THE CRIMINAL JUSTICE INSTITUTIONS APPLICABLE 
TO «STIMULATING» THE COLLABORATION OF THE 
PERPETRATOR WITH THE STATE

Abstract. The article focuses on the main criminal justice institutions such as release from liability and criminal punishment, cases that remove criminal liability or the consequences of the conviction aimed at achieving the principle of humanism, but also making the perpetrator to adopt cooperative conduct with law enforcement bodies in the justice process.

Keywords: Exemption from criminal liability, exemption from criminal punishment, cases of criminal liability exemption.

Fundamental human rights and freedoms are supreme values taken under the criminal justice system protection of any state governed by the rule of law, but also of the entire world community, as the Republic of Moldova is no exception to this. The criminal law of the Republic of Moldova contains a number of provisions which confirm this, with the entire criminal justice regulation focused on the protection of the individual with all the belonging assets.

Thus, the article (4) CC of the Republic of Moldova states in paragraph (1) that the entire justice system is intended to protect, as a priority, the person as the supreme value of the society, his rights and freedoms. Analysis of the provisions invoked leads us to the natural conclusion that the person is the subject of criminal justice system protection, while considering the provisions of paragraph (2), according to which criminal law is not intended to cause physical suffering or to harm human dignity and that no one can be subjected to torture, nor do we infer from cruel, inhuman or degrading treatment or punishment that the legislator has also taken into account the perpetrator personality, in other words, the subject of the
crime. Therefore, the human being/individual may be included in the criminal justice relationship, both in the context of the premise around which such report is formed and as a subject which by his act causes such report appearance.

Both the person who appears to be the passive subject of the crime (who suffers from the act prosecuted by the criminal law) and the perpetrator of the crime, who becomes the active subject of the crime, are equal before the law. That is a commitment made by the provision of article (5) CC of the RM, according to which offenders are equal before the law and are liable for criminal offenses regardless of sex, race, color, language, religion, political opinions or any other opinion, national or social origin, affiliation to a national minority, wealth, birth or any other situation (para. (1)), and the protection of the rights and interests of a person cannot be achieved by violating the rights and interests of another person or a community (article 5, para. (2) CC).

By the provisions of articles 2,3,6 and 7 CC the criminal law provides the perpetrator with certain safeguards, including the presumption of innocence, the guarantees such as presumption of innocence, the right to the defense, the exclusion of unfavorable extensive interpretation and the applying the law by analogy, fail to inflict objective indictments and double punishment for the same crime, internationally recognized principles, which would essentially contribute to an objective and impartial criminal justice system, to stimulating the cooperation between the perpetrator and the law enforcement bodies, as state representatives becoming subject of the criminal justice conflict report.

A number of other articles of the Criminal Code that contain provisions stemming from the general principles of criminal law, would considerably stimulate the perpetrator's decision to cooperate with the prosecution and justice institutions. For example, article 10, 101 CC of the RM which regulates situations where criminal law has retroactive effect or intervenes in the case of final penalties but is more favorable, applying the criminal law of the RM on its own citizens, even they have committed crimes abroad (article 11 CC), prohibition on extradition of Moldovan citizens and those who have received political asylum on the territory of the Republic of Moldova (article 13 CC), etc.
The institutions of exemption from criminal liability and criminal punishment have a special place among the criminal justice systems that would stimulate the collaboration between the perpetrator, prosecution and justice authorities. According to the article 53 CC of the RM, a person who committed an act characterized by evidence of a criminal component may be exempted from criminal liability by a prosecutor during a criminal investigation or by a court during a case hearing in the following cases: a) juveniles; b) administrative liability; c) voluntary abandonment of a crime; d) active repentance; e) situation change; f) probation; g) criminal liability limitation period.

‘Exemption’ means the action of being free and its result, freeing.

The concept of "exemption from criminal liability" first appeared in 1958, when the bases of the criminal law of the USSR used it in the title and text of article 43 “exemption from criminal liability and criminal punishment”. Looking at the essence of criminal liability, we can conclude that any case of exemption from criminal liability is, at the same time, exemption from criminal punishment. In case of exemption from criminal liability, the subject is also free from the official assessment of his deed expressed in the sentence. Therefore, exemption from criminal liability can be defined as the refusal of the State, represented by its competent enforcement bodies, to publicly condemn the actions of the offender, including the conviction itself, expressed in the form of a sentence, including, and apply the criminal penalty to the guilty, followed by the legal consequences - criminal history. Apparently, these two criminal justice institutions seem identical, being different by their legal nature, which is not fair.

First of all, in case of exemption from criminal liability, no sentence is passed, whereas exemption from criminal punishment occurs only on the basis of a respective court decision.

Secondly, the exemption from criminal punishment is carried out exclusively by the court, whereas the exemption from criminal liability can be carried out by the public prosecutor in criminal proceedings or by the court in the trial (article 53 CC of the RM).

Thirdly, exemption from criminal liability is possible only at the prosecution and trial stage, but until the sentence is passed. The exemption from criminal
punishment is possible only after the sentence has been passed, and in some cases even after the sentence is partially served.

Exemption from criminal liability is possible only in cases where the offending is associated with a number of conditions listed in the respective articles of criminal law (the offense was committed for the first time, the offender was not aged 18 years at the time of the commission, the situation has changed, etc.). For this reason, until the decision of the exemption from criminal liability is made, it must be developed that the crime has been committed.

The individualization of the subject’s criminal liability can start only after the suspect has been found guilty and there is evidence that he or she is guilty of the offense, i.e. where there are sufficient arguments for considering him an offender. In this context, it is of particular importance that to establish limits of the exemption from criminal liability. At the beginning, exemption from criminal liability is possible at the stage of criminal prosecution, at the stage of preparation of the criminal case for trial, at the stage of the trial, and in some cases even up to the start/start of a criminal trial. The limit up to which release of criminal liability is possible is the stage of the trial but only until the verdict/sentence is passed (after this stage, it can be only the exemption from criminal punishment).

The criminal law also contains provisions which describe situations where criminal liability is exempted: (A) where an offense is committed which meets the criminal components but which is of no importance does not reach the injurious degree necessary to qualify it as a punishable offense by criminal punishments (article 14, para. (2) CC); (B) the offense has criminal components but there are no criminal grounds in offender’s acts (article 51, para. (1) CC); c) cases stipulated in article 35 CC;

In this way, we can actually see the same result - the person who has committed an injurious offense is not actually held liable for criminal action. Moreover, the situations described are presenting two completely separate criminal justice institutions according to their nature and legal essence. The offences committed in these situations, the circumstances described in those rules, in essence, remain offenses which have the general criminal components and which are liable to
criminal liability and criminal punishment and only the fact that they were committed under the conditions described in the law removes their criminal character. Whether committed in other circumstances will entail liability and the punishment provided for by law.

The criminal law also contains provisions according to which the person who committed a criminal offense can be released from criminal liability (and again, in the presence of certain components clearly stipulated in the criminal code). We are talking about the cases of special exemption from criminal liability, provided in the articles of the special part of the CC, e.g. articles 165¹, para. (4), article 185¹, para. (8), article 185²-217, 246², 278, para. (6), 290, para. (3), 325, para. (4), 326, article 334, para. (4); the exemption from criminal liability to victims of trafficking in human beings (article 165, para. (40)), for offenses committed under this status, to victims of illegal migration (article 362²), persons who have crossed the border illegally in order to obtain refugee status (article 362) or the release of the member of the criminal organization that has cooperated with the criminal prosecution authorities (article 47), exemption from criminal liability of the spouses when favoring the offenses referred to in article 323 CC.

That is, the question of exemption from criminal liability arises only in cases where, on the one hand, there are grounds for holding the person to criminal liability, on the other hand - objective and subjective grounds present that criminal liability is not applied. The rules on the exemption from criminal liability cannot be considered as provisions which rehabilitate the person who committed an injurious offense, the latter is considered guilty and liable for the crime and criminal punishment. In other words, this kind of exemption cannot be considered as a forgiveness of the guilty person.

We can say that in these cases the law manifests to such persons mere indulgence, according to the explicit provisions of the law, and nothing more. Moreover, the criminal law (article 53 CC) states "that the person who committed an act characterized by evidence of a criminal component may be exempted from criminal liability…". The expression "may be" confesses that the exemption from criminal liability based on the grounds provided by the law in articles 54-59 CC is
of a evaluative - subjective character, i.e. the law enforcement bodies (prosecutor, courts or penal prosecution body), in each specific case will lead to the assessment of whether or not the culprit should be held to criminal liability.

At the same time, some researchers note that exemption from criminal liability of the person, if the conditions and circumstances provided by the law are established, is an obligation for enforcement bodies. We consider that such a situation can be taken into account only in the case of the expiry of limitation periods for exemption from criminal liability provided in article 60 CC of the RM. The paragraph (1) of this article states clearly that " A person shall be exempted from criminal liability if the following terms have expired from the date of the commission of the crime:". We note that the legislator in this case does not use the term "maybe". Indeed, the exemption from criminal liability due to the expiry of the limitation periods for exemption from criminal liability will be applied regardless the assessments of the prosecution body, the prosecutor or the court. Even in these cases, the law establishes some exceptions: in case of interruption of the prescription (article 60, para. (4) CC), limitation period suspension (article 60, para. (5) CC), and in accordance with paragraph (6) of article 60 the application of the limitation period to the person who committed an exceptionally serious offense shall be decided by the court. If the court will not find it possible to apply this prescription and exemption from criminal liability, life imprisonment shall be replaced by 30 years of imprisonment and in accordance with the provision of paragraph (8) of article 60 from Criminal Code the limitation period shall not apply to persons who commit crimes against the peace and security of humanity, war crimes, inhuman or degrading treatment or other crimes set forth in international treaties to which the Republic of Moldova is a party, regardless of the date on which they were committed.

The criminal law expressly lists the circle of persons or authorities empowered to carry out the exemption from criminal liability. We consider only those bodies or persons with positions of responsibility who are obliged to bring the culprit to criminal liability. The same subjects have the right to exempt the persons who have committed serious crimes, namely, the prosecutor in the criminal investigation and the court at the trial of the case.
We reiterate the position previously set out that only the person on whom there are grounds for criminal liability can be exempted from criminal liability. Criminal law states expressly the grounds for criminal liability. According to article 51 CC the real grounds for criminal liability shall be the prejudicial act committed while the criminal component set forth in criminal law shall be the legal grounds for criminal liability. Paragraph (2) of article 51 states that only the person guilty of a crime set forth in criminal law shall be subject to criminal liability.

In this context, the question generated by the content of the constitutional provisions may arise, in particular from article 21 of the Constitution of the RM, according to which any person accused of an offense is presumed innocent until his guilt has been proven during a public judicial process, where all the necessary guarantees for his defense has been provided and from article 8, para. (1) CPC, as well as from article 25 CPC, which state that justice in criminal cases shall be carried out in the name of the law only by the courts. The formation of illegitimate courts shall be prohibited and that no one may be found guilty of a criminal offense or punished only by a final judgment of the court, adopted under the terms of this Code. The solution seems us to be such: it depends on the legal consequences arising from the fact that the person is guilty, whether the defendant risks criminal punishment (even if the court then finds grounds for his exemption from punishment) or other legal consequences arising from the accusation of the perpetrator, the sentence can then be enforced only by judgment of the court (sentence of conviction).

If it is about the exemption from criminal liability, we find that criminal investigation is not compulsory (it is enough to establish the grounds and conditions expressly provided for by the criminal code). The essential thing is that the evidence gathered and administered during the prosecution phase shows with certainty that the accused committed the criminal offense, if the grounds and conditions stipulated by law for ending the prosecution and classifying the criminal case have been established and the defendant agrees with that solution, other participants in the trial agree with the solution indicated, first of all, the injured party, and finally, if the interests of the society or the state do not require that the criminal investigation be carried out.
For this reason, cessation of prosecution at the stage of criminal prosecution may be recognized as an action which does not contravene the constitutional principle of the presumption of innocence, provided that certain conditions are met.

In accordance with the constitutional guarantees provided, the person who considers himself innocent in committing the criminal offense he is accused of may refuse his exemption from criminal liability and request to continue the criminal proceedings in general order.

The criminal punishment imposed on the offender is one of the forms of criminal liability. For this reason, once the conviction is finally passed, the criminal penalty imposed must be enforced in strict accordance with the legal provisions and the court decisions. At the same time, certain situations and circumstances as finding certain grounds provided for by the law make unreasonable and inappropriate the real and effective execution of the penalty.

Precisely for these reasons, the legislator stipulated in the Criminal Code ways of exemption from criminal punishment, as the principle of humanism is the basis of this institution of criminal law. According to criminal law, exemption from criminal punishment means the partial or total release of a person who committed a crime from the actual execution of criminal punishment provided by a court decision. (article 89, para. (1) CC) and in accordance with paragraph (2), exemption from criminal punishment shall be done by means of: a) conviction with a conditional suspension of execution of punishment; b) conditional exemption from punishment prior to the term of expiration; c) substitution of the unexecuted part of the punishment with a milder form of punishment; d) exemption from punishment of juveniles; e) exemption from punishment due to a situation change; f) exemption from executing the punishment of seriously ill persons; g) deferral of the execution of punishment for pregnant women and women who have children under the age of 8.

We consider that the means of total punishment exemption have greater influence on the perpetrator’s decision to cooperate with law enforcement agencies, provided he is aware of the consequences of such cooperation and that his collaboration with the prosecution and the courts will cause the court to exempt the
punishment. It is up to the state bodies to convince the subject of the crime to cooperate and to ensure a professional defense.

Another criminal justice institution which, to some extent, may influence the conduct of the perpetrator is the causes which exempt from the criminal liability or the consequences of the conviction. According to the criminal law they are: pardon, amnesty and reconciliation. If *amnesty*, as a clemency act, has certain features similar to both the exemption from criminal liability and the exemption from criminal punishment, because under the CC, amnesty is the act which has the effect of excluding criminal liability or punishment either reducing the penalty imposed or commuting it (Article 107), at that time *pardon* resembles only to the exemption from criminal punishment. In accordance with article 108 pardon an act through which a convict is exempted, in whole or in part, from the punishment set or through which the punishment set is replaced with a milder form.

At the same time, amnesty and pardon are self - sufficient institutions, because by their nature, normative basis and the subjects that enforce them they are different from those of exemption from criminal liability and the exemption from criminal punishment. Both amnesty and pardon are not acts of justice (the amnesty is the Parliament's act, the pardon being granted by the President of the Republic of Moldova individually).

In conclusion, the institutions analyzed can be enforced only in cases where the perpetrator is cooperating, most of them conditioning the application on the involvement of the subject in crime detection and the identification of the co-offenders, recognition of guilt and self- denunciation, voluntary compensation of damages caused, active repentance, etc.

**References:**