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Evasion from Payment of a Fine: Problem Aspects of the Issues of Criminal Enforcement and Criminal Procedure

Introduction

Justification of the choice of the study topic

Due to the humanization of legislation, Ukraine is experiencing a new stage in the establishment and regulation of punishment in the Law of Crimes. After all, no matter what changes are made, they all pass through an adaptation period, and, unfortunately, sometimes such periods last more than one year. With the rapid development of the state, it is necessary to respond just as quickly to the changes in the existing laws. However, changes are not always positive and do not always have better regulation of certain issues of concern.

There are many problems currently with the punishment in the form of fines enforcement. Among such problems are the gaps in the laws on criminal liability for evasion of punishment in the form of a fine (Part 1 of Article 389 of the Criminal Code of Ukraine).

The study of the issue of the punishment in the form of a fine enforcement has always been relevant in the doctrine of the criminal law and the practice of law enforcement. This is due to the fact that the

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criminal laws of Ukraine are quickly developing, due to which many gaps appear. The correct application of the norms of the criminal laws require implementation of the constitutional principles of building a democratic, law-governed state. It should be noted that there have been significant changes in regards to payment of fines recently, which entails a number of difficulties and conflicts in the laws.

The relevance of the article, its scientific and practical value are determined by the necessity of a new comprehensive study of the problem of evasion from payment of fines, taking into account the recent changes in the laws of Ukraine, improvement of the existing law of crimes and correctional laws in this area and their practical application.

The goal and objectives of the study. The goal of the article is a comprehensive study of the problem of evasion from payment of fines, improvement of the current criminal laws of Ukraine in this area and in the law enforcement practice.

To achieve this goal, the following tasks have been set out in this article:

- to carry out research of the regulatory legal acts in the sphere of the criminal laws, namely concerning the law authorities;
- to study the constitutional rights of a sentenced person;
- to identify gaps in the criminal law;
- to determine the peculiarities of evasion from a fine payment;
- to determine the peculiarities of criminal prosecution for the evasion from a fine payment.

The object of the study is the social relations that arise from a fine payment evasion.

The subject of the study is an evasion from payment of a fine: problem aspects of the criminal enforcement and criminal procedure issues.

Methods of the study. The methodological basis of the article is a number of general scientific and special methods of scientific knowledge, the choice of which is determined by the purpose, objectives, object and goal of the study. The article is based on a dialectical method of studying legal phenomena. The systematic and structural method has been used in the research of the authorities that enforce punishment in the form of fines (Section 1). The comparative law method of research allowed to establish the gaps in the criminal laws and to reveal violations of the

constitutional rights of the sentenced persons (sections 1, 2). The formulation of propositions for the improvement of the rules for the payment of fines enforcement (sections 1, 2) has been carried out with use of the theoretical and legal modelling. The materials of the judicial practice of Ukraine, the legal positions of the courts of Ukraine, the criminal laws of Ukraine on the issue of fines serve as the empirical basis of the article.

Scientific novelty of the article. This article is a study of the subjects that should control the enforcement of the fines payment and the specifics of evasion from paying the fines. For the first time:

- a comprehensive study of the authorities, controlling the enforcement of punishment in the form of a fine and liability for the evasion from its payment has been made;
- it has been proposed to amend the criminal laws of Ukraine;
- it has been proposed to return the enforcement of the punishment in the form of a fine and to give these powers to the criminal executive inspection.

Section 1. Fines payment controlling authorities

Analyzing the problems of enforcement of a criminal punishment in the form of a fine, it should be noted that the rules of law are implemented under the following forms: compliance (performance of passive duties), performance (obligations for active behavior), use (exercise of legal rights). According to V.F. Yakovlev, the enforcement of the right is divided into authoritative and non-authoritative². In such case, we are dealing with the fulfillment of the authoritative obligations in the form of active behavior of a sentenced person as a subject of specific legal relations in regards to the instructions of another subject – the state, represented by the court.

In compliance with Part 1 of Art. 26 of the Criminal Executive Code of Ukraine (hereinafter “CEC of Ukraine”), a sentenced to a fine person is obliged to pay the fine within one month after the court sentence becomes effective and notify the criminal executive inspection at the place

² V.F. Yakovlev (1973), *Realizatsiâ prava i otraslevye metody pravovogo regulirovaniâ. Problemy primeneniâ sovetskogo prava.* [Enforcement of the right and branch methods of legal regulation. Problems of application of the Soviet law], no. 22, p. 5.

of residence about it by presenting a document on payment of the fine³.

Conflicts in the laws start already with this regulation. According to this regulation, control over the enforcement of punishment is entrusted to the criminal executive inspection. However, in Part 1 of Art. 10 of the Law of Ukraine “On the State Criminal Executive Service of Ukraine” (hereinafter the “Law”), “1. Criminal Executive Inspection is a body that enforces punishment in the form of deprivation of the right to hold certain positions or engage in certain activities, community services, correctional works, and controls the behavior of persons released from prison on probation or parole, as well as released from serving punishment pregnant women and women with children under the age of three,” and there is not a single word about the fact that they also exercise such powers⁴.

On April 27, 2018, an order of the Ministry of Justice of Ukraine No 1301/5 “Procedure for execution of court judgments on punishment in the form of a fine by the authorized bodies on probation issues” was adopted, with reference to Article 26 of the CEC of Ukraine, which states in paragraph 1 of Section II: When executing a court judgment, the probation body is entrusted with:

- registration of sentenced persons;
- control over the terms of payment of fines by sentenced persons;
- submission to the court of petitions against sentenced persons who violate the terms of fine payment or evade payment of the fine⁵.

The question arises, who should control the payment of the fine: Is it the criminal executive inspection or the probation body?

³ Criminal Executive Code of Ukraine: Law of Ukraine of July 11, 2003 No 1129-IV. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1129-15#Text> (accessed 10.06.2020).

⁴ On the State Criminal Executive Service of Ukraine: Law of Ukraine of June 23, 2005 No 2713 - IV. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2713-15#Text> (accessed 10.06.2020).

⁵ On approval of the Procedure for execution by the authorized bodies on issues of probation of court decisions on imposition of punishment in the form of a fine: Order of the Ministry of Justice of Ukraine; Procedure, Journal, Form of a standard document, Notification, Case, Reference dated April 27, 2018 № 1301/5. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z0544-18#Text> (accessed 10.06.2020).

Section 2. Evasion from payment of a fine

In compliance with Part 1 of Art. 26 of the CEC of Ukraine, a sentenced person is obliged to VOLUNTARILY pay a fine within a specified period. Part 3 and Part 4 of this article do not foresee replacement of the punishment in case the fine is not paid within one month⁶. However, the inability to pay a fine due to objective reasons, the living conditions of the sentenced person, should be distinguished from the punishment evasion. In such case, the submission of the enforcement authority and other attached materials must indicate that the sentenced person has not taken any measures to pay the fine in compliance with the court judgment, does not appear on summons to the law enforcement authorities, does not reside at the address indicated in the court judgment.

If a sentenced to a fine, as the main punishment, person evades its payment, such a person is to be prosecuted in accordance with Art. 389 of the Criminal Code of Ukraine, but this is not always the case. A person who has been sentenced to a fine and has not paid it voluntarily is released from paying the fine if the state has not collected it within two years, and this is not considered evasion of serving a sentence under Art. 80 of the Criminal Code of Ukraine (Resolution of the Supreme Court of Ukraine)⁷.

Summary of the court ruling: While considering case No 5-324 кс 15 at a meeting of the Judicial Chamber for Criminal Cases on December 24, 2015, the Supreme Court of Ukraine stated that the rule of refusal in releasing from punishment of a sentenced to a fine person due to the expiration of the terms for the execution of a guilty verdict may not be connected with the actual fact of non-payment of the fine by the sentenced person within one month.

⁶ Criminal Executive Code of Ukraine: Law of Ukraine of July 11, 2003 No 1129-IV. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1129-15#Text> (accessed 10.06.2020).

⁷ The Supreme Court of Ukraine. Website. Retrieved from: [http://www.viaduk.net/clients/vsu/vsu.nsf/\(documents\)/48BFC83431AD5513C2257F480026ED5D?OpenDocument&Highlight=0,389&](http://www.viaduk.net/clients/vsu/vsu.nsf/(documents)/48BFC83431AD5513C2257F480026ED5D?OpenDocument&Highlight=0,389&) (application date: 10.06.2020).

During consideration of this case, the Supreme Court of Ukraine noted that evasion of serving a sentence as a ground for suspending the limitation period for the execution of a court judgment is a special legal fact. The peculiarity of this fact is that the issue of its ascertainment can be decided by only one entity – the court. After all, in compliance with part one of Art. 389 of the Criminal Code of Ukraine evasion of serving a sentence in the form of a fine is a crime. Such legal facts are established exclusively by a procedure clearly regulated by law. In particular, in compliance with Part 1 of Art. 62 of the Constitution of Ukraine, a person is presumed innocent of committing a crime and may not be subjected to criminal punishment until his guilt has been proved in a lawful manner and established by a court judgment⁸. Therefore, until the court judgment becomes effective, according to which the person will be found guilty of evading the punishment, the question of suspending the limitation period for the execution of the court judgment is illegal to decide.

The question also arises when the already accused person is prosecuted in accordance with Art. 389 of the Criminal Code of Ukraine, if it is not a violation of the constitutional human rights⁹, as Art. 61 of the Constitution of Ukraine foresees that, namely: no one can be brought to legal liability of one type twice for the same offense.

Article 80 of the Criminal Code of Ukraine foresees normative regulation of release from serving a sentence in connection with the expiration of the limitations period for the execution of a guilty verdict and establishes the mandatory terms, the expiration of which is an unconditional basis for release of a sentenced person from serving the sentence.

The legal nature of this type of release from serving the sentence is conditioned by the unilateral obligation of the state to enforce through its specially authorized bodies the sentence imposed on the person within a certain period. A person sentenced to a certain type of punishment does not have a legal obligation to apply the restrictions of rights

⁸ The Constitution of Ukraine: as amended in accordance with the Law of Ukraine of December 8, 2004 No 2222-IV. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (application date: 10.06.2020).

⁹ Criminal Code of Ukraine: Law of Ukraine of April 5, 2001, No 2341-III. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2341-14> (accessed 10.06.2020).

that are part of its content to oneself, as this is the exclusive unilateral competence of special state authorities that enforce punishment.

In addition, Part 3 of Art. 80 of the Criminal Code of Ukraine foresees the suspension of the period of limitations if the sentenced person evades serving the sentence. In such cases, the period of limitations is to be restored starting from the date of the sentenced person's appearance to serve the sentence or from the date of one's detention, and the period of limitations provided for in paragraphs 1–3, part 1 of this Article is to be doubled.

However, evasion from serving a sentence as a ground for suspending the period of limitations for the execution of a guilty verdict is a special legal fact, the issue of which belongs to the jurisdiction of the court, and therefore this fact should be established in accordance with the procedural requirements.

In particular, the wording of Part 1 of Art. 80 of the Criminal Code of Ukraine in some way correlates with Art. 389 and Art. 390 of this Code, as evasion of punishment, which is referred to in Part 3 of Art. 80 of the General Part of the Criminal Code, in its specific manifestation corresponds to the composition of one of the crimes provided for in the named articles of the Special Part of the Criminal Code of Ukraine. Thus, making a conclusion about the evasion of a person from serving a sentence in the application of part three of Article 80 of the Criminal Code of Ukraine, the court thereby actually finds such a person guilty of committing a new crime. Therefore, it is possible to take a decision on the suspension of the period of limitations for the execution of a guilty verdict only after the verdict becomes effective, which will recognize the person guilty of evading the punishment.

In view of this, only non-payment of the amount of the fine by the sentenced person within a certain period of time does not in itself indicate such person's evasion from serving such sentence.

In Art. 533 of the Criminal Procedure Code of Ukraine (hereinafter "CPC of Ukraine") "Consequences of a court decision coming into force" it is stated that the verdict or court ruling, which became effective, is obligatory for the persons involved in criminal proceedings, as well as for all natural and legal entities and is to be executed throughout Ukraine. The procedural issues related to the execution of court judgments in

criminal proceedings are decided by a judge of the court of first instance alone, unless otherwise provided by the CPC of Ukraine¹⁰.

Together with the order on execution of the court judgment the court sends its copy to the relevant body or institution, which is obliged to execute the court judgment in accordance with Part 2 of Art. 535 of the CPC of Ukraine. If the court judgment or its part is subject to execution by the central body of executive power, which implements the state policy in the field of execution of the court judgments and decisions of other bodies (officials), the court issues a writ of execution in the manner prescribed by the Law of Ukraine “On enforcement proceedings”. Bodies executing a court judgment are to notify the court that took it of its execution in accordance with Part 4 of Art. 535 of the CPC of Ukraine. The procedure for punishment enforcement in the form of a fine specified in the CPC of Ukraine is not consistent with the regulations of the CEC of Ukraine (Articles 22, 26 of the CEC of Ukraine) and needs to be amended, as the CEC of Ukraine foresees only voluntary payment of a fine. It is considered that local courts are not the bodies that should independently execute their sentences in terms of fines, as this contradicts the general provisions of justice in Ukraine, and is not consistent with the basic functions of the judiciary, which are defined by the Constitution of Ukraine.

Thus, referring to the above, it is possible to come to a conclusion that the existing two rules are a big gap in the criminal law. To address this gap, it may be necessary to treat such facts as evasion from payment of a fine with its punishment for a committed crime (misdemeanor) or offence out of the sphere of the criminal offence, with giving it the status of a legal fact, or to simplify the court procedure for finding a person guilty of such a crime as evasion from a fine payment.

Conclusions

There are 3 regulatory legal acts in our legislation, which regulate the issues of fines payment, however contradicting each other. In this regard:

1. I propose to amend the Law, namely to transfer the function of

¹⁰ Criminal Procedure Code of Ukraine: Law of Ukraine of April 13, 2012, No 4651-VI. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (accessed 10.06.2020).

- exercising control over the punishment in the form of a fine enforcement to the criminal executive inspection:
2. Return the punishment in the form of a fine enforcement, as a consequence of which the number of evasions from the fines payment will be reduced;
 3. To give the authorities the powers to control the punishment in the form of a fine enforcement to the criminal executive inspection, namely: to give the authorities the right to search for the sentenced person, to summon the sentenced person, to seize the property and accounts of the sentenced person, etc.
 4. To regulate the procedure for prosecuting for evasion of a fine payment.
 5. To take the fact of evasion from payment of a fine outside the limits of the criminal law, and to give it the status of a legal fact, due to which the problem with violation of the constitutional rights of the sentenced person will disappear.

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Yakovlev, V.F. (1973), Realizatsia prava i otraslevye metody pravovogo regulirovaniia. Problemy primeneniia sovetskogo prava. [Enforcement of the right and branch methods of legal regulation. Problems of application of the Soviet law], no. 22.

Summary

General short summary of the main content of the article. The problem of evasion from a fine payment as a type of punishment under the laws of Ukraine has been studied in the article.

In Section 1 “Fines payment controlling authorities” the criminal laws in the field of punishment enforcement, namely their authorities, have been analyzed. A large number of gaps in the laws and regulatory legal acts have been identified and solutions have been proposed to address them.

In Section 2 “Evasion from payment of a fine”, the legal aspects of a fine payment evasion as a criminal offence have been considered; an analysis of various laws and constitutional rights of a sentenced person have been made; and it has been determined that if a sentenced to a fine person has not voluntarily paid the fine during two years, such a person cannot be criminally prosecuted in compliance with Article 389 of the Criminal Code of Ukraine.

Practical significance of the article. The results of the article can be used in determining the policy of Ukraine on the issue of activities of the probation bodies and the possibility of returning the enforcement service of the Ministry of Justice, or consideration of the issue of granting appropriate powers to the probation bodies;

- rethinking the possibility of returning the enforcement of punishment, which in turn will lead to a higher percentage in payment of fines, and replenishment of the state treasury;
- establishment of uniform practice of application of the criminal law norms.

Keywords: punishment, probation body, criminal executive inspection, punishment enforcement, voluntary payment of a fine