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# GROUNDS FOR EXEMPTION FROM LIABILITY OR PENALTY (PUNISHMENT) WITH THE APPLICATION OF COMPULSORY MEASURES

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## Abstract

This article discusses the grounds for exemption from liability or penalty by applying compulsory measures for crimes committed by minors that are not of great social danger and less serious. Local and foreign scholars' opinions on compulsory measures applied to minors are analyzed. It is also shown that it is possible to educate minors through compulsory measures applied to them. Compulsory measures applied to minors, in turn, are described as measures of compulsory educational influence, an independent form of reaction of the state to the crimes of minors, which has a criminal-legal character.

**KEYWORDS:** Exemption from liability, penalty, compulsory measures, compulsory educational measures, criminal law, juvenile offenses, criminal liability, introspective liability.

## INTRODUCTION

The Criminal Code of the Republic of Uzbekistan establishes special rules for crimes committed by minors. Regarding criminal liability and punishment, related norms for exempting minors from liability or penalty is enshrined in Chapter 16 of the General Part of the Criminal Code.

Article 87 of the Criminal Code provides for exemption from liability or fine with the application of compulsory measures, according to which a minor who has committed a crime for the first time that does not pose a great social danger may be released from liability and the case can be referred to the Commission on Children's Affairs for consideration if it is concluded that, taking into account the nature of the act committed, the personality of the perpetrator and other

circumstances of the case, it can be corrected without the application of penalty (punishment).

The court is obliged to consider (hear) the issue of exemption from penalty (punishment) and the application of compulsory measures against a minor who has committed a less serious crime for the first time or has repeatedly committed a crime with a low social risk that is punishable by imprisonment for a term of not more than five years, if there are grounds provided for in the first part of Article 87 of the Criminal Code of Uzbekistan.

The court must consider the appropriateness of applying a compulsory measure instead of penalty (punishment) if the minor is far behind in development for his/her age and does not

completely comprehend the importance of the act s/he did.

The necessity and validity of introducing special types of exemption of minors from liability or penalty (punishment) into the criminal code is determined primarily by the individual psychological traits of minors. Features such as high susceptibility to the influence of external factors, strong impressionability, impressionability and trustworthiness is caused by the fact that minors do not have stable views on relations in society. This implies the possibility of correcting their criminal behavior through educational measures.

However, the current legislation does not specify the definition of compulsory measures applied to minors. Different authors have expressed different opinions on the concept of compulsory measures applied to minors.

A.Magomedova came to the conclusion that: "compulsory educational measures are state compulsory measures applied by the court and have a corrective and educational effect on a minor who has committed a less serious, moderate and serious crime, which are not considered criminal penalty (punishment) (or are not subject to criminal punishment) and are imposed during the release from criminal liability or penalty (punishment) for the purpose of its correction as well as the prevention of new crimes"[1]. Of course, here it is necessary to take into account that the author made this proposal based on Russian criminal law. In his opinion, the system of compulsory measures of an educational nature is significantly different from the system of criminal sanctions due to the shift of the center of gravity to the educational means rather than the punitive ones. Compulsory measures are strictly personal in nature; can only be appointed by the court on behalf of the state; performance is mandatory; according to its content, it is considered educational and aimed at the social adjustment of adolescents.

Persuasion and, if required, coercion are two methods that can be used to upbringing minors, according to I.N. Tyurina. The analysis of the current legislation shows that young offenders are

increasingly being raised under compulsory circumstances.

She notes that "Other forms of education other than coercion have demonstrated their ineffectiveness. But it is understood as certain disciplinary-pedagogical means applied to minors who, due to the psychological characteristics of the person, still have the opportunity to change their behavior in the direction approved by society"[2].

Understanding and analyzing the essence of mandatory educational impact measures as a separate criminal-legal institution implies an understanding of their legal nature and relationship with other institutions of criminal law - criminal liability and penalty (punishment).

The state's criminal-legal response to juvenile offenses can take the shape of mandatory educational effect measures. This is explained by the fact that the studied measures are combined in criminal legal norms. However, the process of bringing a minor to criminal accountability is essentially repeated in the process of assigning mandatory educational measures, from the start of a criminal prosecution to the issuance of a court decision.

Since compulsory measures are used against minors for committing crimes and are not classified as a form of penalty (punishment) under Article 43 of the Criminal Code, they are, in our opinion, a manifestation of criminal liability because they are used alongside other forms of influence that are not criminal in nature.

Therefore, the state's response to a minor's crime may take the shape of criminal liability, which is demonstrated by the use of compulsory measures against the minor. Therefore, using compulsory measures on juveniles is a particular kind of criminal liability.

O.A. Anfyorova demonstrates compulsory measures applied to minors as a special form of exemption from accountability. According to her, "when released from criminal liability, a person is found guilty of the committed act. Otherwise, the exemption from criminal liability will lose its meaning. According to Article 8 of the Criminal Code, in order to exempt a person from criminal

liability, the basis of which is the commission of an act containing all the elements of a crime, a decision must be taken by the body (subject) that has given the right to release a person who has violated the state criminal law from the legally unfavorable consequences (and as a result, from punishment) of criminal behavior, such as an official charge"[3].

According to D. Gurbanov, "one of the most complicated and pressing issues of the theory of criminal law is the legal nature of the release from criminal liability. There is still no consensus on this issue, and it is the cause of various debates"[4].

D. Payziev highlights that "exemption from liability is the cancellation of liability for the socially dangerous act of a person who committed a crime"[5].

Exemption from liability is understood to mean the refusal of a judicial authority body to conduct a criminal investigation and to give an indictment in a verdict, reflected in a special procedural document, the application of the person who committed the act that constitutes a crime, in the presence of grounds specified in this law.

The conditions for exemption from criminal liability differ in special cases. They differ depending on the type of crime and the damage caused. The grounds for exemption from liability specified in the General Part of the Criminal Code are broader.

As the theory of criminal law developed, views emerged regarding the division of criminal liability into "positive" and "negative" liability. These concepts are interpreted as liability for the future and the past.

Positive criminal liability can be called introspective liability, as it arises from a person.

According to some scholars, liability: the type of liability (positive or negative) arises from the type of legal or illegal legal act carried out within the framework of legal relations.

Therefore, liability can be positive or negative as a legal consequence of legal behavior. From a philosophical point of view, any phenomenon has positive and negative aspects.

According to P.V. Korobov "some scholars note that

the concept of positive criminal liability is the (demonstrated) positive behavior of criminals after the commission of criminal act. Advocates of this theory contributed to the development of types of exemption from criminal liability. According to them, sincere remorse for guilt is said to be a special condition in the positive behavior of persons after the commission of a crime that exempts them from criminal liability. Exemption from positive criminal liability can occur only after he has committed a crime. But, of course, it is important to study the liability of a person for his past criminal

actions"[6].

O.Yu. Avvakumova pointed out that the socio-legal nature of the exemption from criminal liability differs in the following aspects:

"a) exemption from criminal liability is one of the legally established mechanisms of criminal-legal regulation, which is produced by the commission of an act that possesses all the signs of a crime;

b) the grounds for exemption from criminal liability are expressed in the mutual agreements of the parties, expressed in the mutual behavior of the participants of legal relations, beneficial actions of the person who committed the crime aimed at eliminating the negative consequences of the crime, the refusal of the application of state criminal law enforcement measures due to reconciliation;

c) existence of the institution of criminal-legal conciliation in the system of criminal law is strengthened by encouraging norms in criminal law. In this instance, it is considered that the criminal's actions have shifted to a more constructive aspect for society, that he is being guided to repair the harm, and that the offender is no longer a threat to society;

d) Exemption from criminal liability is carried out only if it corresponds to the principles of criminal law. They contribute to the achievement of the goals of the criminal law"[7].

In our opinion, the essence of exemption from criminal liability is correctly explained in the following definition given by M. Kh. Rustambaev:

“Exemption from criminal liability is an act of the competent state body on the cancellation of the trial or accusation, as well as the cancellation of the application of state compulsory measures against the person guilty of committing a crime”[8].

The above-mentioned scientists focused on the issue of exemption from criminal liability in general. However, the release of minors from liability or penalty (punishment) by means of compulsory measures differs from the general grounds for release from liability provided for in the Criminal Code.

Release of minors from liability is carried out using compulsory measures. Only juveniles are subjected to compulsory measures, which are more educational in nature. It is crucial that minors who have committed crimes refrain from continuing their criminal behavior and quickly reintegrate into society. The primary requirement for using compulsory measures is that the individual must be a minor.

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