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Problems of releasing a person from criminal liability in connection with bail

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■ **Abstract**. The purpose of the study – determine the possibility of releasing a person from criminal liability in connection with the transfer on bail to another entity, except for the staff of the enterprise, institution, organisation (in particular, the labour collective established by an individual entrepreneur), and suggest appropriate proposals for improving the legislation of Ukraine. Methodology. The methodological foundation of the study is the dialectical-materialistic method of scientific cognition of socio-legal phenomena, and general scientific and specific methods of legal science, namely: system-structural, comparative legal, logical-legal (dogmatic), and statistical. The scientific originality of the study is to prove the possibility within the current legislation to release a person from criminal liability and to transfer them to the bail of the labour collective established by an individual entrepreneur, and to substantiate the expediency of preserving the institution of exemption from criminal liability. This institution must be included in the new Criminal Code of Ukraine, which is currently under active development. One of its essential components should be the release of a person from criminal liability in connection with bail. Therewith, the law should stipulate that the entity that takes a person on bail can be a collective of a legal entity or its separate subdivision, and a labour collective established by an individual entrepreneur (if the accused is a member of the relevant collective). Conclussions. The list of sureties can be extended by the legislator, in particular, by persons who deserve trust and special trust. When applying to the court with a petition, they must undertake written obligations, the content of which is subject to explicit legislative regulation (with a mandatory list of specific control measures to monitor the behaviour of the person released from criminal liability)

■ **Keywords**: dismissal; criminal liability; bail; humanisation; collective; business entity; legal entity; natural person; entrepreneur

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Introduction

The national legal system tends to abandon strict punitive measures and apply alternative forms of crime prevention. Such forms include the institution of exemption from criminal liability provided by the current criminal legislation. One of the types of such release that occupies a prominent place in the practice of application is the release from criminal liability in connection with the transfer of a person on bail. Such type of dismissal allows a person who has committed a crime, under some circumstances and conditions, not to be criminally liable, but to plead guilty and reform within the work collective and prove that they are capable of coexisting in society as a regular member of it and not to violate the law [1].

The presence of these provisions in criminal legislation is an indicator of the level of civilisation of society. It is confirmed by a significant number of international legal acts adopted in this area, and the results of recent scientific research; [2-4]. But current trends in domestic law-making raise doubts about the political will to support such a course.

To reform the legislation of Ukraine, in particular criminal law, the Decree of the President of Ukraine No. 584/2019 of August 7, 2019, established the Commission on Legal Reform, part of which is the Working Group on the Development of Criminal Law, one of the key tasks of which is to ensure the development and submission to the President of Ukraine of coordinated proposals on improving the legal system of Ukraine considering the current challenges and requirements of a democratic society, in particular the preparation and generalisation of proposals for amendments to the legislation on criminal law. The group has now completed the discussion of the General Part and several sections of the Special Part of the new Code. The text of the draft new Criminal Code of Ukraine was published on March 29, 2021.

Theorists and practitioners discuss different positions in this project [5-10]. However, today there is a lack of attention from scientists of the institute of exemption from criminal liability. It is of great concern that the mentioned draft Criminal Code of Ukraine eliminates this institution as such. It contradicts the concept of humanisation of criminal legislation.

As rightly noted in the scientific literature, in terms of humanism, the institution of exemption from criminal liability is associated with the economy of judicial repression, respect for the inalienable rights and freedoms of the person who committed the crime, and the establishment of favourable criteria for exemption from criminal liability, depending on age, health, ability to work and other characteristics. In the rule of law, when addressing the issues of criminal liability, special attention is paid to the intersectoral institute of exemption from criminal liability as a compromise in the restoration of social justice and the promotion of law-abiding behaviour [11].

The national legislator has established that a person who has committed a criminal offence or a minor crime for the first time, except for corruption criminal offences, violations of traffic safety rules or operation of transport by persons who were driving vehicles under the influence of alcohol, drugs or other intoxication or under the influence of drugs, that reduce attention and speed of reaction and sincerely repented, may be released from criminal liability with the transfer of it to the bail of the staff of the enterprise, institution or organisation at their request, provided that within a year from the date of transfer to bail it justifies the trust of the staff, does not evade educational measures and does not violate public order (Part 1 of Article 47 of the Criminal Code of Ukraine).

The practical implementation of this provision has several problems relating to the legal nature, prerequisites and grounds for exemption from criminal liability in connection with bail, aspects of which have already been explored by domestic scholars [1; 12; 13].

In the research, the problems that have been lacking scientific attention will be outlined. One of them is the possibility of exemption of a person from criminal liability in connection with the transfer of some legal entities, belonging to the circle of entities specified in Article 47 of the Criminal Code of Ukraine (enterprise, institution, organisation), to the bail of the collective, which belongs to the circle of subjects specified in Article 47 of the Criminal Code of Ukraine, encourages discussion among scientists and practitioners. In particular, it concerns associations of co-owners of apartment buildings, religious communities, branches of political parties, separate divisions of business entities, etc.

The purpose of the study is to determine the possibility of releasing a person from criminal liability in connection with the transfer on bail to another entity, except for the staff of the enterprise, institution, organisation (in particular, the labour collective established by an individual entrepreneur), and suggest appropriate proposals for improving the legislation.

The following tasks have been identified to achieve this purpose:

1) to substantiate the possibility of exemption of a person from criminal liability in connection with the transfer of the person on bail to the labour collective established by an individual entrepreneur in modern legal realities;

2) to determine the general grounds for such dismissal and specifics of their legal assessment in modern conditions;

3) to substantiate the expediency of preserving the possibility of releasing a person from criminal liability in connection with the transfer of the person on bail in the draft of the new Criminal Code of Ukraine (with the definition of the specifics of legislative regulation).

The scientific originality of the study is to prove the possibility within the current legislation to release a person from criminal liability on the guarantees of the labour collective established by an individual entrepreneur and to substantiate the expediency of preserving the institute of exemption from criminal liability in the new Criminal Code of Ukraine.

Outline of the Main Material

In judicial practice, the problem of the possibility of releasing a person from criminal liability in connection with the transfer of the person to the bail of the labour collective of such a business entity as a sole proprietor periodically arises. After all, the exact definition (lexical construction) that combines the concepts of a collective and one person is immediately (intuitively) perceived as violating logic. Thus, accordingly, the prosecution, in the case of filing a petition of this content, rejects the possibility of its satisfaction, guided by the fact that the individual entrepreneur is not an enterprise, institution or organisation, and therefore, by the provisions of Art. 47 of the Criminal Code of Ukraine, is not a subject that can bail the accused.

Considering the above, it is established:

1) an employee of business entities that explicitly falls under the legislative definition of an enterprise, institution or organisation can be released from criminal liability in connection with the transfer to the bail of the labour collective;

2) an employee of business entities that do not fall under this definition (in particular, individual entrepreneurs) – is not allowed.

This approach contradicts Article 24 of the Constitution of Ukraine, which states: “Citizens have equal constitutional rights and freedoms and are equal before the law.

There can be no privileges or restrictions on the grounds of race, colour, political, religious and other beliefs, gender, ethnic and social origin, property, place of residence, language or other characteristics”.

Thus, in the case of refusal to release a person from criminal liability in connection with bail (based on the fact that the staff of the individual entrepreneur is not a proper subject of bail), the accused is discriminated against based on the place of work by depriving them of the right to be released from criminal liability in connection with bail to the labour collective.

In addition, it should be noted that the definition of an enterprise is contained in Part 1 of Article 62 of the Commercial Code (CC) of Ukraine, which states that an enterprise is “an independent business entity established by the competent state authority or local self-government body or other entities to provide for public and personal requirements through the systematic implementation of production, research, trade and other economic activities in the manner prescribed by this Code and other laws”.

The above definition is fully consistent with the provisions of the legislative regulation of sole proprietorships contained in Chapter 5 of the Civil Code (CC) of Ukraine. In addition, the definition of enterprise fully corresponds to the definition of small business entities, which is given in Part 3 of Article 55 of the Civil Code of Ukraine, which states: “Small business entities are: individuals registered by the procedure established by law as individual entrepreneurs, whose average number of employees for the reporting period (calendar year) does not exceed 50 people and the annual income from any activity does not exceed the amount equivalent to 10 million euros, determined at the average annual exchange rate of the National Bank of Ukraine”.

Part 4 of Article 62 of the Civil Code of Ukraine provides a list of attributes inherent in an enterprise: “An enterprise is a legal entity, has separate property, an independent balance sheet, accounts in banks and can have seals”. As for such attributes of the enterprise as separate property, independent balance sheet, accounts in banks, and seals, the majority of individual entrepreneurs as small business entities have them, as they cannot function without them.

Thus, the only feature that distinguishes between an enterprise and a sole proprietorship is the status of a legal entity, which the latter is not technically endowed with. In this regard, noted that, according to Art. 51 of the Civil Code of Ukraine: “Regulatory legal acts regulating the entrepreneurial activity of legal entities shall be applied to the entrepreneurial activity of individuals unless otherwise provided by law or follows from the essence of relations”.

On January 14, 2011, the Ministry of Justice of Ukraine provided clarifications regarding the status of the individual entrepreneur, stating that the status of an individual entrepreneur is a legal status that certifies the right of a person to engage in entrepreneurial activity, namely: independent, initiative, systematic, at own risk economic activity performed by business entities (entrepreneurs) to achieve economic and social results and profit.

Therewith, the legal status of “individual entrepreneur” does not in itself affect or in any way limit any competencies of a person arising from their civil legal capacity.

The Ministry of Justice of Ukraine in the said clarification noted that in commercial legislation “legal entity” and “individual entrepreneur” are covered by a common concept – “business entity”.

In addition, it should be noted that a sole proprietorship and an enterprise (as business entities) are covered by a single concept – “business entities”. According to Part 2 of Article 3 of the Civil Code of Ukraine, economic activity performed for the achievement of economic and social results and to obtain profit is entrepreneurship.

In addition, this clarification of the Ministry of Justice of Ukraine states that an individual entrepreneur in civil and economic relations is a multilateral participant. The principles of its business activity are similar to legal entities, while in private relations, despite any changes in its status, it remains a citizen - an individual. Thus, it is necessary to distinguish between these different spheres of relations.

According to Article 51 of the Civil Code of Ukraine, the provisions of specific (commercial) legislation should be applied to individual entrepreneurs if the subject of regulation is their entrepreneurial activity. Instead, the provisions of civil legislation should be considered if the subject of regulation goes beyond the limits of entrepreneurial activity, affecting the private interests of the subject, and is fully regulated by the Civil Code. After all, a sole proprietor and an individual have different tax and legal statuses. Thus, a sole proprietor is endowed with all the properties of a legal entity.

In addition, it should be noted that, by the provisions of Art. 47 of the Criminal Code of Ukraine, the accused can be taken on bail not by an enterprise, institution or organisation, but by their collective.

The possibility of the existence of the labour collective is provided by the law. After all, the definition of the labour collective is defined in Part 1 of Art. 252-1 of the Labour Code of Ukraine (hereinafter - the Labour Code), according to which the labour collective of the enterprise is established by all citizens who participate in its activities based on the labour agreement (contract, agreement), and other forms regulating the labour relations of the employee with the enterprise.

As stated above, the sole proprietorship, by the provisions of the law, is:

– a small business entity (according to Part 3 of Article 55 of the Civil Code of Ukraine, such entities are individuals registered by the procedure established by law as individual entrepreneurs, whose average number of employees for the reporting period (calendar year) does not exceed 50 people, and the annual income from any activity does not exceed the amount equivalent to EUR 10 million, determined at the average annual exchange rate of the National Bank of Ukraine);

– the employer (according to Part 3 of Article 1 of the Law of Ukraine "On Labour Protection", the employer is the owner of an enterprise, institution, organisation or its authorised body, regardless of the form of ownership, type of activity, management, and an individual who uses hired labour).

The aggregate analysis of these provisions allows asserting that the sole proprietor is authorised to hire employees based on the employment agreement (contract, agreement), and other forms regulating the employment relationship between the employee and the enterprise. Such employees are hired to perform joint labour activities within the framework of the implementation of the purpose of economic activity performed by the individual entrepreneur. Therefore, a set of employees hired by a sole proprietor constitutes a labour collective.

In the end, in the process of resolving the issue of releasing a person from criminal liability in connection with the transfer of a sole proprietorship to the labour collective, the position of the Supreme Court of Ukraine (SC) should be applied regarding a broad understanding of the terminology of the law. In particular, this is the resolution of December 4, 2018 (case No. 161/3885/16-к), in which it is noted that the established judicial practice of a broad understanding of certain concepts is the reason for applying them to justify court decisions. Thus, the possibility and expediency of exemption from criminal liability should be assessed in light of compliance with the general principles of exemption from criminal liability in general and in connection with the bail of the labour collective in particular.

Currently, in Ukraine, there are numerous cases of releasing persons from criminal liability on the bail of the individual entrepreneur's team, by the provisions of Art. 47 of the CPC of Ukraine.

For example:

1. Rulings of the courts of the first instance that were not appealed:

– The ruling of the Pustomyty District Court of Lviv region of March 1, 2019 (Case No. 450/819/18 Proceedings No. 1-kp/450/61/19) – the accused was released from criminal liability under Part 2 of Art. 15, Part 1 of Art. 185 of the Criminal Code of Ukraine and transferred to the bail of the individual entrepreneur.

– Resolution of the Zvenyhorod District Court of Cherkasy region of April 2, 2019 (case No. 694/37/19) – the accused was discharged from criminal liability under Part 1 of Art. 309 of the Criminal Code of Ukraine in connection with the transfer of the individual entrepreneur's team on bail.

– The ruling of the Zhovtnevyi District Court of Mariupol, Donetsk region, dated March 13, 2020 (case No. 263/13567/17) – the person was released from criminal liability under Part 2 Art. 345 of the Criminal Code of Ukraine based on Art. 47 of the Criminal Code of Ukraine in connection with the bail of the individual entrepreneur.

– Resolution of the Cherkasy District Court of Cherkasy region dated August 9, 2018 (case No. 1-kp/707/227/18) – a person was released from criminal liability for committing a criminal offence under Part 1 Art. 286 of the Criminal Code of Ukraine in connection with his bail to the collective of individual entrepreneurs, etc.

2. Rulings of the courts of appeal that were not disputed in the Supreme Court of Ukraine:

– The decision of the Court of Appeal of Kirovograd region of October 25, 2011 (case No. 11-867/11) upheld the decision of the Vilshany District Court of Kirovograd region of August 10, 2011, by which the accused was released from criminal liability under Part 1 of Art. 263 of the Criminal Code of Ukraine in connection with the bail of the individual entrepreneur.

– The decision of the Court of Appeal of Mykolaiv region as of July 22, 2015 (case No. 490/4611/15-к) upheld the decision of the Central District Court of Mykolaiv as of June 2, 2015, on the release of a person from criminal liability under Part 1 of Art. 396 of the Criminal Code of Ukraine in connection with the bail of the individual entrepreneur.

3. Decisions of the Supreme Court of Ukraine:

– In criminal cases, where the cassation instance resolved the issue of transferring a person to the bail of the labour collective of a specific individual entrepreneur (case No. 158/2745/19, Decision of the Supreme Court of Ukraine of December 22, 2020; case No. 127/31068/19,

– Ruling of the Supreme Court of Ukraine of August 12, 2020; case 5-5095km13,

– Ruling of the Supreme Court of Ukraine of December 12, 2013) in the courts of all instances none of the participants of the criminal proceedings challenged (and did not question at all) the possibility of releasing a person from criminal liability in connection with the bail of the individual entrepreneur.

Thus, the Supreme Court, by the panel of judges of the Second Trial Chamber of the Criminal Court of Cassation, by its Resolution of December 22, 2020 (case No. 158/2745/19), upheld the decisions of the courts of the first and appellate instances, which released the accused of committing a criminal offence under Part 2 of Art. 185 of the Criminal Code of Ukraine and transferred them to the bail of labour collectives (the sole proprietor's store and the labour collective of condominiums “Kravchuk 48” - respectively). The Supreme Court of Ukraine (and the courts of first and appellate instances) did not make any reservations regarding the impossibility of such release in connection with the bail of the individual entrepreneur.

In the ruling of August 12, 2020 (case No. 127/31068/19), the subject of the Supreme Court's research was the possibility of releasing a person from criminal liability in connection with the transfer of the sole proprietorship team on bail. Expressing its legal position, the Supreme Court noted the impossibility of releasing a person from criminal liability with bail in connection with the commission of two crimes. The Supreme Court of Ukraine (and the courts of first and appellate instances) did not have any reservations about the impossibility of such release in connection with the bail of the individual entrepreneur.

An indispensable condition for the release of a person from criminal liability in connection with the bail of the collective of an individual entrepreneur is compliance with the requirements established by Art. 47 of the Criminal Code of Ukraine and other provisions of the criminal and criminal procedural laws.

The analysis of this provision gives grounds to assert that these requirements should primarily include sincere repentance and the presence of a team of an enterprise, institution or organisation.

Both in theory and practice, a person's sincere remorse as a condition for exemption from criminal liability is strongly connected with the plea of guilty and consent to the closure of criminal proceedings on the specified non-rehabilitating ground. In the process of exemption from criminal liability, the state forgives the person who committed the crime. Accordingly, the latter must admit their guilt and sincerely repent of the act. If a person does not agree to release and does not admit their guilt, then in this case it cannot be applied. And from this moment the general rule of the principle of innocence begins to operate, according to which a person is presumed innocent until proven guilty in a court of law [1].

Some scholars insist that a person can be released from criminal liability only after being found guilty of a crime in a court verdict, as there can be no release of a person from criminal liability outside the sentence, as there is nothing to release a person from in this case [14].

The author supports the other position, as criminal legislation contains the institute of exemption from serving the sentence, which comes into force after the conviction. As noted, before the verdict, a person may be released from criminal liability, and after the verdict – from punishment.

An example of refusal to release from criminal liability in the absence of such grounds as sincere repentance and confession of guilt is the Ruling of the Synelnikivskyi City District Court of Dnipropetrovsk region on March 28, 2018. As stated in the document, the grounds for such dismissal is sincere repentance of the person, which indicates their desire to atone to the staff of the enterprise, institution or organisation and to correct their behaviour. A person who has not pleaded guilty to a crime cannot be released on bail. Although the accused did not object to the bail of the staff and supported the request, but did not plead guilty to the crime. Thus, the person was refused to be released from criminal liability in connection with the transfer on bail on the grounds of not pleading guilty to the crime, which indicates that the person did not repent of the crime, and therefore the state can not forgive them, perhaps, what they did not commit. It is a necessary condition for the application of this type of exemption from criminal liability [1].

Concerning the content of sincere remorse, the Resolution of the Supreme Court of Ukraine on

October 30, 2018 (case 559/1037/16-k), states: "The main form of manifestation of sincere remorse is a person's full confession of guilt and a truthful account of all the circumstances of the crime known to them. If a person conceals the essential circumstances of the crime, which greatly complicates its disclosure, pleads guilty only partially to avoid a fair punishment, their repentance cannot be considered sincere and genuine."

One significant conclusion follows from the above provision: before considering a petition for release from criminal liability in connection with the transfer of a person on bail on the merits, the court must interrogate the accused and examine other evidence to conclude whether they are concealing the essential circumstances of the committed criminal offence.

The resolution of the Supreme Court of Ukraine of March 22, 2018 (case No. 759/7784/15-k) states: "Repentance implies, in addition to the recognition by the person of the fact of committing a crime, an actual, frank, and not an imaginary confession of guilt in committing a particular crime, sincere regret about it and condemnation of their behaviour, which should primarily be expressed in the person's attempt to compensate for the damage caused by the crime, the desire to correct the consequences of the crime. The fact of sincere repentance of a person in committing a crime should be reflected in the materials of criminal proceedings."

Although this provision refers to the person's attempts to compensate for the damage caused by the crime, in practice, prosecutors and representatives of victims often associate sincere remorse with the full and unconditional recognition by the accused of the civil claim filed in criminal proceedings.

First, according to this logic, the accused does not have the right to sincerely repent if he does not have the means to satisfy a civil claim (in particular, an exorbitant one).

Secondly, the accused is not always a proper defendant in a civil action in criminal proceedings. Thus, in cases where the damage is caused by a crime under Part 1 of Art. 286 of the Criminal Code of Ukraine, and the vehicle does not belong to the accused, the latter cannot be a proper defendant, as, according to Part 2 of Art. 1187 of the Civil Code of Ukraine, damage caused by a source of increased danger is compensated by a person who, on the appropriate legal ground (ownership, another property right, contract, lease, etc.), owns a vehicle, mechanism, another object, the use, storage or maintenance of which causes increased danger.

The source of increased danger, which causes harm to the victim during the commission of a crime under Part 1 of Art. 286 of the Criminal Code of Ukraine, is a vehicle. And if this vehicle does not belong to the accused, the latter can be the subject of compensation only in case of recourse of the vehicle owner, by the requirements of Art. 1191 of the Civil Code of Ukraine.

In addition, according to the Law of Ukraine of July 1, 2004, No. 1961-IV "On compulsory insurance of civil liability of owners of land vehicles" in the event of an insured event, it is the insurance company that must compensate the victim for the damage caused to health.

Therewith, the legislation of Ukraine does not prohibit the accused from compensating the victim for material and moral damages outside the civil action. Thus, the accused does not have to admit the civil claim in entirety or even in part. They can take independent steps to compensate for the damage, but they must be reflected in the case file.

Many discussions in the theory and practice of applying for the exemption from criminal liability in connection with the transfer of a person to collective bail arise due to the grounds, content, forms and processes of filing a petition for such release, as these issues are not sufficiently regulated in the Criminal Procedure Code.

First of all, it concerns the grounds for filing the petition. It refers to the fact of the general meeting of the staff, the discussion of the issue of bail, the results of such discussion and the decision taken by the staff.

Judicial practice is unified in matters of mandatory documentary confirmation that the decision of the collective to take a person on bail was taken at the general meeting of the collective in the presence of a quorum. Thus, by the decision of the Kyiv District Court of Odesa dated August 24, 2018 (case No. 520/8485/17), the request for the release of the accused from criminal liability in connection with the transfer on bail to the labour collective was denied. The reason for this decision was that the petition of the director of the enterprise was not accompanied by evidence of the fact of the meeting of the staff. Therefore, the court concluded that the staff meeting was not held.

Thus, in confirmation of the circumstances specified in the petition, at least a copy of the minutes of the general meeting of the collective of the relevant entity, evidence confirming that the accused belongs to the members of this collective, and a copy of the extract from the Unified Register of Legal Entities and Individual Entrepreneurs must be provided.

Therewith, the court's verification of the circumstances specified in the petition should not go to extremes. Thus, in case No. 127/12870/20, the Vinnytsia Court of Appeal dismissed the appeals of the victim and the prosecutor against the decision of the court of the first instance to release the person from criminal liability in connection with the transfer of the person to the bail of the individual entrepreneur. One of the grounds for these appeals was that the minutes of the general meeting of the PE's staff did not contain the signatures of the persons present at the meeting, and there was no evidence that they were in an employment relationship with the PE. The court quite rightly considered the presence of the minutes signed by the chairman and secretary of the meeting, certified by the sole proprietor's seal, to be sufficient.

Therewith, it should be clearly understood from the content of the petition and the minutes of the general meeting of the collective: 1) the issue of releasing the accused from criminal liability was put on the agenda and discussed; 2) the conditions for releasing the accused from criminal liability and the obligation of the staff to control their behaviour were explained to those present; 3) the accused undertook to the staff to participate in educational activities and the legality of their behaviour; 4) those present at the meeting decided by voting to take the accused on the staff's bail and to apply to the court with a corresponding petition; 5) if the court satisfies the said petition, the staff is obliged to take educational measures against the accused and to monitor the legality of their behaviour.

Considering the above, it should be noted that, according to the decision of the Kyiv District Court of Odesa of August 24, 2018 (case No. 520/8485/17), the petition was denied since "specific educational measures were not specified, it was not indicated what measures of influence were planned to be applied to correct and re-educate the accused, and the responsible person was not indicated".

Notably, in some other cases, the prosecution and representatives of the victims insisted on the necessity to specify in the petition a clear, detailed and realistic list of educational measures to be taken against the accused in case of release from criminal liability.

But currently, in the legislation of Ukraine, there are no requirements to define in the petition for the release of a person from criminal liability with the transfer of the person to the bail of the staff of the enterprise, institution or organisation a list of educational measures that will be taken against the accused in case of release from criminal liability, and requirements for the clarity and detail of this list.

In addition, it is considered premature to talk about the list of such measures until the court decides on the release from criminal liability in connection with the transfer of the person on bail. The court may make another decision that excludes the application of such measures. Therefore, the specific list of educational measures and the person responsible for their implementation should be determined after the court decision.

Therefore, it is not surprising that in modern court decisions it is quite difficult to find a list of educational measures that should be applied to the accused in case of release from criminal liability in connection with the transfer of a person to the collective bail.

In general, nowadays the educational role of collectives of enterprises, institutions, and organisations is not as relevant as it was in the Soviet Union. Accordingly, the educational measures that were used in those days have now lost their relevance. Moreover, in modern business entities, the administration is mostly not entrusted with educational functions, since ensuring labour discipline is usually performed through the implementation of control functions.

In addition, the Ministry of Social Policy of Ukraine has developed Methodological Recommendations on the introduction of mentoring, approved by Order No. 1611 of 11 October 2017, according to which mentoring involves on-the-job training by transferring the experience and knowledge gained by experienced employees to a person who requires professional training and the development of the necessary skills. The analysis of the above definition, and the content of the recommendations themselves, demonstrates that the institute of mentoring is devoid of an educational component.

Therewith, the organisation of educational work is entrusted to authorise senior officials in law enforcement agencies (National Police of Ukraine, Security Service of Ukraine, Armed Forces, etc.) Such work is implemented mainly within the framework of the professional training system and the mentoring institute. It is the mentoring system that provides individual educational influence on the trainee [15].

Considering the above, it can be concluded that in modern conditions it is inexpedient to determine a certain list of educational measures about a person released from criminal liability in connection with bail. It is advisable to define control measures with the appointment of a person (persons) responsible for their implementation (analogue of a mentor). Therewith, the application of educational measures to a person taken on bail should be regulated by law as a right (and not as an obligation) of the staff.

Control measures, for example, include: daily checks of the person at the workplace; systematic monitoring of their behaviour and compliance with labour discipline; personal reporting of the dismissed person about the work done, compliance with the rules of labour (official, transport, etc.) discipline; visiting the dismissed person at the place of residence (with interviews of relatives and neighbours about their behaviour at home), etc. It is quite natural that these and other control measures should be performed not by the entire team but by its authorised members.

Thus, it should be noted that it is impossible to determine the role of the entire staff of a certain business entity in ensuring the correction of a person transferred on bail. After all, the influence on such a person, except for specially authorised members of the team, can be exercised only by those persons who, according to their functional duties, perform work that allows them to communicate with the person released from criminal liability, to observe them. Due to a large number of employees of a particular enterprise, members of a particular organisation, and all representatives of the team can not be familiar with the person transferred to bail at all. Therefore, the authority to apply to the court for the release of a person from criminal liability should be provided both for a specific business entity and for its subdivisions, regardless of the number of employees.

Regarding the number of members, an important issue in terms of release from criminal liability is the number of members of the team to which the accused is transferred on bail, and the period during which the accused is a member of this team. There is a definite position of the Supreme Court of Ukraine on this issue (case No. 158/2745/19). Thus, the court decision states: "As for the prosecutor's arguments about the impossibility of satisfying the said petition due to the short period of employment of the person and the small number of members of the labour collective that took them on bail, they are untenable, since the provisions of the law do not contain any requirements regarding the number of employees who have the right to take their employee on bail and the time during which this person must be employed."

Therewith, it should be noted that it is advisable to regulate in the law the minimum number of members of the staff of the entity or its subdivision that takes a person on bail (at least three).

It is considered that according to the logic of the legislator, applied in the Criminal Procedure Code of Ukraine, the circle of entities that can take the accused on bail can be expanded by persons who deserve particular trust.

Thus, Article 180 of the Criminal Procedure Code of Ukraine provides that personal guarantee (as a preventive measure) consists in the provision by persons whom the investigating judge, the court considers trustworthy, of a written undertaking that they vouch for the performance of the suspect, accused of the duties imposed on them by Article 194 of this Code and undertake, if necessary, to deliver them to the pre-trial investigation body or the court at the first request (part 1).

The number of guarantors is determined by the investigating judge, the court that chooses the measure of restraint. The presence of one guarantor may be considered sufficient only if it is a person who deserves particular trust (part 1).

The issues of bail in criminal proceedings are explained in the legal notice of the Ministry of Justice of April 24, 2017. In particular, it states that a personal guarantee is based on the court's trust in the guarantor based on the guarantor's specific moral qualities and authority.

The right of a person to act as a guarantor is not limited by law. It is guaranteed by the CPC, regardless of the position of the guarantor. The main thing is that the candidate meets the criteria established by the procedural legislation.

The number of possible guarantors is not limited. In each case, the investigating judge or court determines how many sureties will be sufficient to ensure the performance of duties by the suspect or accused.

Therewith, the CPC provides for the possibility of choosing one guarantor if he is a person who deserves "special trust", which may be dictated by their social status, character or occupation. In particular, such persons include people's deputies, deputies of local councils, statesmen, heads of central or local authorities, persons awarded with state awards, citizens who have outstanding sports awards, etc.

Thus, the criminal law of Ukraine may introduce an exemption from criminal liability in connection with the transfer of the accused on bail to individuals, and not to a particular collective. Such persons must be trustworthy and particularly credible. The content of their written commitment should be regulated and include a specific list of control measures.

Procedural issues of filing a petition for release from criminal liability in connection with the transfer of a person on bail to the court are important. Thus, in the already mentioned case No. 127/12870/20, the Vinnytsia Court of Appeal rejected the argument advanced in favour of reversing the decision of the court of the first instance to release a person from criminal liability that the minutes of the general meeting of the labour collective were not sent to the court by the labour collective itself (these documents are annexes to a separate motion of the defender), which raises doubts about the validity of the will of the labour collective about the accused.

The court quite rightly accepted the position of the defender, who noted that the procedure for submitting documents (petitions, applications, complaints, etc.) to the court and their consideration in court is regulated by the rules of procedural, not substantive law. The provisions of the Criminal Code of Ukraine belong to substantive law. Procedural are the provisions of the CPC of Ukraine.

According to Part 4 of Art. 286 of the CPC of Ukraine: "If during the court proceedings on the proceedings, which came to the court with an indictment, a party to the criminal proceedings applies to the court with a petition to release the accused from criminal liability, the court must immediately consider such a petition".

It means that the Court has to consider the motion of the party to the criminal proceedings. The labour collective is not a party to criminal proceedings and, therefore, is not endowed by the Criminal Procedure Code of Ukraine with the right to apply to the court with a petition for exemption from criminal liability. However, such a right is provided for the defence, in particular, for the accused and their defence counsel. Thus, the team appealed to the court using the procedural powers of the defender.

Conclusions

In the new Criminal Code of Ukraine, which is currently under active development, the institute of exemption from criminal liability must find its place. One of the important components of this institute should be the release of a person from criminal liability in connection with the transfer of the person on bail. The law should stipulate that the entity that takes a person on bail may be a collective of a legal entity or its separate subdivision, and a labour collective established by an individual entrepreneur (if the accused is a member of the relevant collective).

The list of surety subjects may be extended by the legislator with persons who are trustworthy and particularly trusted. Such persons, when applying to the court with a petition, they must undertake written obligations, the content of which is subject to explicit legislative regulation (with a mandatory list of specific control measures to monitor the behaviour of the person released from criminal liability).

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Проблеми звільнення особи від кримінальної відповідальності у зв'язку з передачею її на поруки

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■ **Анотація**. Мета дослідження – визначення можливості звільнення особи від кримінальної відповідальності у зв'язку з передачею на поруки іншому суб'єкту, крім колективу підприємства, установи, організації (зокрема, трудовому колективу, сформованому фізичною особою – підприємцем), а також висунення відповідних пропозицій щодо вдосконалення законодавства України. Методологія. Методологічною основою дослідження є діалектико-матеріалістичний метод наукового пізнання соціально-правових явищ, а також загальнонаукові та спеціальні методи юридичної науки, а саме: системно-структурний, порівняльно-правовий, логіко-юридичний (догматичний), статистичний. Наукова новизна здійсненого дослідження полягає в доведенні можливості в межах чинного законодавства звільнити особу від кримінальної відповідальності та передати на поруки трудового колективу, сформованого фізичною особою – підприємцем, а також в обґрунтуванні доцільності збереження інституту звільнення від кримінальної відповідальності. Цей інститут обов'язково має бути в новому Кримінальному кодексі України, що нині знаходиться на стадії активної розробки. Однією з його важливих складових має стати звільнення особи від кримінальної відповідальності у зв'язку з передачею її на поруки. Водночас у законі слід встановити, що суб'єктом, який бере особу на поруки, може бути колектив юридичної особи або її окремого підрозділу, а також трудовий колектив, сформований фізичною особою – підприємцем (якщо обвинувачений є членом відповідного колективу). Висновки. Перелік суб'єктів поручительства законодавець може розширити, зокрема особами, які заслуговують на довіру й особливу довіру. Звертаючись до суду з клопотанням, вони мають взяти на себе письмові зобов'язання, зміст яких підлягає чіткому законодавчому унормуванню (з обов'язковим переліком конкретних контрольних заходів зі спостереження за поведінкою звільненого від кримінальної відповідальності)

■ **Ключові слова**: звільнення; кримінальна відповідальність; поруки; гуманізація; колектив; суб'єкт господарювання; юридична особа; фізична особа; підприємець