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Application of The Rules on The Exemption from Criminal Liability with The Imposition of a Court Fine: Problems, Features and Experience

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Abstract

This article examines the legal framework and practical aspects of using the criminal liability exemption with the imposition of a judicial fine. The development of Russian criminal and penal legislation, considering the humanization of the State's criminal policy, leads to the emergence of new mechanisms for the humanization of criminal punishment and criminal responsibility itself. Many of them are of great scientific interest, such as the exemption from criminal liability with the imposition of a judicial fine. The authors examine the legal framework, the procedural order to apply this mechanism, the problems that arise in the courts that apply it in practice, the opinions of legal experts on its essence and the problems that arise in relation to its application. Methodologically, it is a documentary investigation close to legal hermeneutics. By way of conclusion, the results contain various provisions that clarify the place of this legal and procedural mechanism for exemption from criminal liability, among other mechanisms used for the same purpose. The authors make several notable proposals to improve the regulatory framework of the mechanism under study, which eliminates several identified problems associated with its use.

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Keywords: application of criminal law; judicial decision; exemption from criminal liability; judicial discretion; judicial fine.

Aplicación de las Reglas sobre la exención de responsabilidad penal con la imposición de una multa judicial: problemas, características y experiencia

Resumen

Este artículo examina el marco legal y los aspectos prácticos del uso de la exención de responsabilidad penal con la imposición de una multa judicial. El desarrollo de la legislación penal y penal rusa, considerando la humanización de la política criminal del Estado, lleva a la aparición de nuevos mecanismos para la humanización del castigo penal y la responsabilidad penal propiamente dicha. Muchos de ellos son de gran interés científico, como la exención de responsabilidad penal con la imposición de una multa judicial. Los autores examinan el marco legal, el orden procesal para aplicar este mecanismo, los problemas que surgen en los tribunales que lo aplican en la práctica, las opiniones de los expertos legales sobre su esencia y los problemas que surgen en relación con su aplicación. En lo metodológico se trata de una investigación documental cercana a la hermenéutica jurídica. A modo de conclusión los resultados contienen varias disposiciones que aclaran el lugar de este mecanismo legal y procesal de exención de responsabilidad penal, entre otros mecanismos utilizados para el mismo propósito. Los autores hacen varias propuestas notables para mejorar el marco regulatorio del mecanismo en estudio, que eliminan varios problemas identificados asociados con su uso.

Palabras clave: aplicación de la ley penal; decisión judicial; exención de responsabilidad penal; discreción judicial; multa judicial.

Introduction

Federal Law of July 3, 2016, No. 323-FL supplemented the Criminal Code of the Russian Federation (2016) with another portion of stories testifying to the state's steady adherence to the policy of humanization and liberalization of the criminal legislation of the Russian Federation. The updating of criminal and criminally-remedial legislation arose scientific and practical interest among legal scientists and practitioners. Scientific works appeared that made a certain contribution to the development of the science of criminal law and law enforcement practice.

Consolidation in Art. 76.2 of the Criminal Code of the new type of exemption from criminal liability with the imposition of a court fine and a new measure of criminal law, which found its place among other measures of criminal law in Chapter 15.2 “Court fine” of Section 6 of the Criminal Code of the Russian Federation, expanded the list of types of exemption from criminal liability.

The Legislative Code of Criminal Procedure did not remain without the attention of the legislator. Innovations touched upon the regulation of the issues of terminating a criminal case and criminal prosecution, as well as proceedings on the appointment of a criminal law measure for exemption from criminal liability. The Russian legislator is taking measures, including by introducing new measures of a criminal-legal nature and expanding the list of grounds for exemption from criminal liability, to achieve “positive dynamics in the social structure of society by reducing the number of persons with a criminal record” (Legislative draft No. 953369-6, 2015). The new type of exemption from criminal liability, like other types, is aimed at a stimulating effect due to the positive post-criminal behavior of the person who committed the crime and involving the facilitation of solving the tasks of the criminal law.

Thus, the introduction of rules on a court fine and exemption from criminal liability with its purpose is aimed at liberalizing the criminal law, as well as encouraging positive post-criminal behavior of the person guilty of committing a crime. The latter may indicate the loss or reduction of the degree of social danger of the guilty person and the inexpediency of applying criminal responsibility to this person if the achievement of the goals of criminal punishment becomes possible without its appointment.

According to the data provided by the Judicial Department under the Supreme Court of the Russian Federation, only in 2017, court fines were imposed on 20,639 people, in 2018 – 33,329, and in the first half of 2019 – 22,316 (The data of judicial statistics, n.d.). Thus, the courts began to actively apply the rules on the imposition of a court fine and exemption from criminal liability. An increasing number of cases of application of this mechanism of exemption from criminal liability and some problems arising in connection with its application and requiring immediate resolution by improving existing legislation actualize the topic of this study.

1. Results

Exemption from criminal liability with the imposition of a court fine refers to the types of exemption on non-rehabilitating grounds provided for in Chapter 11 of the Criminal Code. The norm is characterized by

dispositivity. A court fine in the science of criminal law is ambiguously assessed as a different measure of criminal law, as well as a new type of exemption from criminal liability that has received legislative approval. Similarly, in the law enforcement sphere, many problems create a wide field for discussion regarding legislative innovations under consideration.

A court fine is neither a criminal penalty nor a measure of criminal responsibility. In the first case, the main distinguishing features are the legal limit and the absence of a criminal record. In the second case, it is assigned after the person is released from the application of criminal liability measures.

Thus, I.E. Zvecharovsky, examining the legal nature of the court fine and its relationship with the institution of exemption from criminal liability, expresses with bewilderment: “it is not clear why it is applied” (Zvecharovsky, 2016). A.G. Antonov, developing the idea that a court fine is not a punishment and differs from punishment by the absence of a criminal record, argues that there is a new legal phenomenon as punishment without a criminal record. The scholar proposes to introduce such a concept as “punishment without a criminal record” into the criminal law and extend it to cases of sentencing that are not associated with isolation from society without a criminal record (Antonov, 2018). It is hardly possible to call this idea expedient. Moreover, it seems to us unpromising and unreasonable.

Considering the legal nature of the court fine as another measure of a criminal law nature, one should agree with N.S. Lutsenko that a court fine differs from other measures of a criminal-legal nature in a non-coercive manner. Indeed, the appointment of a fine requires the consent of the person who committed the crime. As the indicated author correctly states, they “consciously choose to undergo a criminal-law measure in the form of a fine, agreeing to voluntarily pay a certain amount of money to the state budget” (Lutsenko, 2019). However, only criminal punishment, according to part 1 of Art. 43 of the Criminal Code, is a measure of state coercion. Thus, as we believe, the place of a court fine in the system of other measures of a criminal nature should not be questioned due to its non-coercive nature.

In part 1 of Art. 104.4 of the Criminal Code of the Russian Federation, the legislator enshrines the concept of a court fine as a pecuniary punishment imposed by the court upon the exemption from criminal liability in the cases provided for by Art. 76.2 of the Criminal Code and, offering a differentiated approach to determining the maximum size of a fine, makes it dependent on the presence or absence of a fine in the corresponding article of the Special Part of the Criminal Code of the Russian Federation. The presence of a fine in the sanction of the article limits the upper limit of the size of the court fine to half the maximum size of the fine. In the absence, one should be guided by the maximum size established by the legislator – no more than 250,000 rubles.

When determining the amount of a court fine, the court must take into account:

- the severity of the crime committed;
- the property status of the person being released from criminal liability;
- the property status of their family;
- the possibility of receiving by the specified person of salary or other income.

There is no legal lower limit on the amount of a court fine. In most cases, courts do not go beyond 5,000 rubles, focusing on the minimum limit provided for punishment in the form of a fine (Art. 46 of the Criminal Code) (Legislative draft No. 953369-6, 2015).

Our study of the practice of court fine application, as well as data provided by individual researchers (Legislative draft No. 953369-6, 2015; Anashenkova, 2017), show that the average size of a court fine varies from 5,000 to 120,000 rubles, including a little more than 50% – in the range of 10,000 to 50,000 rubles. There are some examples of cancellation of court decisions on the imposition of a court fine in the amount not exceeding 5,000 rubles (Resolution of the Avtozavodsky District Court of Tolyatti in case no 10-103/2016, 2016).

Meanwhile, the criminal law does not provide for any requirements that limit the minimum amount of a court fine. However, the appointment of a court fine in the amount not exceeding 5,000 rubles is not a frequent occurrence, which is supported by the theory of criminal law. Researchers suggest that “with a different approach when the court chooses the size of the court fine less than the specified lower limit, the very idea of criminal liability for acts dangerous to the individual, society, or the state will be devalued, assuming the establishment of measures of a criminal legal nature commensurate with this danger” (Legislative draft No. 953369-6, 2015; Soktoev, 2017).

Agreeing with this position, which fully meets to the principle of justice, stipulated in Art. 6 of the Criminal Code of the Russian Federation, it is believed that the minimum amount of a court fine should be legislatively fixed and its calculation of 5,000 rubles is optimal and appropriate. Such a legislative solution would lead to uniform practice and remove the debate over whether it is appropriate to extend the minimum fine to a court fine. The second is not in doubt because of the fundamental contradiction to the requirements of the inadmissibility of applying criminal law by analogy.

In the theory of criminal law, the problem of the lack of uniform practice in determining the amount of a court fine for the commission of several crimes of small or medium gravity by a person for the first time is discussed.

The legislator does not establish the procedure for imposing a court fine against such persons. There are no instructions on determining the final amount in such a situation. However, according to the position of the highest court, set out in paragraph 16.1 of the Resolution of the Plenum of the Russian Federation Armed Forces of June 27, 2013 No. 19, the commission by a person for the first time of several crimes of small or medium gravity is not an obstacle to their release from criminal liability with the imposition of a court fine (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 19, 2013).

Analysis of judicial practice shows that courts use three options for determining the amount of a court fine. Some determine it based on the sanction of the article with the strictest liability (Review of judicial practice of exemption from criminal liability with the appointment of a court fine, 2019), others – assign the total amount of the fine for all crimes or assign a court fine for each crime without further addition or absorption of the number of fines, which in principle is not provided for by law.

The legislator also regulates cases of non-payment of a court fine within the term established by the court, in particular, the court fine is canceled and the person is brought to criminal responsibility under the relevant article of the Special Part of the Criminal Code (part 2 of Art. 104.4 of the Criminal Code).

Rules of Art. 46 of the Criminal Code of the Russian Federation do not apply (The Resolution of Plenum of the Supreme Court No. 58, 2015) to the appointment of a court fine, nor do the norms of the criminal-executive legislation regulating the procedure and conditions for the execution of the fine in the form of a penalty, provided for in the article. Art. 31 and 32 of the Criminal Executive Code of the Russian Federation (Criminal Executive Code of the Russian Federation № 1-FL, 1997), since the court fine imposed is based on Art. 76.2 of the Criminal Code, are a different measure of a criminal legal nature and not a criminal punishment.

Turning to the content of the norms of Art. 76.2 of the Criminal Code, note that the legislature sends to judicial discretion the imposition of a fine and release the person from criminal liability provided that the person first committed the crime of minor or medium gravity to repair the damage or otherwise make amends for crime harm.

Paragraph 2 of the Resolution of the Plenum of the Armed Forces of the Russian Federation dated June 27, 2013 No. 19 clarified that the category of first-time offender includes a person who had previously been exempted from criminal liability (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 19, 2013). Several scholars have objected to this approach. Thus, according to E.A. Belousova and R.G. Stepanov, if for a previously committed crime the statute of limitations for criminal

liability has not expired, then “a procedural decision taken in the past must be checked from the point of view of legality and validity. In case of its cancellation (in the absence of rehabilitating grounds, entailing a repeated termination of the criminal case or criminal prosecution), the person can no longer be considered a first-time offender” (Belousova, Stepanov, 2017; Belousova, 2004). The opinion of these authors, of course, deserves attention, but it is unlikely that it is correct to question the decision taken earlier by the competent persons to release one from criminal responsibility.

Exemption from criminal liability with the appointment of a court fine may be applied in cases when, as a result of a crime, the loss (damage) caused (The definition of the Constitutional Court of the Russian Federation No. 2257-O, 2017), respectively, by the current judicial practice was expected: the rule applies when failure of any one of the alternative conditions set out in Art. 76.2 of the Criminal Code. Thus, the criminal proceeding in respect of Ch., who committed a crime, under part 4 of Art. 337 of the Criminal Code of the Russian Federation, substantiates its decision by the fact that this norm is to be applied “also in cases where the disposition of the corresponding article of the Special Part of the Criminal Code of the Russian Federation does not provide for damage or other harm as a mandatory sign of *corpus delicti* or when damage (harm) is not actually caused” (The Resolution of the Makhachkala Garrison Military Court in case No. 1-53, 2017).

In the criminal case against R., who committed a crime, under part 2 of Art. 307 of the Criminal Code, application of Art. 76.2 of the Criminal Code was justified as follows: “the defendant, without a criminal record, is for the first time accused of committing a crime belonging to the category of moderate gravity, the absence of any harm from the unlawful actions of the defendant, subject to elimination or compensation” (The appellate ruling of the Kemerovo Regional Court in case No. 22-550/2017, 2017).

No less controversial are court decisions on the exemption from criminal liability with the imposition of a fine in the absence of the victim. T., accused of committing a crime under part 1 of Art. 228 of the Criminal Code, admitted guilt, repented of what he had done, wrote a confession, actively contributed to the disclosure of the crime, and apologized to the society. According to the court, T. “thereby made amends for the harm caused” (Resolution of the Oktyabrsky District Court of Tambov on the case no. 1-320/2017, 2017). However, if in this criminal case, there are signs that can be assessed as compensation for harm, in another case – the opposite is true. Thus, the court in a criminal case against V., accused of committing crimes under part 1 of Article 228 of the Criminal Code, substantiated reparation as follows: V. fully admitted guilt, realized the severity of the offense, sincerely repents, and, in the opinion of the court, thus has made amends for the harm caused by the crime” (Resolution of the Oktyabrsky District Court of the city of Ufa № 1-523/2016, 2016).

It is believed that admission of guilt, recognition of the gravity of the crime, sincere repentance, and other similar actions are not enough to free a person from criminal liability with a fine for the reason that these actions are not aimed at restoring broken public relations.

In fairness, court decisions that do not recognize that cooperation with the investigation, repentance, confession, and apology can testify to compensating for harm exist, but are extremely rare (The appellate ruling of the Northern Fleet Military Court in the case No. 22-47/2017, 2017). The absolute majority are decisions to terminate the criminal case and release the person who committed the crime from criminal liability, which ignores the conditions established by Art. 76.2 of the Criminal Code of the Russian Federation (Resolution of the Oktyabrsky District Court of the city of Ufa № 1-523/2016, 2016; The appellate ruling of the Shebekinsky district Court of the Belgorod region in case no 10-5/2017, 2017; Resolution of the Chernyshkovsky District Court of the Volgograd region in case no 1-50/2016, 2016).

The reason for the prevailing negative practice lies, inter alia, in the provisions of paragraph 2.1 of the Resolution of the Plenum of the Armed Forces of June 27, 2013 No. 19, which explains what should be understood as compensating for harm in the article under consideration. In particular, reparation involves not only the property, including cash, compensation for moral damages, or provision of any assistance to the victim, but “bringing them an apology and the adoption of other measures aimed at restoring disturbed as a result of crime the victim’s rights, legal interests of individuals, society, and the state”, that does not imply the material and (or) physical costs to the perpetrators of the crime. For example, the court found the conditions of Art. 76.2 of the Criminal Code fulfilled and released T. from criminal liability for committing a crime under part 1 of Art. 166 of the Criminal Code. As indicated in the decision to terminate the criminal case, T. offered the victim an apology, which he accepted (Resolution of the Uchalinsky District Court of the Republic of Bashkortostan on case No 1-235/2016, 2016).

The list of ways to compensate for harm is left open and, as a result, there is a problem regarding the criteria for evaluating particular methods as acceptable. The lack of such criteria makes it possible to expand the limits of judicial discretion in deciding whether to release from criminal liability with the imposition of a court fine.

Summing up, when applying Art. 76.2 of the Criminal Code of the Russian Federation, there is a trend that manifests itself in the release from criminal liability in the absence of a personal contribution of the guilty to their release, which should be expressed in material and physical costs aimed at reducing or eliminating the socially dangerous consequences of the crime. This tendency makes the preventive impact on the perpetrator

ineffective and does not contribute to the task of preventing crimes.

According to paragraph 3 of the Decree of the Plenum of the Armed Forces of June 27, 2013 No. 19, damages and (or) reparation (Articles 75-76.2 of the Criminal Code of the Russian Federation) can be made not only by the person who committed the crime but also at their request (with their consent) by others persons. This clarification is an occasion for the law enforcer not to consider mandatory such an imperative condition as positive post-criminal behavior of the person who committed the crime. In this regard, it seems appropriate to make adjustments to paragraph 3 of the Decree indicating exceptional circumstances, in the presence of which it will be possible to compensate for the damage and (or) make amends to other persons. Exceptional circumstances may be the lack of a source of income, a low level of material well-being of a family, a low level of family income in the presence of young children, etc.

The legislator in part 2 of Art. 104.4 of the Criminal Code of the Russian Federation did not determine a specific deadline for the payment of a court fine, having provided a decision on this matter to the court. An analysis of Russian judicial practice shows that there are more often periods from 1 to 6 months, although there is a practice of setting deadlines of 12 (Resolution of the Sibay City Court of the Republic of Bashkortostan No. 1-153/2017 in case No. 1-153, 2017) or even 18 months (Appellate ruling of the Moscow Regional Court (case no. 22-7391, 2016; Resolution of the Oktyabrsky District Court of Tambov in case no 1-444/16, 2016). The court must take into account such circumstances as “the possibility of a person receiving a salary or other income, the presence of dependent minors or elderly persons, and other circumstances” (Shalumov, 2017).

To form a uniform judicial practice, it is necessary to establish a legislative framework for the period under consideration. We consider it possible to set the term for payment of the court fine in 60 days with the provision of installments of up to 1 year. An installment period of one year should be established, on the one hand, to avoid competition between norms on the expiration of the statute of limitations and the imposition of a fine and, on the other hand, long terms for installment payment of a fine can lead to the minimization of social expediency and effectiveness of preventive impact.

It seems appropriate to supplement Art. 104.4 of the Criminal Code with part 1.1 of the following content: “A person who is assigned a court fine in accordance with Art. 76.2 of the Criminal Code must pay the fine within 60 days from the date of the court fine. The court has the right, considering the possibility of receiving a person’s salary or other income, the presence of dependent minors or elderly persons, and other circumstances, to impose a court fine with installment payments in certain parts for a period of up to one year”.

Conclusion

Discussions on many other issues of exemption from criminal liability with the imposition of a court fine continue to take place. The interests of legal scientists focused on questions about the essence and legal nature of the court fine, grounds for application, determining the minimum allowable extent of indemnification, exemption from criminal responsibility in accordance with Art. 76.2 of the Criminal Code in situations where the court in accordance with part 6 of Art. 15 of the Criminal Code changes the category of crimes, proceedings concerning the appointment of a judicial penalty upon the release of persons from criminal liability, etc. This leads to the conclusion that the legislation on court fine and exemption from criminal responsibility gave rise to several serious issues concerning the practical implementation of the legislative amendments, requiring scientific comprehension to develop ways of improving the legislation and practice of its application.

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* Although the regulations for the authors of this journal require the full names of the authors to be added to this list of references, unfortunately in some cases the source of origin only places the initial of the name. For this reason, in some cases only the initial of the name is added.

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