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Savchenko V. – Researcher of Criminal Law Department of National Academy of Internal Affairs

Савченко В. О. – здобувач кафедри кримінального права Національної академії внутрішніх справ

DISTINCTIONS OF CRIMINAL AMENABILITY FOR EVASION OF PUNISHMENT NOT RELATED TO IMPRISONMENT IN LEGISLATION OF FOREIGN COUNTRIES

ОСОБЛИВОСТІ КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА УХИЛЕННЯ ВІД ПОКАРАННЯ, НЕ ПОВ'ЯЗАНОГО З ПОЗБАВЛЕННЯМ ВОЛІ, ЗГІДНО ІЗ ЗАКОНОДАВСТВОМ ЗАРУБІЖНИХ КРАЇН

This article is entitled «Distinctions of criminal amenability for evasion of punishment not related to imprisonment in legislation of foreign countries». The subject of the research is criminal liability for evasion of punishment not related to imprisonment. At the beginning of article, it deals with conceptual framework, which establish criminal amenability for evasion of punishment not related to imprisonment under the legislation of foreign countries. Then in article considered the three conceptual approaches fastening (description) prohibition of the criminal law for evasion of punishment, not related to imprisonment.

Keywords: criminal liability for evasion of punishment not related to imprisonment; amenability; prohibition; criminal law; conceptual framework.

Розкрито концептуальні засади кримінальної відповідальності за ухилення від покарання, не пов'язаного з позбавленням волі, згідно із законодавством зарубіжних країн. Розглянуто альтернативні підходи до застосування кримінальної відповідальності за ухилення від покарання, не пов'язаного з позбавленням волі в інших країнах світу.

Ключові слова: кримінальна відповідальність за ухилення від покарання, не пов'язаного з позбавленням волі; відповідальність; заборона; кримінальне законодавство.

Раскрыты концептуальные основы уголовной ответственности за уклонение от наказания, не связанного с лишением свободы, в соответствии с законодательством зарубежных стран. Рассмотрены альтернативные подходы к применению уголовной ответственности за уклонение от наказания, не связанного с лишением свободы в других странах мира.

Ключевые слова: уголовная ответственность за уклонение от наказания, не связанного с лишением свободы; ответственность; запрет; уголовное законодательство.

The fundamental factor in ensuring an effective criminal justice and combating crime is inevitable punishment and serving it. De jure, it means that every person, which commit a crime, must be incurred a punishment. There must be applicable legislative state reaction in the form of prosecution of person and imposition of punishment. Each person must serve her own penalty.

De facto, the reality is far from ideal. It is clear, that not every person which committed a crime has been prosecuted. At once, not every person, which has been assignment to punishment, really complete one's sentence.

In some cases, such person released from penalty or serving the sentence by proper means, while others – willfully evading them serving the sentence. In the first case, it is the refusal of the country from the use of punishment in connection with a major social and beneficial circumstances and deficiency of social danger. While, the presence of the second case is a direct evidence of resistant antisocial

orientation of such person. Doubtless, factor directly influences the effectiveness of the combating crime. Moreover, when we speaking about evasion of punishment, not related to imprisonment, it points to increasing the degree social danger of such person. In addition to the observing, acts of the person indicates the growth of social danger. The matter is that for the previous criminal wrongdoings the court imposed a milder sentence than assignment for the evasion of punishment in future.

Therefore, the existence of criminal proscription of evasion of punishment is very important. In addition, the presence of such proscription directly affects the implementation of their reversible principle of punishment, and even for the effectiveness of countering crime in general.

Analys is of the evasi on punishment not related to imprisonment is particularly relevant in this context.

Perhaps we should also point out the fact that some issues of criminal liability for such acts were studied by such Ukranian and foreign scholars as E. Abdrahmanova, L. Bandolya, I. Bogatyreva, B. Botoyev, I. Vartyletska, O. Demidov, A. Dzhuzha, S. Ivanova, A. Kolosov, V. Kvashys, K. Maznyak, L. Safina, A. Timofeeva, V. Utkinand others. Despite the importance of the existing studies, we should say the researches does not completely show the features of criminal a menability for evasion of punishment not related to imprison mentunder the law so fforeign countries. According to this there is a need for a separate study characteristics of criminal responsibility for these acts under the law to foreign countries.

At first, we should find out the conceptual framework, which establish criminal amenability for evasion of punishment not related to imprisonment under the legislation of foreign countries. It is clear from the seobservations that invasion of punishment not related to imprisonment.

It means that the background for the pursuance of the comparative and judiciary research of the criminal liability for invasion of punishment not related to imrisonment is the determination of the conceptual principles of illegal activity the criminal law of foreign countries. At the same time, it is clear

that a comparative legal research cannot cover criminal law of foreign countries.

According to our opinion, we should draw attention to the criminal law of foreign countries, the legal system that is most similar to the legal system of Ukraine.

In particular, such as a country of continental Europe and countries which formed the part of the USSR.

Therefore, the aim of this work is to clarify the conceptual framework to establish criminal liability for evasion of punishment, not related to imprisonment under the law of continental Europe and other countries.

Analysis of the criminal law of foreign countries allows to state that criminal penalties for evasion of punishment exists in almost all foreign countries in one or another way.

Therefore, such criminal legal prohibition described in a separate article №389 of the Criminal Code of Ukraine. Evasion of punishment not related to imprisonment defined as a separate crime. At the same time, there are no provisions that deals with responsibility for evasion of these types of punishments in general part of Criminal Code of Ukraine, punishment of which the person evades.

Besides, the same approach applies in the criminal law of the Republic of Estonia, the Republic of Belarus, and Poland. The evasion of punishment not related to imprisonment, submitted in the special part of the Criminal Code of these countries. General part of the Code does not contain provisions, which makes it possible to replace the punishment of which the person evades. In other words, evasion of such punishments in the criminal legislation of the Republic of Estonia, the Republic of Belarus and Poland also identified as a separate offense. The description of the signs of the crime is also different.

However, description system of criminal legal prohibition for evasion of punishment not related to imprisonment is quite confusing and ambiguous in criminal legislation of other foreign countries. System of punishments of foreign countries is different because of its specificity (features of structure). Therefore, criminal legal prohibition of such acts not always find expression in special part of

Criminal Code. Namely, not all foreign countries identified such acts as a separate crime. It means that foreign legislation have liability for their commission. Such liability established by fixing general legal propositions (legal propositions of law in general part of Criminal Code) that gives opportunity to replace concrete punishment, not related to imprisonment for rather heavy punishment.

In such a case, provisions that make it possible to replace the punishment describe in the rule so regulations in individual chapters criminal codes of foreign countries. These rules defines the content and amount of punishment and dedicated to the general characteristics of criminal punishment. In particular, that approach reflected in the criminal law of Georgia, the Kyrgyz Republic, the Kingdom of Denmark, the Kingdom of Spain, Norway, Sweden, the Republic of Latvia, the Republic of Austria, the Republic of Azerbaijan, Bulgaria, Armenia, Kazakhstan, Moldova, Tajikistan, Uzbekistan, Russia, the Republic of Turkey, Turkmenistan, the Federal Republic of Germany and Switzerland.

Measures that describes the substitution of punishment, not related to imprisonment are different. Conceptual foundations of fixing legal prohibition of such evasion are the only one.

It should be noted that the maximum similarity in the description of the changes in punishments in case of evasion their execution, is seen in the criminal legislation of countries which were in the part of the USSR.

To our opinion, this is due to the orientation of legislators of the provisions of the Model Penal Code for the State of the Common wealth of Independent States and the provisions of the Criminal Code of the Russian Federation.

Besides, the similarity of the provisions set in the criminal law of Georgia, the Kyrgyz Republic, the Republic of Latvia, the Republic of Azerbaijan, Armenia, Kazakhstan, Moldova, Tajikistan, Uzbekistan, Russia and Turkmenistan, we can see because of the legal prohibition evasion of punishment not related to imprisonment secured through the provisions of the General Part, while the responsibility for evasion of punishment associated with imprisonment, set in specific part of Criminal Code.

There is some ambiguity existing approaches for fixing criminal liability for evasion of different punishment in legislation of these countries.

More over, the article of the criminal law of these countries separately assumed amenability for wilful default or evasion of the judgment court. Partly this approach is available in the criminal law of other foreign countries.

We can distinguish the mixed approach to establish the criminal liability for evasion of punishment not related to imprisonment during of our research of the criminal law of foreign countries. Criminal liability for the evasion of certain types of punishment not related to imprisonment, are in Individual part of Code and for the evasion of others punishment in the General part of the Code. That will be the essence of this approach. That depends from the type of punishment. Evasion from serving can recognize as a separate crime or as a ground for replacing of the punishment to rather heavy one.

This approach exists in the criminal law of the Netherlands, the Republic of Lithuania and the French Republic. For example, ch. 1, art. 24 of the Criminal Code of the Netherlands implies the necessity to replace the penalty of a fine, if it is not paid, for the custodial punishment. At the same time, art. 195 of the same Code provides the responsibility for the implementation of law, which is prohibited by court order. The articles of the Criminal Code of the French Republic 434–38–434–41 set the evasion of punishment in the form of prohibition appearance in certain places, the disclosure of a verdict of guilty and deprivation of some rights. Article 131–25 of the Criminal Code of the French Republic describes grounds replacement of unpaid fines compulsory imprisonment. In the art. 243 and art. 244 of the Criminal Code of the Republic of Lithuania established the evasion of serving the punishment or other sanctions not related to imprisonment, as well as serving the punishment appointed to the legal person. At the same time, art. 46 and Art. 47 Criminal Code of the Republic of Lithuania defines the grounds replacing punishment in the form of social works and a fine, provided evading their execution, to rather heavy types of punishment.

Thus, we can formulate the following conclusions on conceptual framework to establish criminal liability for evasion of punishment, not related to imprisonment under the laws of foreign countries.

The approach for establishing responsibility for examining acts in the criminal law is not the only one. We can distinguish three conceptual approaches fastening (description) prohibition of the criminal law for evasion of punishment, not related to imprisonment:

1. Criminal liability for such actions assumed only in the Individual part of the Criminal Code. The articles of the General Code have no direct reason for replacing punishment not related to imprisonment, which person deviates from, for rather heavy one. For example, criminal law of the Republic of Estonia, the Republic of Belarus, Poland and Ukraine.

2. Responsibility for evasion of such punishments is not expected separately in the Individual part of the Code. According to the norms of the General Part, evasion recognized as reason for replacing punishment, which avoids the person to a rather heavy punishment. In individual articles of the Code the evasion of serving the punishment connected with imprisonment and by default or evasion from fulfillment the decision or a court verdict may be envisaged separately. For example, the criminal laws of Georgia, the Kyrgyz Republic, the Kingdom of Denmark, the Kingdom of Spain, Norway, Sweden, the Republic of Latvia, the Republic of Austria, the Republic of Azerbaijan, Bulgaria, Armenia, Kazakhstan, Moldova, Tajikistan, Uzbekistan, Russia, the Republic of Turkey, Turkmenistan, the Federal Republic of Germany, Switzerland.

3. Failure to implement certain types of punishment not related to imprisonment is a ground provided for in the articles of the General part of the Code to replace such punishments on a rather heavy, while for evasion of other types of punishment not related to imprisonment, responsibility assumed in the article of the Individual part of the Code. For example, the criminal law of the Netherlands, the Republic of Lithuania and the French Republic.