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**POSSIBILITY OF IMPLEMENTATION OF SPECIAL
RELEASE
OF CRIMINAL RESPONSIBILITY ACCORDING TO
ARTICLE
158-1 OF CRIMINAL CODE OF UKRAINE**

Does the duty of bodies of state power to ensure the highest social values (mentioned in Art. 3 of the Constitution of Ukraine) mean the obligingness to put to justice all guilty persons in each and all cases of crimes against election rights? At first sight this question seems inappropriate as its posing discords with the principle of inevitability of punishment. But taking into consideration other principles of criminal law (e.g. humanism, economy of criminal

person's positive postcriminal behavior (even by this person's releasing of criminal responsibility) if it is possible to avoid.

If prevention of action's damage (or their fast and complete rectification) is possible without causing relevant burden (of freedom, financial losses etc.), it is more appropriate - taking into account interests of citizens' active and passive right to vote realization (with regard to satisfactory security) - to stimulate positive postcriminal behavior even by releasing the person from responsibility, than to try and put such person to responsibility at all costs and threaten an in-time and free stated wish of voters.

Using current criminal norms for special means of releasing of criminal responsibility, it is reasonable to maintain the legislator used to use a designated logic while implementing them to Criminal Code of Ukraine. For example, crimes articles about which have norms of such special means usually are so-called formal composition crimes and non-violent. Stimulation by itself is stipulated by relevant postcriminal behavior which is stimulated by state, e.g. voluntary refusal to accomplish a crime, active or sincere repentance, report of crime and so on as well as stopping the crime on its initial phase, active support of solving the crime and remediation of damage.

Objective side of the crime according to Art. 158-1 of Criminal Code of Ukraine envisages among other forms of its committing also receiving of a ballot paper or referendum ballot by a person which is not entitled to receive it. For a short period of time (between the receiving and disposing of the ballot) a situation appears when person who received the ballot still can prevent another crime (according to the same article of Criminal Code of Ukraine) - voting more than once. Whilst receiving of the ballot by itself is a violation of the law, it is still not producing such social danger which makes bringing the person to criminal responsibility unavoidable. Moreover, if the received ballot was not used for voting more than once any potential damage (in the form of impossibility to establish voting results or consideration the elections as invalid) is excluded. In this case stimulating of socially useful behavior is much more valuable than bringing the person to responsibility.

Taking this into account it seems appropriate to add a norm on special mean of releasing of criminal responsibility (in a form of an explanatory note) to Art. 158-1 of Criminal Code of Ukraine as follows: «The person is released of criminal responsibility for committing for the first time ever a crime according to Part 1 of this Article (in the form of receiving of a ballot paper or referendum ballot by a person which is not entitled to receive it) if this person did not commit any unlawful acts using the received ballot, voluntary informed about this head of election commission and relevant law enforcement body of power as well as returned this ballot paper or referendum ballot».

Such definition envisages not only person's independent decision about positive postcriminal behavior, but also determines the necessity of non-committing other crimes using the received ballot (e.g. theft, concealment, voting more than once etc.).

Result of special mean of releasing of person from criminal responsibility for crime according to Art. 158-1 of Criminal Code of Ukraine (if such is to be put in force) will be termination of criminal legal relations between such person and the state due to the fact of this crime, annulment of this crime's committing and releasing from any legal burden (punishment, conviction etc.).

Such crime will not be taken into account in future as an aggravating circumstance in a case of a new crime committing. Meanwhile if there are signs of other crime (or crimes) in the actions of same person, he (or she) as a general rule will held responsibility only for this (these) crime (crimes).

All this make relevant criminal legal assessment of person's behavior by law enforcement bodies of power more relevant and competent.