

REGULATION OF CRIMINAL LIABILITY FOR NON-ENFORCEMENT OF A JUDICIAL ACT UNDER THE LEGISLATION OF THE EUROPEAN UNION COUNTRIES



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Abstract. The article analyzes the current state of consolidation of criminal liability for failure to comply with a court order under the legislation of several EU countries. Separate provisions that are worthy of implementation in national legislation are identified. In particular, this concerns the specification in the disposition of Art. 382 of the Criminal Code of Ukraine on the ways of committing a non-enforcement of a judicial act.

Keywords: *judicial act, EU countries, non-enforcement, criminal responsibility.*

Introduction

Enforcement of judgments is one of the main criteria by which citizens evaluate the capacity, efficiency and integrity of the justice system. In turn, the lack of an effective mechanism to enforce judgments to protect the interests of citizens and the real restoration of their violated rights adversely affects the authority of the judiciary, since the ultimate goal of justice is not achieved.

The comparison of the laws of the European Union states, in terms of establishing liability for non-enforcement of the judgment, will reveal similar and different features in the criminal legislation of Ukraine and other states, evaluate the advantages and disadvantages of certain legislative decisions, as well as the mutual influence of the laws of individual states, and, most importantly, to identify positive experiences that should be implemented in the national legal system and outline legislative decisions that should be avoided.

State of the study. Problematic issues of criminal liability for non-enforcement of the court decision have always been the subject of study of scientists, among which the special contribution was made by: M. Bazhanov, V. Borisov, V. Gatselyuk, V. Grishchuk, V. Navrotsky, V. Tyutyugin, V. Osadchiy, P. Fris, M. Khavroniuk, M. Shepitko and others.

The aim of the article: is to investigate the rules governing criminal liability for failure to comply with a judicial act under the laws of the European Union.

Outline of the main research material. Attempting to comply with a court order is typical of EU law. However, the foreign legislator has succeeded differently approached formulating the rules governing criminal liability for non-compliance of a court act.

In particular, Art. 434-39, enshrined in Book 4, «On Crimes and Misdemeanors Against the Nation, State, and Public Peace»

Section III, «On Attacks on Government» Chapter IV, «On Attacks on the Judiciary» Section 3, «On Attacks on the Judiciary power» of the Criminal Code of France ensures criminal liability for unlawful acts related to the non-enforcement of a judgment for the publication of a conviction. The disposition of the article demands criminal liability for the act of destroying, concealing or tearing down, in whole or in part, the posters posted, in the case when the court decision provides for punishment of posting the indictment. Also in Book III, Section I, «On Misappropriation» Chapter IV, «On Misappropriation» Section 3, «On Artificial Insolvency» is fixed by Art. 314-7, which provides criminal liability for various acts in order to evade a sentence of property given by a court in criminal cases or a decision rendered by a court in civil cases for torts, quasi-torts or alimony [1].

For example, the Criminal Code of Italy, in Book II, «On individual crimes», Section III, «Crimes against the administration of justice» Section II, «Crimes against the judicial force of judgments», in Article 388, «Deliberate failure to comply with a judge's decision», establishes responsibility for non-enforcement of judgments. This crime has specific ways of committing it, namely: committing fraudulent or fraudulent acts on its property or the property of third parties; evasion of civil custody decisions against children or other persons with disabilities or involving security measures in respect of property, possession or monetary obligation; concealing, destroying, wasting property subject to description, judicial arrest or arrest in the course of securing a claim; unlawful refusal, evasion or delay of execution of an administrative act; evasion of an official's request for an indication of a property or monetary liability to be described or a statement containing false data [2].

The provision for liability for non-enforcement of a court decision is also enshrined in the Criminal Code of the Czech Republic. For example, Section X, «Criminal Offenses against Public Order», Section 4, «Other Interference with Public Authorities» contains Art. 337 «Obstruction of justice and obstruction of sentence», which provides for criminal liability of a person who impedes or substantially impedes the enforcement of a decision of a court or other state body. The national legislator has determined that interference or substantial encumbrance with the enforcement of a court decision or other public authority may be done by: 1) pursuing an activity prohibited by such decision or activity for which the relevant license has been revoked; 2) leaving on the territory of the Czech Republic contrary to the sentence or decision on expulsion; 3) remain without permission and without serious cause in the place or district to which the stay sentence applies, or fails to comply with the restrictions imposed by the court in connection with the enforcement of this sentence; 4) attending measures for which there is a ban on visits established by a court order; 5) failure to comply with a sentence of imprisonment without good cause; 6) the implementation of serious actions aimed at impeding the execution or purpose of the sentence; 7) implementation of serious actions aimed at preventing the execution of the decision to

drown a person or to take him into custody; 8) take serious actions aimed at preventing the implementation of preventive measures ordered by the court or otherwise, especially by escaping from the institution or assisting with escape, which seriously complicates the implementation of such decisions or complicates the supervision intended for the termination of these measures. Paragraph 4 of this Article provides that it is the responsibility of the one who, after the ineffective use of measures in civil proceedings against him, to enforce a court decision or an agreement approved by a court for the education of minor children, including contact with children, impedes such decision or agreement, or anyone who takes serious action to interfere with the enforcement of another state authority's decision regarding the education of minor children. Unfortunately, the legislator does not indicate what is meant by «serious action» [3].

In the Criminal Code of Poland, Article 244, which is set out in Chapter XXX «Crimes against the administration of justice», provides for criminal liability for failure to comply with an injunction or failure to comply with an order of a court. The above-mentioned article provides the liability of the person who fails to comply with a court injunction with respect to: holding a position; performance of work; conducting activities; control of vehicles; going to gambling centers and participating in gambling; participation in mass events; the obligation to refrain from being in a designated environment or place; order to leave the place of residence with the victim; ban on contact with identified persons; prohibition of approaching certain persons and prohibition of leaving the place of residence without the consent of the court or not complying with the court's order to announce the decision in the manner provided therein [4].

Chapter XVI, Crimes against the Judiciary, of the Criminal Code of Hungary contains Section 288, Obstruction of Judicial Enforcement. According to this article, criminal offenses are actions that are in default of a statutory obligation in connection with enforcement proceedings, other obligations than those contained in a writ of execution [5].

Section IV «Obstruction of Justice» of the Criminal Code of Romania contains Article 287 «Non-enforcement of judgments» which establishes criminal liability for non-enforcement of judgments. The national legis-

lator has predicted several ways of committing such a crime: 1) impeding the enforcement of a court decision by resisting the actions of the authorities responsible for such execution; 2) refusal of the body responsible for enforcement to comply with the court's decision by which it must perform certain actions; 3) refusal to support the authorities responsible for the execution of court rulings by persons obliged to do so by law; 4) failure to comply with a court order to reinstate an employee; 5) failure to comply with the court's decision on payment of salary within 15 days from the date when the request for execution was submitted to the employer by the interested party; 6) failure to comply with the court's order on the establishment, payment, indexation and adjustment of pensions, etc. [6].

Chapter XXIII «Criminal offenses against the administration of justice» of the Criminal Code of Latvia contains Article 296 «Failure to comply with court decisions and prosecutor's decisions». In this provision, the legislator provides several ways of committing such a crime. The first way is non-compliance, and the second is to delay the execution of these documents. Since the legislator did not indicate what these terms define, in our view, considering through the lens of national law, it can be argued that the objective side is expressed in the form of action, that is, both in action and inaction [7].

The Criminal Code of Estonia establishes criminal liability for the crime we are investigating in § 331-1 «Non-enforcement of a court decision» in Chapter 4, Crimes against the enforcement of a judgment, Chapter 18, Crimes against the administration of justice. Paragraph 331-1 of the CC of Estonia's failure to comply with a judgment provides for criminal liability for failure to comply with a judgment in a civil case requiring a person to surrender a child or thing, to commit an act that cannot be replaced, or to refrain from committing such an act if the person was fined or arrested in enforcement proceedings for committing such an act [8].

The Criminal Code of Slovenia contains a number of rules providing criminal liability for non-enforcement of a judgment, which are enshrined in Chapter 28, Criminal offenses against justice, of the Special Part. In particular, in Art. 289 «Obstruction to Return to Work» lays down criminal liability for failure to comply with a court decision to reinstate an

employee. In this case, it is a deliberate failure to comply with a final judgment that entitles the employee to return to his / her position. Article 290 «Violation of the prohibition on the pursuit of a professional activity» establishes the criminal liability of a person for failure to comply with a court decision to prohibit the pursuit of a certain activity by another person. That is, criminal liability is imposed on a person who allows another person to occupy a position, engage in an activity or perform a function, although he / she knows that this person has been banned by a final court decision [9].

Instead, the Criminal Code of Bulgaria in Art. 293a establishes the criminal liability on a person sentenced to pay a monetary obligation on the basis of a court decision, which has entered into force and fails to fulfill this obligation within one year after the decision to discharge the obligations to the creditor enters into force, despite the availability of funds or property for that purpose. In addition, Article 296 provides for criminal liability of a person who interferes with the enforcement of a judgment or fails to comply with an order for protection against domestic violence. Such rules are set out in Chapter 8, Crimes Against the Activity of Government Bodies and Public Organizations, Section 3, Crimes Against Justice. [10].

For its part, the Criminal Code of Lithuania in Chapter XXXIV «Crimes Against Justice», enshrines Article 245, «Non-enforcement of a non-punitive court judgment». This rule does not specify the ways of committing this misconduct, so we believe that they are committed both through action and inaction [11].

Section 25 of the Qur'anic Benefits of the Criminal Code of Germany enshrines § 288 «Obstruction of Compulsory Enforcement Proceedings», which provides the criminal liability of a person for preventing the satisfaction of a creditor's claims by alienating part of his property or preventing him from being accessed in the course of enforcement proceedings [12].

The Criminal Code of Spain in Chapter XIX «Crimes against public authorities» in Chapter III «On disobedience and refusal to promote» contains Art. 410, which establishes criminal liability for the refusal of an official or public servant to execute properly the judgments, decisions and orders of senior officials. In addition, in Art. 508, which is set out in

Chapter XXI «Crimes against the Constitution» in Chapter III, «Crimes Against the Institutions of Power and the Division of Power» provides the criminal liability of an official or public servant who assigns judicial power or impedes the enforcement of a decision issued by a competent judicial authority. The ways of committing such crimes are different: 1) refusal to execute the proper execution of judgments, decisions and orders of senior officials, and 2) assignment of judicial authority or obstruction of enforcement of judgments [13].

The Criminal Code of Austria does not provide criminal liability for failure to comply with a judgment, but contains a similar criminal law provision. In particular, Section 271 of Section 19, «Criminal Offenses Against Government» provides criminal liability for breach of property arrest. The legislator, in particular, specified the ways of committing this crime: destruction, damage, dismantling, incapacitation or wholly or partially removal from property arrest [14].

In particular, Art. 195, which is set out in Section VIII, Crimes against State Power, of the Criminal Code of the Netherlands, provides the liability of any person for the enjoyment of his rights when he is aware that he has been deprived of that right by a court decision [15].

The Criminal Code of Denmark does not provide any criminal liability for failure to comply with a judgment. Instead, §148 of Chapter 16, «Crimes committed in the exercise of public office» enshrines the criminal liability of any person having jurisdiction or other public authority to decide on a legal question or whether it is incumbent on the State to punish the State for failure to comply with the law. the law of the procedure for considering a case or executing relevant legal acts concerning arrest, imprisonment, seizure or other measures of a similar nature [16].

Article 254, Chapter 5, «Abuse of Power», Section IV, «On Crimes and Misdemeanors Against Public Order, Committed by Officers or Officials of Cults Performing Their Duties», Book 2 of the Criminal Code of Belgium contains a criminal law provision responsibility for «actions to use force against the enforcement of a law or a royal decree, or against the enforcement of a lawful tax, or against a court order or order, and against any order issued by a public authority» [17].

Section 13, Part 2, On Crimes, of Chapter 17, «Crimes Against Public Activity» of the Criminal Code of Sweden provides criminal liability for the unlawful transfer, damage or otherwise disposition of property subject to restraint in securing an obligation, temporary arrest, pledge, confiscation or other such measures, damage or destruction of official notice or seal, or otherwise unlawful opening of something officially closed or violation of other similar officially announced orders [18].

Section 9 (a) of the Violation of the Restraining Order, contained in Chapter 16, Crimes Against Public Authorities, of the Criminal Code of Finland, provides criminal liability for the violation of a person for whom an injunction or injunction is temporary injunction, the procedure provided in appropriate solutions [19].

The Criminal Code of Slovakia, in the Special Part of Chapter 8, Crimes Against Management Order, Section 5, «Other Forms of Violation of the Activity of Public Authorities», establishes in § 348 criminal liability for obstruction of enforcement of a formal decision. Such methods are to impede or substantially complicate the enforcement of a decision taken by a court or other public authority (1) by: 1) the inability to begin serving a sentence of imprisonment from a date specified by the court without good cause; 2) residence without a permit and without serious reasons in the settlement or district in which the person has been banned from living, or for failure to comply with the restrictions and obligations imposed on him / her by a court decision in connection with the execution of such sentence; 3) residence without a permit and without good reason on the territory of the Slovak Republic, despite the fact that a sentence on eviction or punishment was issued in the form of a ban on residence in the territory of the Slovak Republic; 4) performance of actions prohibited in accordance with the decision of a court or other government body prohibiting the commission of such actions; 5) committing serious misconduct in order to disrupt the prescribed medical prophylaxis or protective re-education assigned to the person by a court or otherwise, in particular by escaping from the institution, or substantially complicating the implementation of such decision or; 6) committing serious misconduct in order to prevent the appointment, detention or sentence; 7) committing serious

or repeated misconduct in order to disrupt the order, preventing the person from entering into a common accommodation (regulated by a separate provision or on the basis of measures taken in advance by a court) or; 8) committing serious offenses, thereby impeding the performance of protective supervision intended for a person [20].

Although criminal liability for failure to comply with a judgment is not exactly provided in the Criminal Code of Croatia, however, Chapter XVI «Criminal Offenses in the Field of Marriage and Juvenile Relations» of the Special Part of the Code provides several principles similar to those of the Criminal Code. In particular, Art. 209 «Alimony» establishes responsibility for the

evasion of the maintenance of a person in view of a judgment to be enforced. In addition, in Art. 215 «Obstruction and Failure to Take Measures to Protect a Child or Minor» assigned responsibility for impeding the implementation of educational and other measures taken by the court [21].

Instead, Art. 391 of the Criminal Code of Luxembourg provides the debtor's liability for actions to deteriorate his financial position in order to evade criminal or civil court decisions. This provision is set out in Part II, Section VII, Crimes and Torts against the Family Orders and Public Morality, in Part II, Part IX, «Failure to Perform Family Responsibilities and Fictitious Insolvency» by the Luxembourg Code [22].

Conclusions

As a result, it should be noted that the rules governing criminal liability for non-enforcement of a judicial act under the law of EU countries are characterized by a wide variability in the expression of the objective side of the crime and, in particular, the specification in the methods of its committing. In my opinion, this experience is worth borrowing, since specifying ways of committing a crime directly in the norm itself will eliminate the possibility of error in its qualification and will also allow to avoid competition within general and special norms.

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