

CRIMINAL LIABILITY AND CRIMINAL LIABILITY EXEMPTION

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1. Criminal liability and criminal liability exemption as the two basic stipulations of Vietnam's Criminal Law

Criminal Liability is the State's strictest coercive measure applied to those who commit crimes stipulated by Vietnam's Criminal Law, and at the same time is one of the basic and most important stipulations in the Criminal Law of Vietnam and is recorded in articles 2, 8-16 in the 1999 Criminal Code of Vietnam.

It can be affirmed that together with three other stipulations: (1) crimes, (2) penalties, and (3) criminal acts, criminal liability is the main stipulation and also the "pivotal thread" running through the general regulations and the criminal regulations of the Criminal Law. On the other hand, the nature and the level of progressive legal principles of human civilization and of Vietnam's Criminal Law such as legislation, humanity, the respect and protection of human rights, etc. mainly depend on the settling of offenders' criminal liability.

According to Criminal Law, a person may have to bear criminal liability (or criminal liability) when there are sufficient bases and conditions of

criminal liability related to him/her. However, to promote the struggle to prevent and combat crimes effectively and together with the classification of crimes, Vietnam's Criminal Law also sorts out different criminal cases and offenders so as to have appropriate, quick, accurate and fair solutions. Especially, the classification of criminal cases and offenders manifests that not all offenders shall have to bear criminal liability. In some cases, there are sufficient legal proofs and conditions or (and) if it is not necessary to bear criminal liabilities, the person who caused a dangerous action prohibited by Criminal Law may not have to bear criminal liability or can be exempted from criminal liabilities.

If criminal liability appears when there is a criminal case and it is represented in the scope of criminal law relation between the State and the offenders, in the case that the offenders are exempted from criminal liability, the criminal liability is also considered to be terminated. Thus, similar to the stipulations of criminal liability, criminal liability exemption is also one of the independent and important stipulations in Vietnam's Criminal Law.

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It expresses the humanitarian policy of the Communist Party and the State of Vietnam to the offenders and their criminal behaviors. At the same time, it aims at encouraging the offenders to achieve feats in order to redeem their crimes, proving their quick re-education ability to integrate into the community and helping them to become useful people in the society.

According to the 1999 Criminal Code of Vietnam, there are nine cases of criminal liability exemption: (1) five cases in the General Regulations (Article 19, items 1-3; Article 25, item 2 and Article 69), (2) four cases in the Criminal Regulations (Article 80, item 3, paragraph 2; Article 298, item 6 and Article 314, item 3). On this basis, the 1999 Criminal Code clearly divides the cases of criminal liability exemption into two groups: a compulsory group and an optional group.[7]

Thus, the norms of the stipulations in the 1999 Criminal Code shows the reason why the 1985 Criminal Code recorded that criminal liability exemption was an independent stipulation. It results from the humanitarian principle in Vietnam's criminal policy in general and Vietnam's Criminal Law in particular. It also results from the viewpoint that although imputing criminal blame and penalizing the offenders criminally is important in the protection of legislation and law order consolidation, it is not the only measure. The problem requires that we

should use different social measures in order to prevent and combat crimes. Therefore, this stipulation in Vietnam's Criminal Law expressed the right guideline of criminal treatment policy, ensured the harmonious combination of the strictest coercive measure of the State and other social measures in order to re-educate and educate the offenders. By doing so, the application of criminal coercive measures can be limited.

In short, the analysis of the stipulations of criminal liability and criminal liability exemption shows that the former one aims at solving exactly the issue of criminal liability and the penalty for offenders, representing the State's punishment for the offenders defined as law-breakers by Vietnam's Criminal Law, also protecting the legislation and law order and protecting the legitimate rights and the interests of the State of Vietnam, the society and its citizens. The latter stipulation expresses the deep humanity with the content of implementing the policies of "severe punishment combined with tolerance" and "punishment combined with re-education" in the treatment way of the State of Vietnam. Similar to the requirement that it is not necessary to imputing the criminal blame for the persons who caused dangerous actions to the society and they are considered as offenders, we still ensure the requirement for the struggle to prevent and combat crimes, the requirement for general and particular preventions.

2. The unity, logicity and organicality of the relation between criminal liability and criminal liability exemption

In terms of principle, anyone causing dangerous actions to the society shall have to bear criminal responsibility when there are sufficient criminal signs defined in the Criminal Law. In other words, criminal liability is the inconvenient legal consequence of the criminal implementation and is expressed by applying one or many coercive measures of the State of Vietnam, which is defined by Criminal Law for offenders. However, as mentioned above, a person who causes dangerous actions to the society shall have to bear criminal liability only when there are sufficient conditions and bases of criminal liability. Because these are the important contents and actions to ensure the legal principle in the Criminal Law, ensure the legitimate rights and interests of citizens, as well as the exemption of applying criminal liability in accordance with the similar principles once applied in the reality of criminal judiciary in Vietnam in the past. Moreover, it sets the firm foundation for the awareness of the content and basis of criminal liability exemption.

Article 2 in the 1999 Criminal Code records the basis of criminal liability that only the persons who commit crimes

stipulated by Criminal Law shall have to bear criminal liability. However, if we only say about criminal liability, there is not enough evidence to force a person to bear criminal liability. The basis of criminal liability is only a general, coercive basis defined by Criminal Law so that the State offices raise the criminal liability issue for the persons who caused dangerous actions to the society. In order to compel a person to bear criminal liability, beside the basis of criminal liability, there must be a sufficient collection of criminal liability conditions which is relevant to the criminal signs based on the generally conceded formula "no crimes, no criminal liability". Based on that, a person has to bear criminal liability when he/she (1) must have the ability of criminal liability; (2) must be old enough to bear criminal liability; (3) causes dangerous actions to the society; (4) his/ her actions are prohibited by the Criminal Law; and (5) must offend against law when implementing those actions[2; tr.136-140].

Thus, a person shall have to bear criminal liability only when he/she has sufficient basis and condition of criminal liability to the implemented crimes. In the case where there are enough legal evidence and certain conditions or whereas there is no need to impute a criminal blame, he/ she can be exempted from criminal liability. Therefore, the logical, organic and dialectical relation between the stipulations of criminal

liability and criminal liability exemption can be seen in the following aspects.

2.1. Legal nature

Criminal liability and criminal liability exemption are the independent stipulations in Vietnam's Criminal Law, which are closely related. If criminal liability is the inconvenient legal consequence for the offender because he/she committed crimes and is shown by applying to him/her one or many the State's strict coercive measures defined by the Criminal Law, criminal liability exemption means that the offender is not compelled to bear the inconvenient legal consequence of that crime. If there is no legal basis and condition defined by law in order to be exempted from criminal liability, that person shall have to bear criminal liability according to the regulations of Vietnam's Criminal Law on the general bases.

In addition, if the basis of criminal liability is the dangerous actions caused to the society which Criminal Law defines as crimes, the basis of criminal liability exemption is the legal basis and condition prescribed by Criminal Law in order not to compel a person to bear criminal liability. However, in terms of form, the dangerous actions caused to the society have the signs of other crimes prohibited by Criminal Law and they should have born criminal liability (if there are sufficient proofs and conditions prescribed in Criminal Law). In other words, the offender enjoys the humanity

stipulation of Vietnam's Criminal Law - criminal liability exemption- when there are legal bases and conditions defined by Criminal Law. It means that the inconvenient legal consequence of implementing the dangerous actions defined as criminal by Criminal Law is repealed. Thus, we have agreed on the view point of Vice Rector of Hanoi University of Law (Ministry of Justice), Dr. Le Thi Son, that: "Criminal liability is the legal liability made for the offender, criminal liability; the legal consequence exemption of committing crimes only can be made for the offender. It is impossible to apply the criminal liability exemption to the person who doesn't have the actions satisfying the legal manifestations of the criminal formation stipulated in Vietnam's Criminal Law" [5; p.19]

2.2. The subjects who are under the stipulation of criminal liability and those who enjoy criminal liability exemption

Both of these subjects are the offenders. This means that they cause the dangerous actions defined as crimes by Criminal Law. In other words, the subjects in these two cases are the offenders although they have to bear criminal liability or are exempted from criminal liability. That is to say, they are the subjects who commit crimes and implement actions contrary to Criminal Law and they have the ability of criminal liability and reach the certain age defined by law.

2.3. Legal consequences of the stipulations of criminal liability and criminal liability exemption

When offender is the person who has to bear criminal liability, he/she has to bear the inconvenient legal consequence of the crime implementation (he/ she is applied with one or many strict coercive criminal measures of the State) and especially the offender has to bear the recorded convictions (if he/ she is applied with the penalty). Meanwhile, the persons who are exempted from criminal liability are also the offenders, but in their criminal cases there are enough legal bases and conditions in order to enjoy the criminal liability exemption according to the regulations of Vietnam's Criminal Law. In this case, they of course do not have to bear the inconvenient legal consequences of the crimes caused by them: they shall not have to bear criminal responsibility, criminal punishment or other coercive measures and, therefore are not considered as having recorded convictions. However, the reality of trial shows that the persons exempted from criminal liability probably have to bear one or more legal measures affected by other relevant branches of law: specifically, prevention measures according to the regulations of criminal procedure law; the obligation of restoring the origin state, compensating for damage, etc., according to the Civil Law; pecuniary penalty, warning or being compelled to stop work according to the Administrative Law; suspending

the labour contract according to the regulations of the Labour Law or disciplinary measures, etc. To prove this, it is possible to quote the unanimous guiding document by the Judge Council of People's Supreme Court in Decision No 02/ HDTP dated 05-01-1986 on Guidelines for Applying some regulations of Criminal Code: "when exempted from criminal liability, the court is not allowed to give any decision on any penalty, but still give a decision on the compensation for victims of a criminal action and settling exhibits".

2.4. Starting and termination of criminal liability

As can be seen, criminal liability only arises when there is crime and it is only implemented within the scope of Criminal Law relation between two parties as the two subjects who have certain rights and obligations. One is the State and the other is the offender. The time of criminal liability implementation starts when the court passes a sentence in legal effect, which affirms the mistake of the accused in the implementation of crime and finishes when the recorded conviction of the convicted is abolished according to the regulations of Criminal Law. However, in the process of implementing criminal liability, the criminal liability in some cases can be immediately terminated - can not be continued if the court finds out the evidences to exempt the offenders from criminal liability at the trial (Articles 181 and 249 in the 2003 Code of Criminal Procure).

3. The issue of applying the stipulations of criminal liability and criminal liability exemption

As analysis above shows, criminal liability and criminal liability exemption are closely related to each other. Thus, solving appropriately the issue of criminal liability and applying the stipulation of criminal liability exemption correctly in reality will create a favorable legal basis for the state agencies to apply the law of struggle to prevent and combat crimes, protect the interests of the State effectively, the legitimate rights and interests of organizations and citizens. However, through the research on the Criminal Law stipulations related to the two stipulations of criminal liability and criminal liability exemption as well as the reality of applying them, we have come to the conclusions as follows:

3.1. Now to apply the criminal liability to the persons who caused dangerous actions to the society defined as offenders by Criminal Law, based on the constitutional principle of presuming somebody innocent recorded in Vietnam's 1992 Constitution (Article 72, paragraph 1) and 2003 Code of Criminal Procedure (Article 9): "Nobody is considered as an offender and has to bear a penalty when there have not been the court's convictions in legal effect", criminal liability is officially implemented when the conviction of the Court takes legal effect. It means that

from the time the Court passes an effective sentence, there is an application of restricting or depriving the freedom right (even life) of the convicted. In other words, according to the regulations of Vietnam's current Constitution, Criminal Law and Code of Criminal Procedure, the application of criminal liability only can be implemented by the only authority organization - the Court.

3.2. The above theoretical point leads to the logicity that only the Court is allowed to apply the stipulation of criminal liability exemption. Investigative Offices and the Procuracy can be appropriate authorities which apply criminal liability exemption. It is in contradiction with the regulations of Vietnam's current Code Criminal Procedure. Because criminal liability exemption can be applied in writing in order to suspend the investigation and the case by the investigation offices, the procuracy and the court (Articles 164, 169, 181 and 249 in the 2003 Code of Criminal Procedure) when there are sufficient legal bases and conditions in accordance with the law. Thus, not only the court but also the procuracy and the investigation offices have the rights to apply criminal liability exemption. Therefore, the regulations of Vietnam's Constitution in 1992 (Article 72, Paragraph 1) and the Code of Criminal Procedure in 2003 (Articles 9, 164, 169, 181 and 249) lack the legal consistence and haven't been close in terms of legislative technique.

3.3. From our viewpoint, in the coming time, Vietnam's lawmakers should examine, modify and supplement the regulations of criminal liability and criminal liability exemption in the direction that their application should be assigned to one office – the Court. The reason is that only in so doing can they be suitable and consistent with the regulations of Vietnam's Constitution – the most fundamental and most effective law, other documents must be in conformity with the Constitution (Article 146, the 1992 Constitution). However, this is a big and complicated issue which needs to be studied in another article. In this article, we only take into consideration the relation between criminal liability and criminal liability exemption.

4. Conclusion

From the research into the relation between criminal liability and criminal liability exemption, the following conclusions can be made as follows:

First, criminal liability is the legal consequence of the criminal implementation and represented the application of one or more coercive measures defined by Vietnam's Criminal Law to the offenders. Criminal liability is implemented when the court announces a legal sentence in effect, which affirms the faults of the accused in committing crimes and is finished when the recorded conviction of the convicted is abolished according to the regulations of Vietnam's Criminal Law.

Second, criminal liability exemption is the abolishment of the legal consequence of the causing the dangerous actions to the society prohibited by Vietnam's Criminal Law for the person who is considered to have made mistakes in causing those actions. Therefore, the competent criminal judiciary stipulation, depending on the relevant period of criminal liability, shall apply when there are sufficient legal bases and conditions as stipulated in Vietnam's Criminal Law.

Third, criminal liability and criminal liability exemption are independent and important stipulations of Vietnam's Criminal Law in solving exactly the issue of criminal liability and the penalty of the offender, protecting the legitimate rights and interests of the State, the society and its citizens as well as manifesting deep humanitarian nature of the policy: "severe punishment combined with tolerance", punishment combined with re-education" in the treatment way of the Vietnamese State.

Fourth, criminal liability and criminal liability exemption show the relations of unification and organicity, logicity and dialecticality. Thus, the right awareness of criminal liability will create a firm basis for the awareness of criminal liability exemption, making a contribution to the precise and correct application of these two stipulations to the lively reality of Vietnam.

Finally, criminal liability and criminal liability exemption are the two

important stipulations in Vietnam's Criminal Law. They play an important role in solving the issue of criminal liability and the penalty of the offender, but now in criminal science we need to study more about such issues related to these two stipulations as the concept, legal nature, fundamental features, bases and conditions of criminal liability, the criminal liability of a legal entity, the concept, legal nature, fundamental features of criminal liability exemption, the difference between liability exemption and some other related stipulations, etc. On the other hand, so far in the criminal science in Vietnam,

there hasn't been any monograph concerning these two stipulations. Therefore, clarifying the regulations of Vietnam's current Criminal Law on criminal liability and criminal liability exemption and applying them in reality, and putting forth the reasoning form of norms on these two stipulations [2]; [4]; [6]; [7] in order to perfect them from the angle of legislation technique and scientific awareness not only has an important significance theoretically and practically but also is a fundamental task and research direction for the criminal science of Vietnam.

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