal activity consists in theoretical development of international foundations, and they are based on the definition of standards that form legal norms, defining actions of officials of law enforcement and judicial bodies and their procedural participation in criminal proceedings. Marked, that investigative units, and prosecutorial supervision in the form of procedural guidance and support for public prosecution, the professional, moral qualities of the judge, and the participants in the criminal proceedings must apply the law in such a way, to provide a measure of punishment under the criminal offense committed.

«Caracas Declaration» the UN said, that legal activity in criminal proceedings and its system should be based on process guarantees, which are capable of providing a quick, impartial, objective pre-trial investigation and assize, and provide the participants of criminal proceedings Protection of Rights and Freedoms [5].

«The Istanbul protocol» which is based on «Declaration on the Protection of All Persons from Being SubJECTED to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment» notes to prevent cruel, inhuman or degrading punishment of persons and forbids the accused's physical pain, suffering or pressure from law enforcement agencies. In case of this Facts State competent authorities should immediately begin pre-trial proceedings, without waiting for a formal complaint of the victim. Particular attention deserves the norm, which obliges the state to take measures to ensure the protection of the civil plaintiff, witnesses from all forms of intimidation in connection with their participation in criminal proceedings [6].

International documents provide practical elements of the functioning of the judicial system, which are set out in «The basic principles of the independence of the judiciary», «Basic Principles on the Role of Lawyers», as well as at «Guiding Principles Regarding the Role of Prosecuting Persons». The general content of procedural documents determines their criteria regarding the selection provisions, vocational training, and definition of legal qualification, legal knowledge, terms and conditions of authority [7].

An analysis of procedural form of exemption from criminal liability in Western countries indicates elements, which are related firstly with not determining of the circumstances of a criminal offense and exemption from criminal liability. Secondary,
release of a suspect, accused of criminal responsibility in the case of his cooperation with the criminal justice authorities and the court. Thirdly, it’s exemption from criminal liability in the case of unreasonable verdict during the trial of the criminal proceedings in the absence of the accused.

On the basis of international legal documents, today we have the practical implementation of the legal foundations of the court operation, which should be effective, impartial, and fair in relation to the participants in the process. The prosecution party must understand the legal ideals; adhere to ethical norms of morality, which are inherent in the data of participants in criminal proceedings. Particular importance is attached to the consolidation and application of the guiding principles of the criminal process, which are built on the basis of international documents [8].

It is necessary to pay attention to the importance of the United Nations documents on protection of participants in criminal proceedings. International principles, standards of protection of participants in criminal proceedings found reflection in the legislation of some States. The Baltic countries have achieved particular success in this direction.

For example, Lithuanian legislature took as a basis the US experience and developed a program of protection for the participants in the process, which many rules of the Federal Law on the Fight against Organized Crime have been reflected (USA, 1970 r.).

Ukraine is forms a new system of law enforcement activities, which based on international and European standards. Transparency of access to the service law enforcement officers indicates to the new staffing approaches. The basis of legal activity includes realization of the tasks of the current legislation, in particular protection of individual rights, state, and society from criminal offenses. To staff of the law enforcement systems are imposed special requirements – they must have high moral and ethical qualities, and the necessary professional training.

Along with the process of implementation of international standards in the legislation of Ukraine, which are intended to ensure the functioning of law enforcement and judicial authorities, the government adopted a number of laws, which are oriented to protect the rights and obligations of participants in criminal proceedings while execution their functions.

Apart, in «Basic Principles Regarding the Independence of the Judiciary» is noted, that the legal and procedural activities of judges should be properly guaranteed by the state under the rules set forth in the Constitution of Ukraine and current legislation. There is no one has not the right of unlawful or unauthorized interference to the administration of justice. The state is obligated to take care of the courts so that they properly fulfil their constitutional and legal obligations.

In «Basic Principles, which are concerning the role of lawyers» is draws attention to the circumstances, that professional associations of lawyers should ensure the observance of professional ethics while protecting the suspect, the accused from prosecution, unlawful restrictions of rights and freedoms. Lawyers, attorneys, advocates while performing their professional duties must have procedural rights, which provide the opportunity to perform professional duties without moral, psychological threats, physical impediments, intimidation or unjustified interference with the legal activities of lawyers. The state should ensure the safety of the life of lawyers while performing their functions and guarantee proper protection. Similar provisions were enshrined in «Guiding Principles, which are concerning the role of prosecuting persons». At the state level, there are provisions ensuring the protection of participants in criminal legal relations, who prosecute the accused, in particular concerning the investigator, the prosecutor, the judge. According to the current legislation, the participants of the process, which are part of the prosecution, or provide criminal proceedings, and their families, are guaranteed physical protection from the state authorities in cases where there is a threat to their safety as a result of their professional duties.

Beginning in 1995, the United Nations began to work more intensively on the mechanism of implementation of the standards to protection of participants in criminal proceedings. UN and Council of Europe committees were worried that «victims of crime, and also more often to their families, witnesses and other persons unjustly inflicted material damage, physical, mental injuries or damage to their material property while
facilitating the prosecution of criminals, who have committed serious crimes». Based on the analysis of the UN Council made a proposal the adoption of international and national measures of a general and effective protection of rights to participants of criminal proceedings.

The main provisions of this idea has found its development at the VII Congress of the United Nations, which took place in 1985 in Milan, where an action plan was adopted to strengthen international cooperation in crime prevention at the national and international level. There also were recommended «Guiding Principles on Crime Prevention and Criminal Justice in the context of the development of a new international economic order».

States were invited to take all necessary legislative measures in order to provide victims of crime with effective remedies. The category was first defined «victims of a criminal offense», particular person, which was caused by physical, moral, mental damage or significant restriction of their fundamental rights and legal interests as a result of committing a criminal act or inaction, provided for by the national criminal law. Description for assigning a person to a category «victims of crime» must be attributed to the participant in the criminal process, in case of establishing against him the unlawful influence, both from the criminal structures and not legal activity of law enforcement bodies.

On the basis of international documents was proposed at the national level to resolve and distribute the concept of «crime victim» and «victim of abuse of power». In the first case we are talking about any crimes considered relatively categories of persons, second – about non-criminal acts, which require an independent review of procedural and procedural aspects.

The Declaration consolidates the basic principles of justice for victims of a criminal offense. There are among them, of particular importance can be determined following principles, which provide protection of the rights and freedoms of the participant in criminal proceedings, that is: providing access to the legal protection mechanism; ensuring the right to receive information; provision of the right to restitution, compensation, social assistance.

Ensuring the right to receive information, concerning procedural documents in criminal proceedings, the current legislation indicates, that the investigator, the prosecutor, the judge must provide the participant in the criminal proceedings, the victim, the accused all the documents to determine the circumstances of the criminal offense for review. In addition, the prosecution and the court are obliged:

- take measures to clarify the procedural rights and responsibilities of the participant in the process;
- provide information on reasonable terms, progress and results of pre-trial and court proceedings, and after the adoption and declaration of the verdict by the court, provide a copy of the verdict to the participants of the process;
- clarify the legal status of receiving financial compensation, medical and social services and assistance, and provide the opportunity to use them.

In cases of impossibility to receive compensation in full from the convicted person or from other sources, State should provide measures for financial compensation to victims of criminal offenses.

Standards and guiding principles for protecting victims of a criminal offense have become a significant benchmark for the national legal system. In Ukraine, a new criminal procedural law was promptly adopted, which contains the exact formulation of the Declaration.

On September 7, 1990, the UN Congress passed a legal act «Measures to combat international terrorism». Special attention in the final document was aimed at ensuring the protection of participants in the process. It was suggested, consider the expediency of applying witness protection measures, allowing them to move, change the name, and also provide physical protection in the presence of physical threats [9].

Analysis of the considered documents allows us to conclude, that in the activities of the United Nations there is a tendency of transition from the development of principles to their standardization regarding the participants in the criminal proceedings, which establishing the creation of specific security measures on the basis of mechanisms for their implementation in practice.

Significant activity in the area of justice takes Council of Europe. Great importance has a legal document – «European Convention for the Protection of Human Rights and
Conclusions

Retrospective analysis of the current legislation of foreign countries of Europe provides grounds for determining the basic provisions of the criminal process to establish the guilt of the accused and the possibility of exemption from criminal liability or the use of a criminal punishment for further education in a society. The first way, which is determined by the legal system of the Union of Europe and the Anglo-Saxon legal system, is represented by the United States and the United Kingdom. There is a possibility of dismissal of the accused in case of cooperation with the investigation. The second is – determination of standards for the exemption from criminal liability. Analysis of procedural forms of exemption from criminal liability in western countries indicating to the elements, which related to begin with undetermined circumstances of the criminal offense and exemption from criminal liability. Otherwise, exemption suspects, the accused from criminal liability if he have cooperation with the Criminal Justice and Court. Third is the exemption from criminal liability in the case of unreasonable verdict of a court during the trial of the criminal proceedings in the absence of the accused.

Summing up, we propose to classify the institute of exemption from criminal liability on the basis of international legal acts by function; which the participants in criminal proceedings are performing. Functions in the criminal process can be defined as regulatory, namely the prescriptions, which establish rights, duties and interests of participants in criminal legal relations. The second element of the functional activities of participants in criminal proceedings is security functions, which are aimed at protecting the violated subjective rights of participants in the process.

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