Judicial fine as a means of ensuring sustainable state development

Abstract. The article states that sustainable development of the state requires a balanced policy, including criminalisation, decriminalisation of acts, penalisation, depenalisation as well as prosecution, non-criminalisation. That is why the authors targeted one of the types of exemption from criminal liability, the imposition of a court fine, which is relatively new and causes certain difficulties in its application in practice. The purpose of the study is to identify controversial provisions of the criminal law in relation to the regulation of court fines and, on the basis of this, to develop recommendations aimed at eliminating the identified deficiencies of the legislation. The work is based on such methods as system analysis, formal-legal, comparative-legal, statistical and concrete-sociological. Having examined in detail the conditions of exemption from criminal liability in connection with the imposition of a court fine, the authors draw attention to the fact that a number of points require specification, including the terms of payment of a court fine, the definition of its lower limit, etc. They also express their disagreement with the position of the Supreme Court which allows a broad interpretation of the law. Therefore, courts must find out the reasons for non-payment of the court fines before cancelling the fine and bringing a person to criminal responsibility. On the whole, assessing positively the introduction of a rule allowing for exemption from criminal liability in connection with the imposition of a court fine, they conclude that only a deliberate use of this type of exemption from criminal liability will contribute to the sustainable development of the Russian state, which requires adjustment of the criminal law in terms of regulation of the court fine, as well as some positions of the Russian Supreme Court.

1 Introduction

Russian legislators have been searching for many years for measures that would contribute to the stable and sustainable development of our state. Sustainable development is possible if, firstly, the measures taken are able to meet not only the immediate needs of society, but also the future needs that may arise in the foreseeable future. Second, the measures taken...
should be as wide-ranging as possible and affect different spheres of people’s life, and, accordingly, the changes should concern different branches of law, including criminal law.

It is no secret that in the early 2000s, criminal law experts began sounding the alarm, drawing the attention of legislators to the fact that Russia had become one of the leaders in terms of the number of people sentenced to imprisonment and incarceration. The negative consequences affected different spheres of society - social (destruction of social ties, consolidation of criminal experience, etc.), economic (lowering the standard of living of those sentenced to imprisonment, inability to return to a familiar lifestyle, reduction of labour force, predominantly male, etc.), demographic (higher mortality among those named, lower reproduction rate due to breakdown of family ties, etc.). There are many reasons for this situation, but the most obvious, according to the authors, are the following: the traditionally punitive bias of previous criminal policy and sentencing practices, as well as imperfect criminal legislation in terms of the system of punishment, including deficiencies in the construction of sanctions of criminal law norms, a significant number of which provided no alternative punishment in the form of imprisonment. Consequently, for nearly two decades now (since the first major amendments to the criminal law took place in 2003), domestic lawmakers, in an attempt to ensure the sustainable development of our state, have been seeking a balance between criminalisation and decriminalisation, penalisation and depenalisation, and criminal prosecution and noncriminalisation.

On the one hand, by criminalising an increasing number of acts, which is a response to the challenges of our time, on the other hand, it is looking for other options to respond to criminal behaviour, other measures of criminal-legal impact in order to minimise the damage caused not only to the convicted, but also to society as a whole when a person is held criminally responsible. The inclusion of a provision on court fines in the criminal law is one attempt to achieve such a balance. The addition of a new type of exemption in connection with the imposition of a court fine to the Criminal Code is certainly positive. However, the theory of criminal law draws attention to the fact that existing norms have a number of shortcomings [1], [2], which reduces the effectiveness of their application, which also directly affects the practice of judicial fine, which is characterised by instability.

The purpose of the study is to identify controversial provisions of the criminal law in terms of regulation of judicial fine as a type of exemption from criminal responsibility and to develop recommendations aimed at eliminating the identified shortcomings.

2 Research methods

The work is based on a systematic analysis. In addition to the above, the authors also relied on formal legal, comparative legal, statistical and concrete sociological methods in order to study the topic in more detail and in full.

3 Results

The rules on court fines appeared in the criminal law much later than the adoption of the Criminal Code - in July 2016. Simultaneously with the inclusion of Article 76.2, a new chapter was added to the criminal law - 15.2 “Judicial fine”, which is located in Section VI “Other measures of criminal law”. To harmonize the criminal and criminal procedural legislation, a relevant article - article 25.1 “Termination of the criminal case or criminal prosecution in connection with the imposition of a criminal law measure in the form of a court fine”, as well as a new chapter - chapter 51.1 “Proceedings on the imposition of a criminal law measure on release from criminal responsibility” was included in the criminal procedural legislation of Russia.
Article 76.2 of the Criminal Code sets out the following conditions for exemption from criminal liability:

- Commission of an offence classified by the legislature as a category of minor or medium gravity;
- The offence must have been committed for the first time;
- The damage caused by the offence must have been compensated for or otherwise mitigated.

In order to clarify the content of the first condition, it is necessary to refer to Article 15 of the Criminal Code, which defines the categories of crimes. As a rule, this issue does not cause problems in practice. The understanding of a crime committed for the first time is disclosed in the Resolution of the Plenum of the Supreme Court of the RF of 27.06.2013 No. 19 (edited 29.11.2016) "On the application by the courts of the legislation governing the grounds and procedure for exemption from criminal responsibility". It should be noted that the understanding of a first-time committed crime, which is proposed by the Supreme Court of the RF, is the most criticized in the theory of criminal law, judicial fine is devoted quite a lot of publications [3]. However, we will not dwell on this issue, as in one of the previously published works, we have already dwelled on it, arguing the position that such a broad understanding of the first-time committed crime contradicts the principle of justice and does not ensure the implementation of those tasks, which are defined in article 2 of the Criminal Code of the RF [4].

Thus, the modern Criminal Code, defining the possibility of exemption from criminal responsibility in connection with the imposition of a court fine, does not establish any restrictions on the range of committed crimes depending on the content of the object of encroachment (for example, sexual inviolability and sexual freedom, interests of state power), their number (we are talking about multi-object crimes), features of victims (for example, if the victim is a minor). In this regard, the literature suggests that it is inadmissible to impose a court fine for certain crimes, in particular, against the sexual inviolability of minors, homicidal crimes, etc. S.V. Anoshchenkova draws attention to the progressive increase in the number of persons released from criminal responsibility for "bribery", which, in her opinion, is contrary to the strategic directions that underlie the provision of national security against internal threats [5]. In general, she proposes to define at the legislative level a list of crimes to which article 76.2 of the CC will not apply. Although, there are opposing views. So, some authors, on the contrary, believe that in those cases where the fact of compensation for damage caused should be fixed not the right, but the obligation of the court to release from criminal responsibility (for example, V. Sarkisov).

In general, we are against an excessive increase in the options of exemption from criminal responsibility, especially when it comes to supplementing the criminal law with new norms, which criminalise certain deeds and immediately contain notes that allow the possibility of exemption from criminal responsibility [6]. But objecting to S.V. Anoshchennova, we can say that article 76.2 of the CC has a typical design similar to those presented in chapter 11 of the CC. If art. 75 and art. 76 of the CC do not define the exceptions to the range of crimes, then there is no need to establish them in art. 76.2 of the CC, which corresponds to the requirements of systematic presentation of the criminal law. We believe that the way out of this situation can only be a change in criminal policy in general, reflecting it at the level of decisions of the Plenum of the Supreme Court of the Russian Federation. Today we see that the expansive interpretation of the criminal law by the Supreme Court of the RF has resulted in a change in the traditional understanding of many "classic" criminal law postulates (such as that reconciliation is impossible in case of the victim's death, that the damage may be compensated only by the person who committed the crime, etc.), which has resulted in the release from criminal liability in the most unlikely cases (for example, during the study of court practice we found a case of release from criminal liability on the basis of the victim's...
Certainly, S.V. Anoshchankova is right that the exemption from criminal liability should be selective and rather an exception and that in each particular case the court should carefully study all the circumstances of the case and make a final decision. But, once again, this course should be set by the Supreme Court of the Russian Federation and then no further adjustments to the criminal law would be necessary. The same arguments can also form the basis for criticism of those authors who propose to enshrine the obligation of exemption from criminal liability in the presence of compensated damage. Only the totality of conditions can give rise to an appropriate decision, including the characteristics of the object of the crime and the victim, the number of objects infringed by the act, the content of the inflicted damage, the fact that the crime was committed for the first time, etc. Only the court in each specific case, evaluating all the circumstances of the case, can decide on the exemption from criminal liability, based on the fact that the exemption is an exception to the rules, and the exception can be applied only when really necessary, when such a decision would not contradict the goals and objectives set by the criminal law.

Another condition for exemption from criminal liability under Article 76.2 of the CC is compensation for damage or making amends for the harm caused by the crime. Due to the existence of such a condition, for some time there was no unanimity in the theory of criminal law as to whether exemption in connection with the imposition of a court fine was possible for offences with a formal structure of the offence, when the consequences are not specified in the law, and there was no unified approach in practice either. The Supreme Court of the Russian Federation in the Review of judicial practice of exemption from criminal liability with the imposition of a court fine (Article 76.2 of the Criminal Code), approved by the Presidium of the Supreme Court of the Russian Federation on 10.07.2019 resolved this issue in favour of such exemption.

Chapter 15.2 of the Criminal Code specifies certain issues related to the imposition of a court fine. Thus, Article 104.4 of the CC stipulates that a court fine is a monetary penalty, which is imposed by the court when releasing a person from criminal liability in the cases stipulated by Article 76.2 of the CC. The same article also specifies the conditional nature of this type of exemption from criminal liability. Thus, part 2 of Article 104.4 of the CC states:

"In case of non-payment of the court fine within the time limit set by the court, the court fine shall be cancelled and the person shall be prosecuted under the respective article of the Special Part of the CC."

Article 104.5 of the CC does not specify the lower limit of the court fine, in each particular case its amount is determined at the discretion of the court. This approach of the legislator raises justified criticism in the science of criminal law. Theorists have expressed different solutions to this problem. For example, in one of the recent dissertations on court fines a proposal was made on the need to establish the ratio between fine and court fines. If the sanction of the article defines the lower limit of fine - punishment, then the court penalty should be not less than \( \frac{1}{2} \) of it, but if there is no lower limit of fine - punishment, then the court penalty should be imposed in the amount not less than \( \frac{1}{2} \) of the minimum allowed in part 2 of article 46 of the CC [7]. It seems that such judgments deserve attention and support. Indeed, there should be some certainty in determining the amount of a court fine, the presence of guidelines will only contribute to the uniformity of judicial practice and implementation of the principle of justice, as for similar crimes will be set a limit, beyond which will be inadmissible. As to the maximum amount of the court fine, it is regulated by part 1 of clause 104.5 of the CC and should not exceed 250 thousand roubles. Although a court fine is not a punishment, nevertheless, according to part 2 of article 104.5 of the Criminal Code, the court shall, while determining the amount of the court fine, proceed from the gravity of the crime, the financial situation of the person exempted from criminal liability and his family, as well as take into account the possibility of the person receiving a salary or other income.
Among the problematic issues also discussed in criminal theory is the determination of the final amount of the court fine when several offences have been committed. For example, some researchers have expressed the view about the admissibility of adding court fines [8]; about their independent value and assumption of assignment for each of the committed crimes [9]. But the Supreme Court of the Russian Federation in its Review of 10.07.2019 outlined a different position, indicating that despite the fact that several crimes are committed one criminal-law measure is applied and when determining the amount of a court fine one should start from the sanction of the article establishing the most severe responsibility.

Unlike a fine, the Criminal Code of the Russian Federation does not specify the term for payment of the court fine but leaves it to the discretion of the court. If the fine is not paid within the time limit indicated in the court order, the court fine is cancelled and the person is held criminally liable (Article 104.4 part 2 of the Criminal Code). The law regulates the issue of cancellation of a court fine rather strictly - non-payment within the term results in cancellation and bringing to criminal responsibility. However, the Supreme Court has reduced this requirement by stating in paragraphs 3 and 4 of paragraph 19 of Resolution No. 19 of 27.06.2013 that only those cases where failure to pay within the prescribed period of time is due to unjustified reasons should be considered as evasion. Applying an expansive interpretation of the law, the Supreme Court obliged the court to take into account the validity/irrelevance of the reasons for non-payment of the court fine, while the issue of the possibility of extending the payment period is not regulated either in the judgment or in the law. On the whole, however, we cannot assess such recommendations positively. The legislator already provides the person who committed the offence with the possibility of being released from criminal liability, i.e., shows a certain humanism, significantly reducing the amount of criminal-law impact. Moreover, since this type of release is referred to the number of non-rehabilitation, such release is possible only with the consent of the perpetrator, who is first explained all the consequences, including the need to pay a court fine. We believe that by giving such consent, the person assesses his/her capacity to pay the court fine and assumes the relevant obligations, while the refusal of their subsequent performance, in our opinion, demonstrates a stable line of conduct aimed at non-compliance with the established rules, so there should be no repeated leniency for such persons.

4 Conclusion

To summarise, it is necessary to note that in many respects court fines and penalty fines are the same. Thus, both measures are defined in the law as a pecuniary penalty, the limits of a court fine (at least upper ones) are "tied" to the amount of a fine-penalty, and the fundamental differences relate to the nature of the legal consequences. Firstly, there is no criminal record in the imposition of a court fine, and secondly, if a court fine is not paid, it is replaced with a stricter type of punishment, and if a court fine is not paid, the person is held criminally liable.

Since its introduction, the court fine has been actively used in court practice. However, it is characterised by a certain instability. Thus, while from 2017 to 2021, the number of persons exempted from criminal liability due to a court fine steadily increased, in 2021, their number almost halved (from 56,980 in 2020 to 36,685 in 2021). It is not known what has caused such a sharp decrease in the imposition of a court fine, but it is too early to draw conclusions; it will have to be seen whether this trend will continue in 2022. Such a dramatic reduction in the use of court fines did not go unnoticed by the Chairman of the Supreme Court of the RF, Vyacheslav L...
offenders of minor and medium gravity. In other words, in his speech he emphasised the importance of the use of court fines in practice and called for their wider application. We believe that this call will be reflected in the 2022 statistics.

On the whole, the introduction of a rule allowing for exemption from criminal liability in connection with the imposition of a court fine should be recognised as positive. Surely, wide, but deliberate use of this type of exemption from criminal liability will contribute to sustainable development of our state, because, on one hand, a person avoids criminal liability and thus maintains full existence in the society without restrictions imposed by criminal liability and, on the other hand, a court fine is associated with an element of repression among other types of exemption from criminal liability - a person is released from liability only on condition of paying the fine. There is also a certain economic effect for the state in the form of money (which is not the case, for example, in a reconciliation with the victim or in active repentance). At the same time, as shown above, a number of issues relating to the regulation of court fines remain unresolved, which is why work on improving this type of exemption from criminal liability should continue. In particular, the authors’ proposal to set the lower limit of the court fine and the deadline for its payment deserves attention. A number of explanations of the RF Supreme Court are also in need of correction when an expansive interpretation of the law is used, which leads to an unreasonably broad application of various types of exemption from criminal liability, including court fines.

References


5. S.V. Anoshchenkova, Russian judge 9, 12-17 (2021) https://doi.org/10.18572/1812-3791-2021-9-12-17

6. V.K. Duyunov, I.A. Podroikina, R.V. Zakomoldin, Exemption from criminal responsibility and criminal punishment in the mechanism of criminal law impact (monograph) (Moscow, 2022)

7. A.V. Murashova, Differentiation of fine in criminal law (Kursk, 2021)


9. E.V. Blagov, Exemption from criminal liability (reflections on the problems and overcoming the m) (Yurlitinform, Moscow, 2018)