

Improving the institution of release from criminal liability in connection with the reconciliation of the victim of a crime provided for in Article 264 of the Criminal Code

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One of the most actual problems of modern Russian criminal law is the practice of application of exemption from criminal responsibility persons in relation to the reconciliation with the victim. Article 76 of the Criminal Code of the Russian Federation stipulates that a person who has committed a crime of small or average gravity for the first time may be released from criminal responsibility if he has reconciled with the victim and has made restitution for any damage inflicted on the victim [1].

The theme of our research is dedicated to the improvement of using the specified rule to article 264 of the Criminal Code of the Russian Federation which provides responsibility for violation of the rules for traffic safety and operation of transport vehicles. Sanctions of the parts 4, 5, and 6 of the same article provide for a penalty of imprisonment for a term of up to 7 and 9 years, accordingly. But despite such terms, all the acts provided in this article fall into the category of average gravity, as they are negligent by the form of guilt. Thus, article 15 states that negligent acts, for the commission of which the maximum penalty stipulated by this Code exceeds 3 years deprivation of liberty shall be recognized as crimes of average gravity, so, the upper limit of punishment for careless crimes does not affect the category of crimes.

That's why the amount of criminal cases being stopped in relation to the reconciliation of victims have recently increased. As statistics shows, perpetrators of the road traffic accident causing through negligence death of two or more people and actively using "the services" of article 76 of the Criminal Code are, as a rule, representatives of the authorities.

In our view, the application of article 76 would have been justified if the reconciliation occurred with the victim, i.e. a person directly affected by the crime. Article 42 of the Criminal Code gives the definition of the victim as a person upon whom physical, property or moral damage was inflicted by the crime, as well as a legal entity, if his property and business reputation were damaged by the crime.

However, according to paragraph 8 of this article, in criminal cases, the consequence of which was death of a person, the victim's rights pass to one of his close relatives. And what is, if these close relatives did not get on well with the deceased or bore a grudge against him? Then, in reality, it doesn't matter for them whether he will be imprisoned or not. Moreover, "a compensation" for the death of a relative can lead to the release of the offender from liability even at the pre-trial stage of criminal proceedings. A strange situation turns out to be: if the culprit has money he will not be imprisoned and vice versa. It contradicts the principle of equality of individuals before the law, in accordance with which persons who have committed crimes shall be equal before the law and shall be brought to criminal responsibility regardless of their property and official status.

We think it is necessary to make consequential changes in the Criminal Code of the Russian Federation that would make it impossible to reconcile, if the victim was killed under the wheels, and leave this possibility only when he survived.

Summing up aforesaid, we propose to state article 76 of the Criminal Code in the following edition: a person who has committed a crime of small or average gravity for the first time, may be released from criminal responsibility if he has reconciled with the victim and has made restitution for any damage inflicted on the victim , except cases, provided in article 264 of this code, the consequence of which was the death of the victim.

Литература

1. The Criminal Code of the Russian Federation from 13.06.1996 N 63-FL (as amended on 03 February 2014)