

Comparative Legal Analysis of the Institute “Exemption from Criminal Liability”

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Abstract

The present research aims to examine some imperfections in the legal framework of the institute "exemption from criminal liability" both in Bulgarian and other national legislations, through its systematic, doctrinal and comparative legal analysis. For the purposes of the study, the essential differences between the concepts of "decriminalisation" and "depenalization" are indicated, as well as between the legal institutions of exemption from criminal liability, exemption from punishment and exclusion (loss) of criminal liability. In this regard, the individual types of legal liability are distinguished by deducing the main characteristics of criminal liability. As a result of the scientific analysis, several concrete ideas are proposed for improving the current legal framework of the institute "exemption from criminal liability" in Bulgarian legislation, which could be adopted in other jurisdictions as well.

Keywords: exemption from criminal liability, criminal procedure, decriminalisation, depenalization, alternative sanctioning measures.

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1. Introduction

For several decades, there has been a global trend toward humanising criminal legislation and searching for effective measures of influence, and alternatives to punishment as a form of state repression. Criminologists have concluded that the counteraction of criminal deeds, including the general and special prevention of punishment, can be implemented most effectively by paying more attention to the preventive goal, respectively. The re-education and real personal "correction" of the perpetrator rather than punishing him "with the utmost severity of the law". This is because the problem cannot be resolved, respectively. Criminality cannot be eliminated or at least limited as long as the root cause of its occurrence and development exists. The attention of criminalists is increasingly directed to the personality of the specific perpetrator of the illegal act, to his correction and re-

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education, to achieve a real and lasting warning-deterrent effect on the entire society.

In modern criminal law science, the leading idea is that punishment is not the only possible means of counteracting illegal acts, and the effectiveness of the criminal sanction depends not so much on its severity as on its inevitability². The penal policy must reflect the basic principles and values of civilised societies, which require equality before the law, the proportionality of crime and punishment, humaneness of penal measures, and humane treatment of convicted persons. In this sense, the statement that “*modern criminal law increasingly combines repressive measures with humane, economic (not only in the literal sense of the word) effect. This manifests itself in the institutes of immunity from criminal responsibility, exemption from punishment, and most clearly, exemption from criminal responsibility after the perpetrator and the victim have reconciled in the institute*”³ is true. Therefore, punishment nowadays is seen more as *an ultima ratio*, i.e. last possible means of the state to react to the perpetrators of criminal encroachments.

In jurisprudence, the thesis has long been established that criminal sanctions should be provided only for particularly serious crimes while respecting basic human rights, whose legal protection is regulated in several international and European legal acts. Thus, in *Recommendation No. R (87) 18 of the Committee of Ministers to member states concerning the simplification of criminal justice*⁴ it is accepted that legal systems that distinguish between administrative offences and crimes “*should take steps to decriminalise offences, particularly mass offences in the field of road traffic, tax and customs law, under the condition that they are inherently minor*”. In addition to decriminalisation, depenalization of deeds with a lower degree of public danger or whose public danger has disappeared in the current socio-political and economic conditions is also necessary.

Depenalization generally means not applying the punishment provided for in the law for the relevant type of crime, without the deed losing its criminal character, unlike decriminalisation, in which the criminal character of the deed disappears completely.⁵ Thus, instead of determining punishment for the specific act, the *Criminal Code of the Republic of Bulgaria*⁶ provides various forms of exemption from criminal liability or for the elimination of criminal liability altogether. This means that when a certain act constitutes a crime, albeit with a lower degree of public danger, it

² Weigend, T. 2018. “A Comprehensive View of International Criminal Law and Procedure.” *Crim Law Forum* 29, 475–491. <https://doi.org/10.1007/s10609-018-9348-9>

³ Agnė Baranskaitė. 2009. „Humanizmo principas atleidimo nuo baudžiamosios atsakomybės instituto istorinės raidos kontekste”, *Socialinių mokslų studijos*, 4(4):179–194, *Mykolo Romerio universitetas*, <https://cris.mruni.eu/cris/entities/publication/90cfb9ac-1fa0-42c0-b7b2-76354aeec5c5>.

⁴ Adopted by the Committee of Ministers of the Council of Europe on 17 September 1987 at the 410th meeting of the Ministers' Deputies. Available on: <https://rm.coe.int/16804e19f8>.

⁵ Йорданова, Радослава. 2021. „Освобождаване от наказателна отговорност и административно наказване по българското наказателно право“, Сибѝ, [Yordanova, Radoslava. „Exemption from criminal liability and administrative punishment under Bulgarian criminal law“. Publishing house „Sibi“, p. 12-13.

⁶ Promulgated in State Gazette No. 26/2.04.1968, in force from 1.05.1968, last amended SG No. 42/14. 05.2024.

should be sanctioned but according to a softened legal regime, different from criminal law, such for example, administrative sanctioning.

Exemption from criminal responsibility as the main means of depenalization constitutes a refusal by the competent state authority to determine a punishment for a specific person, even though he committed a crime, using another form of state coercion or a measure of public impact. In this way, emphasis is placed on individual prevention and the use of a minimum of coercion in cases where the objectives of punishment can be achieved even more successfully by applying alternative sanctioning measures. Some authors define this approach as “*a justified legal compromise*”⁷.

The purpose of this study is to point out some ambiguities and contradictions in the legal framework of the institute's "exemption from criminal liability" both in the Bulgarian and other European legislations by using doctrinal, systematic, linguistic and comparative legal analysis. In this regard, punitive liability is distinguished from criminal liability in the context of the relation between a general and special case of the concept of "legal liability". As a result of the analysis, several ideas are proposed for improving the current legal framework of the institute "exemption from criminal liability" in the Bulgarian legislation, which could be adopted in other countries as well.

2. Current Legal Regulation of the Institute “Exemption from Criminal Liability” in the Criminal Code and Criminal Procedure Code of Bulgaria

Chapter 28 of the *Bulgarian Criminal Procedure Code*⁸ (CPC) regulates a differentiated procedure, according to which a person accused of committing a crime can be released from criminal liability when the court ascertains the existence of the substantive legal grounds of Art. 78a of the Bulgarian Criminal Code. Similar to other differentiated procedures under the Bulgarian CPC, its main objective is to achieve procedural speed and economy in the administration of justice.

Grounds for initiation of proceedings under Chapter 28 of the Bulgarian CPC are completed pre-trial proceedings for a committed crime of a general nature. When ascertaining the presence of the regulated in Art. 78a of the Criminal Code prerequisites, the legislator has accepted that the perpetrator should not be punished with the punishment provided for the relevant crime, but should be given an administrative punishment. The differentiated procedure is inapplicable to crimes of a private nature, but this does not prevent the possibility of the court applying the institution in question according to the order of the general rules for the prosecution of

⁷ Sirotkina, Mariia, V. 2020. „Exemption from criminal liability as an alternative to criminal prosecution“, *Legal Ukraine* (9), DOI 10.37749/2308-9636-2020-9(213)-4 [Сироткіна М. В. “Звільнення від кримінальної відповідальності як альтернатива кримінальному переслідуванню”, *Юридична Україна* (9)].

⁸ Promulgated in State Gazette No. 86/28.10.2005, in force from 29.04.2006, last amended SG No. 39/01.05.2024.

crimes of a private nature. It should be pointed out that Art. 78a of the Criminal Code can also be applied when the proceedings were conducted according to the general criminal procedure, regulated in Chapters 19-20 of the CPC, as a result of which the court found the defendant guilty and released him from criminal liability according to Art. 301, Para. 1, item 5 of the CPC. Moreover, the general substantive legal prerequisites within the meaning of Art. 78a, para. 1 of the Criminal Code must constitute a cumulative fact and be present at the time of committing the act, and not subsequently, when, in the pre-trial or judicial phase of the process, it is assessed whether the cited norm is applicable.

The first prerequisite has a complex nature as, on the one hand, it is tied to the form of guilt in the commission of the crime, and on the other - to the type and amount of punishment, as follows: *"The crime is punishable by imprisonment for up to 3 years or another lighter punishment when it is intentional, or imprisonment for up to 5 years or another lighter punishment when it is careless"* (Art. 78a, Para. 1, b. "a" of the Criminal Code). A hypothesis is possible under which the conditions under Art. 78a, para. 1, b. "a" of the Criminal Code were present at the time of the commission of the crime, but due to legal changes in the period until the prosecutor's ruling, the type and amount of the punishment for the corresponding type of crime should be increased. Then it is also admissible for the perpetrator to be exempted from criminal liability based on the principle that the law in force at the time of the crime is applied (Article 2, Paragraph 1 of the Criminal Code). In this case, however, the prosecutor should not prepare a motivated proposal based on Art. 78a of the Criminal Code, but must submit an indictment to the court, since the question of which is the applicable substantive law, respectively. Which is the law more favourable to the perpetrator is a question of the merits of the case and must be decided by the court at the time of sentencing.

The second prerequisite for the institute's application is regulated in Art. 78a, Para. 1, b. "b" of the Criminal Code - the perpetrator must not have been convicted of a crime of a general nature and must not have been released from criminal liability at the time of the commission of the act. This means that a previous conviction for a crime of a private nature; conviction for a crime of a general nature, for which, however, the perpetrator has been rehabilitated, or exemption from criminal liability, in which case one year has passed from the moment of execution of an administrative penalty, do not constitute an obstacle to the release of the accused from criminal liability.

A mandatory prerequisite, according to the text of Art. 78a, Para. 1, b. "c" of the Criminal Code, is that the property damages caused have been compensated, i.e. all material damages that are a direct and immediate consequence of the procedural act, regardless of whether they are part of the composition of the crime or are disproportionate. It is of no legal importance which entity has recovered these damages - the accused or another person, e.g. his relative or friend.

Next, it should be noted that paragraph 7 of Article 78a (supplemented - SG No. 54 of 2017) regulates the exceptions in which, regardless of the presence of the listed general prerequisites, exemption from criminal liability is not allowed, namely:

"if the damage caused is serious bodily injury or death, or the perpetrator was in a drunken state, or after using narcotic substances or their analogues, as well as in multiple crimes, as well as when the crime was committed against a body of authority during or on the occasion of execution at his service".

In Bulgarian jurisprudence, the understanding is established that the court's decision to release the perpetrator from criminal liability neither erases the criminal nature of the committed act (unlike amnesty) nor changes the legal qualification of the act into another type of offence. In addition, the general provisions of the Criminal Code (repetition, recidivism, rehabilitation, statute of limitations) apply to the convicted person, unless the law provides otherwise.⁹ In this sense is also the text of Art. 301, Para. 1, item 5 of the CPC, according to which the court recognises the defendant as guilty and exempts him from criminal liability. In addition, according to interpretive decision No. 3/2014 of the Bulgarian Supreme Cassation Court¹⁰, the decision by which the court exempts the perpetrator of the criminal act from criminal liability has the legal meaning of a sentence, respectively. It has the force of a *res judicata* regarding the proportionality of the act and the perpetrator's guilt. This means that regardless of the proven guilt of the perpetrator, the court is obliged to give it legal significance only by finding the defendant guilty of committing a crime, for which, however, it determines a different type of sanction measure.

3. Differentiation of Legal Liability

In the Bulgarian doctrine, the understanding is accepted that proceedings under Chapter 28 of CPC are criminal, even though the changes in the legal sphere of the convicted person are related only to the sanctioning effect of certain types of administrative penalties. Thus, according to the cited provision (Art. 301, Para. 1, item 5 of CPC), when the court finds the defendant guilty of committing the crime and decides to exempt him from criminal liability, it can only impose an "administrative penalty" instead of a punishment from the system of criminal sanctions in the Criminal Code. Moreover, another possibility is regulated in Art. 78a, para.4 of the Criminal Code - at its discretion, the court may impose on the defendant cumulatively with the fine and another type of administrative penalty "deprivation of the right to exercise a certain profession or activity", if deprivation of such right is provided for the relevant crime. The conclusion is obvious, that in this case only the sanctioning effect of the administrative penal, and not the criminal liability, is manifested since the court is authorised by force of a *res judicata* to impose one or more administrative penalties on the perpetrator.

It is important to note that one of the most favourable legal consequences for the person exempted from criminal liability within the meaning of Art. 78a of the

⁹ See Decree No. 7 of 04.11.1985 on criminal case No. 4 of 1985 of the Plenum of the Supreme Court of Bulgaria.

¹⁰ Interpretive decision No. 3 of 20.11.2014 on interpretive case No. 3/2014 of the General Assembly of the Penal Board in the Supreme Court of Cassation of Bulgaria. Promulgated in State Gazette No. 23/2014.

Criminal Code states that the same is treated as unconvicted. In this way, the Bulgarian legislator has allowed the possibility for the perpetrators of minor crimes to reform and re-educate themselves through a relatively lighter sanction regime, excluding the negative legal consequences of a court conviction.

Therefore, at the legal level, a kind of legal paradox has been settled, according to which, first of all, the perpetrator of an act that the court qualifies as a crime must be released from criminal liability, and secondly, as a sanction for the committed crime, the court must determine an administrative penalty. The argument that the perpetrators of crimes of lower public danger are allowed to correct and re-educate themselves through a lighter sanctioning regime, which excludes the negative legal consequences of a judicial conviction for a crime, can be accepted in the spirit of humanising criminal sanctions. But the explanation that *"the concept of 'exemption from criminal liability' should not be interpreted etymologically and strictly linguistically"*¹¹ can hardly be accepted, considering the complexity and serious consequences for society of the quality of the rule-making process. On the contrary, legal precision requires a more in-depth analysis of the legal institution under consideration. First of all, the well-established theoretical position should be taken into account, according to which both criminal and administrative penal liability are varieties of legal liability as a generic concept. Administrative penal liability is a consequence of the commission of an administrative violation, while criminal liability is a consequence of a crime. The common thing between the two types of legal (sanction) liability is that both are implemented through state intervention in the presence of the objective and subjective signs of a certain type of offence that the positive law has determined as punishable.

It is undeniable that the differences in the two types of offence - crime and administrative offence - are based on the leading objective characteristic of "public danger", which serves as a foundation for the differentiation of the acts. Public danger is determined, first of all, by the object and type of encroachment - threatening or violating certain public relations and/or goods, and then by the subject and the legally regulated objective and subjective signs of the offence. While the crime within the meaning of the Bulgarian Criminal Code affects with the greatest intensity fundamental values and goods for any society, the administrative offence according to the legal definition in Art. 6 of the Bulgarian Administrative Violations and Penalties Law (AVPL) "violates the established order of state governance". Of course, the moral aspects of punishment should not be neglected. Here is the place to note that *"according to the neoclassicists, punishment is intended to communicate moral condemnation to the perpetrator, in fact to make the perpetrator feel responsible for the evil committed"*¹², or rather, the commission of a moral evil should lead to criminal

¹¹ Йорданова, Радослава. 2021. „Освобождаване от наказателна отговорност и административно наказване по българското наказателно право“, Сиби, 2021, [Yordanova, Radoslava. 2021. „Exemption from criminal liability and administrative punishment under Bulgarian criminal law“. „Sibi“, p. 61.

¹² Peno, Michał. 2015. „Aspekty moralne odpowiedzialności w prawie karnym". *Acta Universitatis Lodzensis. Folia Iuridica* 75: 141-158, <http://dx.doi.org/10.18778/0208-6069.75.10>. [Peno, Michał.

liability.

The next significant difference is related to the procedural order by which each of the considered types of sanctioning liability is realised. Thus, the punishment for a committed crime is individualised by the court according to the procedure of the Criminal Procedure Code as a result of criminal proceedings. And the sanction for a committed administrative violation is determined and imposed administratively by an authorised administrative-punitive body that exercises authority, which, however, does not have the characteristics of a judicial body.

It should also be noted that the imprecise legal framework, which allows overlapping of a number of criminal offences and administrative violations, leads to many practical problems, including the real possibility that the same person may be held both administratively and criminally liable for the same act. On this issue, the consistent case law of the ECHR¹³ and the Court of Justice of the EU¹⁴ already contains specific solutions that have been confirmed as mandatory rules at the national level¹⁵.

The immediate goal in the implementation of each type of legal liability is the sanctioning effect of the punishment established in the law as an expression of state repression against offenders.¹⁶ The same determines the penal or sanctioning nature of all types of legal liability, which essentially represents a punitive measure of authority. In this regard, the administrative penal charge in the general case is a criminal charge within the meaning of Art. 6 of the ECHR. This understanding is consistently and stably established both in doctrine and in interpretative practice.¹⁷ According to Engel's criteria, used by the ECHR, when a sanction is intended only to

2015. "The Moral Foundations of Criminal Responsibility". *Acta Universitatis Lodzensis. Folia Iuridica* 75: 141-58. <https://doi.org/10.18778/0208-6069.75.10>. See also Peno, Michał. 2014. "O odpowiedzialności karnej, uzasadnieniu kary i koncepcji komunikacyjnej karania." *Archiwum Filozofii Prawa i Filozofii Społecznej* 2: 95-107. [Peno, Michał. 2014. "On criminal responsibility, justification of punishment and the communicative concept of punishment." *Archive of Philosophy of Law and Social Philosophy* 2: 95-107].

¹³ See ECtHR cases *Engel and Others v. Netherland*; *Tsonyo Tsonev v. Bulgaria*; *Nikolova and Velichkova v. Bulgaria*, § 49 – 64; *Constantinescu v. Romania*, § 40 – 44; *Dalban v. Romania*, Grand Chamber, § 44; *Brumarescu v. Romania*, Grand Chamber, § 50; *Zolotukhin v. Russia*, § 115; *Moskovets v. Russia*, § 50; *Guisset v. France*, § 66 –70; *Kuduc v. Bosnia and Herzegovina*, § 7 – 18; *Jensen v. Denmark* (decision on admissibility); *Freimanis and Lidums v. Latvia*, § 68; *Cocchiarella v. Italy*, Grand Chamber, § 84 – § 107, etc.

¹⁴ See CJEU cases *Luca Menci*, C-524/15, ECLI:EU:C:2018:197; *Garlsson Real Estate SA and others*, C-537/16, ECLI:EU:C:2018:193; *Enzo Di Puma and the National Commissioner for the Society and the Exchange (Consob)*, C-596/16 and C-597/16, ECLI:EU:C:2018:192.

¹⁵ Interpretative decision No. 3/2015 on interpretive case at the of the General Assembly of the Penal Board in the Supreme Court of Cassation of Bulgaria, available at: <https://www.vks.bg/talkuv/atelni-dela-osnk/vks-osnk-tdelo-2015-3-reshenie.pdf>.

¹⁶ Hart, H.L.A. 2008. *Punishment and Responsibility: Essays in the Philosophy of Law*. Oxford: Oxford University Press, <https://doi.org/10.1093/acprof:oso/9780199534777.001.0001>.

¹⁷ In decision No. 1/1.03. 2012 on constitutional case No. 10 of 2011 of the Constitutional Court of Republic of Bulgaria explicitly emphasizes that the proceedings for establishing and punishing the administrative violation constitute a criminal charge, corresponding to Art. 6, par. 1 of the ECHR. In the same sense is the Supreme Cassation Court's Decision No. 3/2015.

compensate for material damage, it does not have a penal character. We can talk about a sanction of a penal nature only when it contains too much repression and prevention.

It is obvious that in regulating the institute of "exemption from criminal liability" in Art. 78a of the Criminal Code, the Bulgarian legislator combined elements of the factual composition for the realisation of two types of legal liability. On the one hand, this is criminal liability, because the institute is applicable only when a crime within the meaning of the Criminal Code has been committed, and on the other hand – administrative penal liability, because it only provides for the imposition of an administrative penalty, but by judicial procedure, respectively, by the procedure for punishment for a committed crime. Hence, the need for legal clarification of this legal institution, which has an extremely wide practical application. From a theoretical-applied point of view, it is important to define what type of sanctioning liability is realised when using this institute. Otherwise, we will be faced with a hypothesis of competition between criminal and administrative penal liability.¹⁸

According to some authors¹⁹, when applying the institution in question, the criminal liability is not replaced by the administrative penal responsibility, but only the sanctioning consequence for the committed act is replaced, and in this connection it is not a matter of exemption from criminal liability, but of a hypothesis of "exemption from punishment" in the sense of the Bulgarian Criminal Code. According to other authors, "... exemption from criminal liability is a specific institute that is located on the border between criminal and administrative penal liability and combines both types of liability."²⁰ In my opinion, when an offence of a specific type is committed according to the relevant procedure, we cannot talk about dropping out or exclusion of legal liability whatsoever. Furthermore, it is not a question of exemption from punishment at all, since each type of legal liability implies the determination of a punishment, according to the type of violation committed. Following the classical principles and philosophy of criminal law, when applying Art. 78a of the Bulgarian Criminal Code, "the deed is not decriminalised, but under the law, the criminal sanction is only changed, by imposing an educational measure or an administrative penalty instead of a punishment."²¹ This is because both substantive and procedural legal relations arose and developed according to the statutory order, respectively. The perpetrator's responsibility for the crime committed by him in a broad sense has been fulfilled, but the competent judicial authority imposes another

¹⁸ Sofia Mirandola, Giulia Lasagni. 2019. "The European ne bis in idem at the Crossroads of Administrative and Criminal Law", *Eucrim* 2: 126-135, available at: <https://doi.org/10.30709/eucrim-2019-009>.

¹⁹ Груев, Лазар. 2020, *Наказването за престъпление*, Издателство на БАН „Проф. Марин Дринов“, ISBN 978-619-245-014-4, с. 84-87. [Gruev, Lazar. 2020. *Punishment for a crime*, BAS Publishing House "Prof. Marin Drinov", ISBN 78-619-245-014-4, p. 84-87].

²⁰ Йорданова, Радослава. 2021. „Освобождаване от наказателна отговорност и административно наказване по българското наказателно право“, Сиби, [Yordanova, Radoslava. 2021. „Exemption from criminal liability and administrative punishment under Bulgarian criminal law“. Publishing house „Sibi“, p. 91.

²¹ This understanding was also adopted in Interpretative decision No. 3/2015 of the Bulgarian Supreme Court of Cassation.

type of measure of state coercion - an administrative penalty. In this way, the Bulgarian legislator has considered that the goals of the punishment can be achieved even more successfully.

The legal institute under consideration, although it has reasonable legal justification, is at least incorrectly formulated from a legal, technical and systematic point of view in Bulgarian legislation. The more precise legal formulation of the institute, given the current legal framework, is "mitigation of criminal liability". Moreover, considering that criminal liability is realised for the culpable commission of a crime, even under the conditions of a simplified procedural regime, I find it legally justified that the consequences of the conviction should not be erased or replaced. This conclusion inevitably follows from the legal definition of criminal liability and crime. There are no reasonable arguments in support of the legislative decision that persons exempted from criminal liability should not be included in the criminal records as "convicted of a crime", regardless of the fact that they were punished with an administrative penalty. Practice shows that this approach not only does not prevent, but even encourages relapse, i.e. the warning-deterrent and re-educational effect of the sanction in this case does not achieve the desired result. One of the obvious explanations for this finding is the feeling of impunity and the low level of legal awareness of a large part of the perpetrators of crimes.

4. Comparative Legal Analysis of the Regulation of the Institute "Exemption from Criminal Liability"

Comparative legal analysis shows that not all European countries use the institute of "exemption from criminal liability" as a form of decriminalization (e.g. Romania, Germany, Serbia), but apply other methods such as termination of criminal prosecution (e.g. expiration of the statute of limitations, amnesty), removal of the punishability of the act (e.g. unavoidable defense, extreme necessity, factual error), release of the convicted person from serving a sentence (e.g. reconciliation between the perpetrator of the crime and the victim).

Of course, it would be difficult to talk about a complete harmonisation of European criminal legislation, since essential factors such as national sovereignty, exclusive criminal jurisdiction and legal traditions in each country should be taken into account. It should be noted that some authors advocate the innovative idea that „the perspective of national sovereignty should not be the primary concern in criminal justice affairs in the EU“ and also „...propose an alternative standard to assess the EU's influence on national criminal law and argue that the primary concern in criminal justice affairs in the EU should be the pursuit of finding a reasonable balance between crime control and judicial protection.“²²

Given the accuracy of the comparative research, the specifics of the national

²² Ouwerkerk, Jannemieke. 2015. "Criminal Justice beyond National Sovereignty. An Alternative Perspective on the Europeanisation of Criminal Law", *European Journal of Crime, Criminal Law and Criminal Justice* 23, 1: 11-31, <https://doi.org/10.1163/15718174-23012058>.

language and language translation, the adopted legal terminology, according to which each country places a different meaning even in some classical criminal law and procedural institutes, must also be taken into account. There is a common understanding in criminal law theory that the terms „responsibility and liability are distinct, respectively. Responsibility is a pre-condition of liability”²³. In the same sense, A. Loughnan writes: „In its positive form, criminal responsibility appears as if it were neatly demarcated from blameworthiness or culpability, liability and (positive ascriptions of) responsibility are connected. There are two aspects to this point, one concerning the elements of criminal offences and the other concerning defences. First, differentiation of positive ascriptions of criminal responsibility is achieved by the different types of mens rea or fault – intention, recklessness, knowledge and negligence – that apply to different criminal offences... The second way in which (positive ascriptions of) responsibility are differentiated concerns those defences that an individual may raise to avoid criminal liability, but which do not throw criminal responsibility into question.”²⁴ It should be clarified here that the present analysis is focused on the specifics of exemption from criminal liability as a type of legal liability for a committed crime, and not on the prerequisites for bearing individual legal liability, which is also defined given the personality of the perpetrator.

The Russian Federation and some of the former Soviet republics have long-standing legal traditions in the application of the institute under consideration. According to some authors „in the context of considering the negative aspect of legal liability the institution of exemption from it can be defined as an independent comprehensive intersectoral institution that regulates legal relations arising from the state's refusal (expressed in the form prescribed by law) from a formal condemnation of the legal conduct of the offender in order to achieve the maximum effect on the correction or restoration of legal relations that were violated as a result of illegal actions, humanization and individualization of measures of influence and prevention of offenses”²⁵. Other authors support that „the essence of the legal structure of exemption from negative legal liability should be understood as the absence of a legal obligation to undergo measures of state coercion in the form of deprivation of personal, moral and property nature for the offense due to changes in its assessment and the subject of the offense as well as the subject of the offense on the grounds provided by law, in order to achieve a socially useful result.”²⁶

The systematic analysis of the provisions in the Criminal Code of the Russian

²³ Duff, Antony. 2007. *Answering for Crime: Responsibility and Liability in the Criminal Law*. Published by Hart, ISBN 9781472560155, pp. 19-23.

²⁴ Loughnan, Arlie. 2016. “Asking (Different) Responsibility Questions: Responsibility and Non-Responsibility in Criminal Law.” *Bergen Journal of Criminal Law & Criminal Justice* 4 (1). doi: 10.15845/bjclcj.v4i1.1025.

²⁵ Y. Shevchenko, Anatolii V. Kudin, Oleksandr M. Loshchykhin, and Vasyl H. Fatkhutdinov. 2021. “The principle of inevitability and the institution of exemption from legal liability: aspects of the relationship”. *Revista Género E Interdisciplinaridade* 2 (01). <https://doi.org/10.51249/gei.v2i01.130>, p. 164.

²⁶ S.V. Medvedev. 2005. *Exemption from legal liability in the Russian state: (Theoretical and Practical Aspects)*. Nizhny Novgorod: Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia.

Federation shows that the Russian legislator also considers the exemption from criminal liability of a person suspected or accused of committing a crime, not exemption from legal liability at all, nor exemption from serving a sentence. Moreover, according to the Criminal Code of the Russian Federation, in order for the perpetrator to be released from criminal liability, he must first pay a court-imposed fine of a certain amount. The term used is "judicial penalty fine", which is not understood as a type of criminal punishment in the full sense of the word, but as a sanction supplementing the group of other punitive measures.²⁷ The solution adopted in the Bulgarian Criminal Code is different, according to which the payment of the fine as a type of administrative penalty is part of the executive criminal process, or is considered as a consequence, and not as a prerequisite for applying the institute of "exemption from criminal liability". Thus, in practice, a situation is possible in which a person, released from criminal liability according to a court decision that has entered into force, subsequently fails to pay the fine imposed by the court. However, this does not lead to the annulment or invalidation of the court decision, nor is it grounds for resuming the trial. Therefore, Bulgarian legislation lacks sufficiently stable legal guarantees that the person exempted from liability will bear the due sanction consequences of their illegal behaviour. The only option left for the competent law enforcement authorities is to use the legal mechanisms for the forced collection of the fine. In this sense, the decision adopted by the Russian legislator can be defined as a more effective way to implement the sanctioning consequences of the institution under consideration.

When comparing the Bulgarian and Russian Criminal Codes, other differences are observed regarding the regulation of the substantive legal prerequisites for exemption from criminal liability. The Russian legislator has accepted that the institute in question can be applied only if the perpetrator commits a crime for the first time. In *Resolution of the Plenum of the Supreme Court of the Russian Federation № 19 from June 27, 2013, "On the application by courts of legislation regulating the grounds and procedure for exemption from criminal liability"*, the conditions under which a person is considered to have committed a crime for the first time are listed²⁸.

²⁷ See Leonid Evgenievich Shchetnev and Maya Aleksandrovna Klyuchnikova. 2021. *Institution for the Exemption from Criminal Liability: Current Issues of Law Enforcement*. DOI: 10.5220/0010634600003152. In: Proceedings of the VII International Scientific-Practical Conference "Criminal Law and Operative Search Activities: Problems of Legislation, Science and Practice" (CLOSA), p. 239. Available online at: <https://www.scitepress.org/Papers/2021/106346/106346.pdf>.

²⁸ Ibid, p. 238: "the person who has committed a crime for the first time should be considered as: - person who has committed one or a number of illegal acts, regardless of qualifications under one or more articles of the Criminal Code of the Russian Federation, but a prerequisite is a provision when the perpetrator has not been punished for more than one committed act; - person to whom a guilty verdict was passed, but at the time of the commitment of a new crime did not enter into legal force; - an individual who has committed an unlawful act and has been convicted of a previous crime, the sentence of which has entered into legal force, but circumstances have been discovered that prevent the person from being held criminally liable (expiration of the statute of limitations for a previous crime, cancellation or expungement of record); - a person sentenced to criminal punishment for which the sentence came into legal force, but as a result of correlation, comparison and analysis of the facts of the defendant's guilt for which he was convicted, it was unsaid and eliminated; - an individual who has been

As stated, according to the Bulgarian Criminal Code the the perpetrator may be exempted from criminal liability when he is not exempted from criminal liability under the same procedure and has not been convicted of a certain category of crimes, unless he has already been rehabilitated.

Further, in the Criminal Code of the Russian Federation (Articles 75–76.2, 78 Chapter 11), the following grounds for exemption from criminal liability of the suspect and the accused are established: active repentance; agreement with the victim; compensation for the damage caused; expiration of the statute of limitations.²⁹ The agreement with the victim and the expiration of the statute of limitations for criminal prosecution according to the Bulgarian Criminal Code are grounds for termination of criminal proceedings (regulated explicitly and restrictively in Art. 24 of the current Criminal Procedure Code), which are associated with a different legal consequences from exemption from criminal liability. Moreover, at present in Bulgaria, an agreement between the perpetrator and the victim is permissible only in crimes of lower public danger, including all crimes of a private nature. An agreement can be reached both during initiated criminal proceedings and out of court, through private conciliation or a mediation procedure.³⁰

For comparison, in the Criminal Code of the Republic of Uzbekistan, the agreement between the perpetrator and the victim of a criminal act is also considered one of the grounds for exemption from criminal liability, which also leads to the termination of criminal proceedings even in the pre-trial phase of the process.³¹ From a legal point of view, neither the termination of the criminal proceedings nor the exemption from criminal liability erases the criminal nature of the committed act. Upon termination of criminal proceedings according to the Bulgarian CPC, the possibility of the competent judicial authority to rule on the merits of the case is precluded, respectively, the court is not obliged to rule with the force of res judicata

previously exempted from criminal prosecution and criminal liability.”

²⁹ Zvecharovskiy I. E. 2018. „Exemption from liability and punishment in Russian criminal law”. Courier of Kutafin Moscow State Law University (MSAL) (12):81-87. <https://doi.org/10.17803/2311-5998.2018.52.12.081-087>.

³⁰ More about mediation procedure and restorative justice see in Чанкова, Добринка. 2020. *Книга на медиатора* (в съавторство), Фондация Партньори - България, София, 240 с. [Chankova, Dobrinka. 2020, *Book of the mediator* (co-authored), Partners Foundation - Bulgaria, Sofia, 240 p.]; Chankova, D. 2021. *Restorative Justice as a New Response to Crime - the Modern Vision and Bulgarian Dreamers and Opponents*, In: Balkanistic Forum, SWU – Blagoevgrad, Print ISSN: 1310-3970, Issue 3, pp. 344-355; Чанкова, Д. 2020. *Към въпроса за задължителното приложение на алтернативните способи за решаване на спорове: европейски поглед*, (в съавторство с Елина Попова), ел. сп. “Право, Политика, Администрация”, ЮЗУ “Н. Рилски”- Благоевград, ISBN 2376 – 4601, том 7, брой 1, с.16-27 [Chankova, D. 2020. *Towards the compulsory application of alternative dispute resolution: a european perspective*, (co-authored with E. Popova), e-journal “Law, Politics, Administration”, SWU – Blagoevgrad, ISBN 2376 – 4601, Volume 7, Issue 1, pp. 16-27].

³¹ Urmonjonov, Khurshidbek. 2022. “Reconciliation with the victim as a basis for exemption from criminal liability”. *Academia Globe: Inderscience Research* 3 (11): 118-20. <https://doi.org/10.17605/OSF.IO/PRBZT>. See also Muazzam, Akramova. 2022. “Legal Aspects of the Exemption From Criminal Liability Under the Act of Amnesty in the Legislation of the Republic of Uzbekistan”. *Middle European Scientific Bulletin* 23 (April): 105-8. <https://cejsr.academicjournal.io/index.php/journal/article/view/1197>

on the presence or absence of criminal liability of the alleged perpetrator of the act (except for several hypotheses, e.g. when the perpetrator is not criminally responsible, due to minors or insanity; when the agreement between the perpetrator and the victim is validated by the court with a judicial act (determination) recognizing the perpetrator's guilt, etc.). Furthermore, when the criminal proceedings against a person are terminated, he is considered unconvicted and not exempt from criminal liability. The latter has legal significance since, according to Art. 78a, para. 1 of the Bulgarian Criminal Code, a person who has been convicted of a crime of a general nature or has been released from criminal liability under the same procedure does not have the right to benefit from the advantages of this legal institution again, unless he has been rehabilitated. In addition, „*The limitation period's expiry is a legal event entirely. This is why the offender does not 'release himself/ herself from criminal liability' at all in the cases when the limitation period runs out.*“³²

Next, with the expiration of the statute of limitations for criminal prosecution according to Art. 79-80 of the Bulgarian Criminal Code, the judicial authority is obliged ex lege to terminate the criminal prosecution against the accused/defendant, which, however, does not erase the criminal nature of the act in question, nor does it release the perpetrator from criminal liability. This is because the criminal liability has already arisen as a result of the committed crime, but due to the emergence of the legal fact terminating the right - expiration of the statute of limitations, the judicial authority cannot implement its sanctioning effect or rather does not have the authority to either pronounce a verdict or release the perpetrator from criminal liability. With the same meaning is Art. 153, para. 1 of the Criminal Code of Romania and Section 34, para. 1 of the Criminal Code of the Czech Republic.³³

When analysing the Russian criminal law, it is striking that the legislator foresees the same legal consequences both when the criminal prosecution is terminated and when the perpetrator is released from criminal liability. Moreover, according to the Russian Criminal Procedure Code, in the presence of the substantive legal prerequisites for the application of the institute "exemption from criminal liability", the competent law enforcement body - the prosecutor's office or court - is obliged to terminate the criminal proceedings. Two more significant differences from the Bulgarian legislation stand out here. First of all, the institute of exemption from criminal liability within the meaning of Chapter 28 of the CPC can be applied only by the competent court. The Prosecutor's Office does not have the authority to exempt adults with legal capacity from criminal liability. This is only possible in the hypothesis of Art. 61 of the Criminal Code, when a minor commits a crime due to frivolity or passion, which does not pose a great public danger.

In some countries (e.g. Republic of Lithuania, the Republic of Bulgaria), the application of the institute is permissible even in the pre-trial phase of the criminal

³² Girginov, Anton. 2021. "Statute of Limitations under the Penal Law of Bulgaria". *Problems of Legality*, no. 154 (December): 219-43. <https://doi.org/10.21564/2414-990X.154.239351>, p. 221.

³³ Гиргинов, Антон. 2023. Абсолютната наказателна давност (тълкувания и законови празноти). [Girginov, Anton. 2023. „The absolute statute of limitations (Interpretations and Legal Gaps)“], *DE JURE* 13 (23): 35-43; DOI: 10.54664/HDLC5738, p. 35.

process. Although some authors define this procedural possibility as a violation of the presumption of innocence and propose to the legislator “to settle the procedural legal relationships in a way that only a court could decide whether to exempt a person from criminal responsibility or not”³⁴, the critical arguments presented should not be supported. The opposite would mean that any action taken by the prosecution to prosecute the person suspected/accused of committing a crime essentially violates the presumption of innocence. On the other hand, in order to guarantee legality, objectivity and the protection of the procedural rights of the accused persons in the pre-trial phase, it is reasonable to arrange for judicial control over these procedural acts of the prosecution. The Bulgarian CPC provides for judicial control over almost all final procedural acts of the prosecutor in pre-trial proceedings. Other authors state categorically that “...the principle of presumption of innocence while exempting from criminal liability is not restricted: the prescriptions of presumption of innocence should be assessed, firstly, as not included into the mechanism of criminal liability, and secondly – as criminal law measures which are an alternative to punishment. Exemption of a person from criminal liability remains to be an effective means to resolve a criminal law dispute in cases prescribed by law. A person who has committed a criminally punishable act is, in no way, limited in their rights, much less in the right to implement the principle of the presumption of innocence.”³⁵

According to the Bulgarian CPC, when the substantive legal prerequisites for applying the institute of exemption from criminal liability are present, the court does not terminate the criminal proceedings, but pronounces a judgment of conviction, by which it recognises the defendant as guilty of committing the procedural act and determines the type of administrative punishment accordingly. Therefore, in Bulgarian legislation, the termination of criminal proceedings is not equivalent to exemption from criminal liability. It is true that when applying the institute “exemption from criminal liability”, the court determines different alternative sanctioning measures, other than the punishment in the sense of the Criminal Code, but the criminal liability is considered realized, since the criminal procedural relationship between the perpetrator and the state has ended with a judicial act that has the force of a *res judicata*. While upon termination of criminal proceedings, the procedural legal relationship regarding the realisation of criminal liability remains incomplete, because due to the occurrence of a specific legal fact terminating the right, the judicial authority has no authority to either convict or acquit the defendant, nor to release him from criminal liability. In this sense, the understanding that the procedural act that blocks the path of criminal prosecution has only executive legal force, but not the

³⁴ Iveta Vitkutė Zvezdinienė. 2009. „Exemption from Criminal Liability: the Problems of the Implementation of the Presumption of Innocence Principle“, *Societal Studies*, 4 (4): 231-242, Mykolas Romeris University, <https://ojs.mruni.eu/ojs/societal-studies/article/view/1390>.

³⁵ Sirotkina, Mariia. V. 2020. “Exemption of person from criminal liability and correlation with the principle of presumption of innocence.” *Legal Ukraine* (8), DOI 10.37749/2308-9636-2020-8(212)-5 [Сироткіна М. В. 2020. “Звільнення особи від кримінальної відповідальності та співвідношення з принципом презумпції невинуватості”, *Юридична Україна* (9), DOI: 10.37749/2308-9636-2020-8(212)-5].

force of *res judicata*, has been established in Bulgarian doctrine.

5. Conclusion

With the introduction of the institute of "exemption from criminal liability" in the criminal law of the Republic of Bulgaria, the idea of achieving a reasonable balance between the effective protection of society from illegal acts and the expediency of punishment, through the use of a minimum of state coercion, is realised. The broad practical applicability of the considered legal institute and the multitude of contradictory opinions in scientific circles require the legal regulation of its essence and the legal consequences of its application in Bulgarian legislation to be specified.

It is a general theoretical position that crime as a legal fact can be a legal basis only for engaging in criminal liability. The fact that the type of sanctioning consequences changes without erasing the criminal nature of the act cannot justify a change in the type of legal liability. The above leads to the conclusion that this case concerns a specific hypothesis, an exception to the general rules for the realisation of the legal consequences of criminal liability, or an exception to the rules for punishment for a committed crime. The correct name of the institute under consideration should be "*mitigation of criminal liability for a committed crime*". For the comparative legal analysis of the institute under consideration in the various national legislations, it is necessary to clarify the terminology of the concepts of "ground" and "condition" for their practical application. In this sense, the position of some authors is very reasonable: "*The content of the institute of exemption from criminal liability is a legally enforceable right-grounds and conditions for exemption from criminal responsibility which are a set of essentially encouraging criminal law applied in cases where there is no need to resort to repressive measures. In any research it is necessary firstly to understand the used terms. The accuracy of the terminology means, first of all, that each concept has its own term and one term defines one concept*"³⁶.

It is obvious that every country adopts a different approach and attach different meaning to the discussed legal concepts, which is where the more significant differences in the regulation of the criminal law institute "exemption from criminal liability for a committed crime" originate. This finding is completely understandable, considering insurmountable factors such as state sovereignty, exclusive criminal jurisdiction and legal traditions in each society.

The significance of such scientific research can be found in the need for national legislation to be permanently developed, taking into account good practices and positive results achieved in other countries.

³⁶ See Gulmira T. Onayeva, Aytugan Zh. Abdizhami, Akylbek T. Kabzhanov, Lazzat M. Zhunusova. 2018. „Some Issues of Exemption from Criminal Liability on the Existing Criminal Code of the Republic of Kazakhstan”, *Journal of Legal, Ethical and Regulatory Issues* 21, 1 (March), <https://www.abacademies.org/articles/some-issues-of-exemption-from-criminal-liability-on-the-existing-criminal-code-of-the-republic-of-kazakhstan-7086.html>.

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