

## Summary

**The year:** 2019.

**Specialty / field of study (code and full name):** 40.03.01-Law

**Level of study:** bachelor's degree.

**Institute or Higher school:** Law University.

**Department** of criminal law disciplines and forensic expertise

**The subject of the final qualifying work:** “Active remorse in criminal law”.

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**The relevance of the research topic.** Currently, one of the main trends in the development of criminal law is the search for optimal ways of resolving criminal law conflicts when committing crimes of small or medium gravity, and in some cases when committing serious, or even especially serious, crimes. Obviously, in this situation, the science of criminal law faces the task of developing legislation that would more fully ensure the formation of new relations in society, effectively protect it from socially dangerous attacks and at the same time stimulate socially useful post-crime activity. This problem has long been discussed at both the scientific and practical levels. The priority direction for the development of criminal incentives was chosen not “the inevitability of punishment”, but the elimination of all possible consequences of criminal activity, that is, the most complete and quick elimination of harm caused by the crime. Indeed, if a person is able to acknowledge his guilt with his socially useful post-criminal behavior, which forms an active repentance, eliminates the harmful consequences of his act, contributes to the timely disclosure and investigation of the crime, thereby reducing state costs and ensuring the restoration of the legitimate rights and interests of the victim, then to such a person it is impractical to apply criminal law measures. On the contrary, such voluntary actions of the perpetrator should be encouraged in every possible way, using the practice of introducing incentive norms into the criminal law. The current Criminal Code of the Russian Federation in Art. 75 for the first time legislatively enshrined the general rule on exemption from criminal liability in connection with active repentance and significantly expanded the application of this institution in the notes to the articles of the Special Part of the Criminal Code of the Russian Federation. Nevertheless, as practice shows, the problem of applying active remorse remained unresolved. The nature and multiplicity of existing problems in the application and interpretation of exemption from criminal liability in connection with active repentance indicates the need to improve the legislative regulation of this institution, harmonize it with fundamental legal principles, specify the concept of active repentance, eliminate contradictions between general and special cases of exemption from criminal liability according to Art. 75 of the Criminal Code, the development of criteria for evaluating the signs of active remorse and their combination for exemption from criminal liability, the use of the investigated circumstances in accordance with the goals and requirements of the law.

**The purpose of the work:** based on the study of the institute of active repentance, theoretical and practical foundations of its application, develop proposals for improving legislation in the field of exemption from criminal liability in connection with active repentance and recommendations for a more effective implementation of this institution.

**Objectives:** to identify the legal nature of active repentance and its socio-legal significance; conduct a detailed analysis of the signs of active remorse; to study the conditions of exemption

from criminal liability in connection with active repentance; consider special types of exemption from criminal liability in connection with active repentance; to determine the criteria for distinguishing active repentance from reconciliation with the victim and from voluntary renunciation of the crime; formulate recommendations for improving the norm on exemption from criminal liability in connection with active repentance.

**Theoretical and practical significance of the research:** it is a comprehensive study of both general and special grounds for exemption from criminal liability in connection with active repentance, and its results can be used both in normative and law enforcement activities, as well as in the educational process in the study of the disciplines of the criminal law cycle .

**Results of the study:**

1. Due to the fact that the criminal responsibility lies in the obligation of the person who committed the crime, to report to the state in the deed, to be convicted, punished and other adverse legal consequences provided for by criminal law, it is inextricably linked with the concept of punishment. According to the Constitution of the Russian Federation, criminal punishment is imposed only by the court, and the competence of the inquiry officer and investigator includes the adoption of a decision on the commencement or termination of criminal prosecution. In this regard, in the content of Art. 75 of the Criminal Code of the Russian Federation, the words “The person who first committed the crime ...” should be replaced by “The person who first committed the act containing signs of the crime ...”. In addition, in our opinion, procedural terminology should be introduced into the material institution of exemption from criminal liability, i.e., to exempt a person not from criminal liability, but from criminal prosecution.

2. In the literature, various points of view are expressed as to whether all acts appearing as signs of active repentance should be carried out guilty for his release from criminal liability under part 1 of article 75 of the Criminal Code of the Russian Federation. In our opinion, the person who committed the crime can be exempted from criminal liability not only after the fulfillment by him of the totality listed in Part 1 of Art. 75 of the Criminal Code of the Russian Federation, but also in the case when it performs only part of them (for example, helps to solve crimes and compensates for harm), provided that the person could not perform other actions due to the objective circumstances. It should be noted that judicial investigative practice follows the same path. In this regard, to eliminate the uncertainty in the legislative wording, it is necessary to indicate the actions testifying to active repentance through the "or" separation unions. In addition, it seems necessary to issue an appropriate resolution of the Plenum of the Supreme Court of the Russian Federation with explanations on the correct application of Article 75 of the Criminal Code of the Russian Federation.

3. The state should recognize the obligation, and not the right to be exempted from criminal liability, when all objectively possible conditions of active repentance are fulfilled. Therefore, it is proposed to consolidate the peremptory procedure for exemption from criminal liability in connection with active repentance by changing the wording of part 1 of article 75 of the Criminal Code of the Russian Federation by replacing the phrase “may be released” with the term “released”.

4. Consideration of special types of exemption from criminal liability in connection with active repentance allows us to state that the restrictive condition of “absence of a different corpus delicti” in formulating special types of active repentance does not carry a meaning and can be excluded from the relevant notes to the articles of the Special Part of the Criminal Code of the Russian Federation .

5. In a number of notes to the articles of the Special Part of the Criminal Code of the Russian Federation, containing an indication of special types of exemption from criminal liability, a mixture of concepts that are heterogeneous in terms of meaning is allowed. So, in the notes to articles 204, 291, 210, 228 of the Criminal Code of the Russian Federation, in addition to actions that are manifestations of active repentance, alternative conditions for exemption from criminal liability are indicated that are not related to positive post-criminal behavior. For example, the condition "to actively contribute to the suppression of crime (s)" (Art. 210, 228) corresponds to the stage of an unfinished crime, moreover, committed by another person; the condition "if extortion took place against him (the person who committed the crime - author)" (Articles 204, 291) - the concept of mental coercion. That is, the conditions for release here are acts and events that do not correlate with the rules on exemption from criminal liability in connection with active repentance, provided for by Article 75 of the Criminal Code of the Russian Federation. But in the General part of the Criminal Code of the Russian Federation there are no other legal grounds for placing the rules on exemption from criminal liability in the notes to the articles of the Special Part of the Criminal Code, except for those established by Article 75. Therefore, such conditions should either be excluded from the notes or legalized in Article 75 of the Criminal Code of the Russian Federation.

### **Recommendations**

It seems possible to propose the following version of the article st.75 of the Criminal Code of the Russian Federation:

“Article 75. Exemption from criminal prosecution in connection with active repentance

1. A person who has committed an act for the first time containing signs of a crime of small or medium gravity shall be exempted from criminal prosecution if, after committing such an act, he voluntarily confessed, or contributed to the disclosure of the crime, or compensated for the damage caused or otherwise made amends for the damage caused as a result of the unlawful acts, and as a result of active repentance ceased to be socially dangerous.

2. A person who commits an act containing signs of a crime of a different category shall be exempted from criminal prosecution only in cases specially provided for by the relevant articles of the Special Part of this Code. ”