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**FEATURES OF EXEMPTION FROM SERVING A SENTENCE
WITH PROBATION FOR CRIMINAL OFFENCES THAT
ENCROACH ON SECURITY ACTIVITIES**

Syploki M. V.

*Doctor of Law, Associate Professor,
Criminal Law and Process Department
Uzhhorod National University
Uzhhorod, Ukraine*

Nesterova I. A.

*PhD in Law, Associate Professor,
Criminal Law and Process Department
Uzhhorod National University,
Uzhhorod, Ukraine*

One of the measures of criminal-legal influence on a person who has committed a criminal offense is the institution of release from criminal punishment with probation. It is based on social needs, due to the imperative of Article 62 of the Constitution of Ukraine requirements on the inviolability of the presumption of innocence, in terms of criminal liability humanization and narrowing the limits of criminal legal repression in order to achieve the goal of punishment without its actual serving and successful re-socialization of the person who has committed a criminal offense.

Speaking about the sphere of illegal encroachments on criminal offenses that encroach on security activities, it should be noted that it is quite extensive. It can be considered in the following areas, such as security activities as a kind of economic activity; security activities as a type of activity for the protection of public order and security; security activities as a type of official activity; security activities as a type of activity for the protection of life, human health and property of individuals and legal entities.

As it is known, at the legislative level, release from serving a punishment along with release from punishment is regulated by Chapter XII of the General Part of the Criminal Code of Ukraine, which is evidence of the practice in the national criminal justice of achieving the tasks facing criminal legislation by applying not only exclusively punitive, but also alternative non-punitive, encouraging or those based on the inexpediency of further criminal proceedings and other measures of a criminal nature.

There is a group of scholars who understand the release from punishment as the refusal of the state to apply punishment to a person who was found guilty of a crime by a court conviction [1, p. 423], or the Criminal Code of Ukraine provide the cases of non-application by the court to the person that is guilty of the crime committing, punishment or termination of its further serving [2, p. 281].

Some foreign researchers argue that release from punishment is the early release of a person convicted of a crime from serving a court sentence in cases where the goals of the sentence are achieved early or it cannot be achieved due to the disease of the convict [3, p. 663]. Others believe that the essence of the institution of release from punishment is that on the grounds provided by criminal law, the person who committed the crime should be released by the court: a) from the imposition of punishment for the crime committed; b) from the actual serving of the sentence imposed by the court sentence; c) early from the further serving of the sentence partially served by the convict so far, imposed by the court [4, p. 495].

We are inclined to support those scholars who note that release from punishment consists in the exercise by the court of its power, according to which it (the court), in the presence of grounds and conditions provided by the Criminal Code of Ukraine, terminates in whole or in part the execution of a sentence.

Therefore, in view of the above and taking into account the existing case law, it can be argued that the most numerous manifestations of release from serving a sentence, as a type of release at the stage of sentencing, for crimes that encroach on security activities, is exemption from serving a sentence with probation (Articles 75-78 of the Criminal Code of Ukraine) [5, p. 444].

When analyzing the case law in the application of this type of release from serving a sentence, it should be indicated the legal position of the panel of judges of the First Judicial Chamber of the Criminal Court of Cassation of the Supreme Court in criminal proceedings (case) 235/689/20. Thus, the court considers that release from serving a probation sentence (Article 75 of the Criminal Code) can be applied in cases when the materials of criminal proceedings contain data that indicate that reducing the public danger of a criminal offense and the convict itself determines the possibility of his correction without isolation from society [6].

The Supreme Court of Ukraine draws attention to the fact that the issue of sentencing and release from its serving should be decided taking into account the purpose of punishment as covering not only punishment but also correction of convicts, prevention of new crimes by convicts and others. At the same time, taken into account the provisions of Article 75 of the Criminal Code, the legislator emphasizes the importance of such a goal of

punishment as correction of the convict, providing that in the case of a number of punishments, including imprisonment for up to five years, a person may be released serving a probationary sentence if the court concludes that it is possible to correct the convict without serving the sentence; the court must take into account not only the gravity of the crime and the identity of the perpetrator, but also other circumstances of the case. This right of the court is discretionary. Its implementation is a legally enforceable intellectual and volitional activity of the court, within which a decision is made on the possibility of applying or not applying Article 75 of the Criminal Code [7].

We believe that the implementation of general and special release from punishment with probation can be used in the case of direct implementation of release from punishment with probation in case of conviction for criminally illegal encroachments on security activities. The only clarification is that the general exemption from serving a probation sentence in case of these criminal offenses (Part 1 of Article 75 of the Criminal Code of Ukraine) cannot be applied to certain criminal acts that indirectly «from within» violate the interests of security relations' participants. Such encroachments include criminal offenses under Art. 364, 364-1, 368, 268-2, 368-3 of the Criminal Code of Ukraine. In addition, we do not rule out the existence of cases of impossibility of implementation in some cases and special release from serving a probation sentence (Part 2 of Article 75 of the Criminal Code of Ukraine) in the case of some of these criminal offenses committing. These are, in particular, cases of impossibility of release from serving a sentence with probation under Part 2 of Art. 75 of the Criminal Code of Ukraine in connection with the objective impossibility of concluding a conciliation agreement in case of premeditated murder of a person or his close relative in connection with the performance of this person's official or public duty (paragraph 8 of Part 2 of Article 115 of the Criminal Code Ukraine), intentional grievous bodily harm under Part 2 of Art. 121 of the Criminal Code of Ukraine, etc.

Nevertheless, there is every reason to believe that release from punishment with probation in the case of criminal offenses in the field of security activities is a sufficiently effective and efficient means of tasks achieving facing the criminal legislation of Ukraine.

Thus, the above suggests that in the case of any criminal offense in the sphere of security activities, the statement of the relevant grounds and conditions of these types of release at the stage of sentencing or execution of the sentence obliges or entitles the court to release the convicted person from full or partial execution. Nevertheless, the study of the practice of release from punishment for these types shows that such types of release in the case

of criminal offenses commission in the sphere of security activities are practically not implemented, because in most cases priority in the issue of release from punishment for its commission is given to release from serving a probation sentence.

Summing up, it should be pointed out that security activities are a special area of public relations, which is insufficiently regulated at the legislative level. Therefore, one of the tasks of the state is to create favorable conditions for the successful functioning of the sphere of security activities by adopting lawful, reasonable and motivated court decisions in case of conviction for criminal illegal encroachments on security activities. One of the levers of influence on the positive solution of this situation is the application of the institution of release from serving a sentence with probation in the specified area.

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