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Ekaterine Akhalkatsi*

Fine – as a Rule of Execution of a Sentence

Pursuant to the Georgian Criminal Code, fine is one of non-custodial penalties, which – based on the Court decision – may be awarded as the primary or additional penalty. Enforcement of the fine bears importance not only for the purpose of enforcing penalty but for achieving substantial goals of the punishment as such.

Key words: *Sentence, penalty, enforce (enforcements), solve (solving) a legal issue, interpretation of a legal provision.*

1. Introduction

Criminal Code of Georgia establishes and regulates responsibility for committing an illegal and guilty act. "Goal of criminal justice is to combat socially dangerous acts thus protecting peaceful coexistence of people"[1], and for commitment of illegal act it is necessary to establish relevant responsibility as well as kpunishment. "Punishment (penalty) is a compulsory measure of the state imposed on behalf of the state of Georgia as a guilty verdict for commitment of an offence, and it is always linked to restriction of human rights and leads to criminal history"[2].

Punishment (sentence) is applied for purposes of achieving various goals and the sentence imposed for the crime committed shall be a remedy for achieving such a goal; the Court defines the punishment in consideration of the goal to be achieved[3].

One of penalties under the Criminal Code of Georgia is a fine, which may be imposed as a primary, as well as a supplementary, penalty. LEPL National Enforcement Bureau is assigned a function of oversight over payment and enforcement of imposed fines. The Enforcement Law regulates matters like enforcement procedure, statute of limitation as well as termination of enforcement.

Purpose of the article below is to review a fine as one of types of penalties and its enforcement. The article reviews matters like meaning and goal of the fine, its history and practice of the European Court for Human Rights (ECHR). The last part of the article speaks about pressing issues in the area and contains specific recommendations on use of fines as a punishment and optimization of provisions regulating enforcement of such. Concluding part is meant to identify legislative gaps and solutions.

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* Doctoral Student and Visiting Lecturer at Ivane Javakhishvili Tbilisi State University, Faculty of Law; Lawyer at National Bureau of Enforcement of Georgia.

1 *Mchedlishvili-Hedrich K.*, General Part of Criminal Law, Part I, Tbilisi, 2014, 7, Field 5 (in Georgian).

2 *Dvalidze I.,* General Part of Criminal Law, Punishment and other Criminal Outcomes, Tbilisi, 2013, 14 (in Georgian).

3 *Tskitishvili T.,* Proportionality of Punishment, Criminal Law Liberalization Trends in Georgia, Tbilisi, 2016, 187 (in Georgian).

2. Fine as One of Penalties as per Ancient Georgian Law

Offence, punishment and matters pertinent to their correlation are issues reviewed in the monuments of the Georgian Law "….that should have happened to the offender for the crime committed or accomplice actions by the decision of the court was known as "punishment" (penalty)"[4]. In addition to "punishment" the ancient Georgian law knew other terms like "blood" and "retribution". "Blood" represented property (material) requital, which an offender paid to the victim or his/her family; and "retribution" had a meaning of deserved punishment (the bad received deserved punishment)[5]

From early ages of the development of law any act considered as an offence was subject to punishment. The more public relations developed, the more was the number of offenders and offences, which, of course, led to change of types of punishment. Various types of punishment (criminal or property) were known not only to laws created by states, but to customary law as well[6].

In the old Georgian criminal law Ivane Javakhishvili defines various types of punishment; according to the classification of the author, one group of punishment was more material (property) in nature and he explained it as follows: for certain types of offences, the state would impose payment of compensation to the victim (or his/her relations), court, feudal lord and/or state.

Before Moguls invasion in Georgia, united Feudal Georgia had a concept of property compensation in favour of state, feudal lord or court; the story of "seven" is interesting in this regard; according to it, the stolen subject would be returned to the victim, or its cost would be compensated, and the thief would additionally pay in favour of the state a sevenfold cost of the stolen thing.

In addition of the rule of "seven" we also see the rules of "three" or "five". Thus, in Georgia of the 12th century the proprietary was considered as a public punishment for commitment of the property crime. However, after Moguls invasion the main punishment became "redemption" or property compensation[7].

Article 117 of the Book of Law of Bagrat Kurapalat, establishes punishment for intentional murder in amount of the cost of one house and 12 000 Tetris, and Article 107 envisages an apology and payment of 20 000 Tetri in case the landlord curses and uses foul language with regard to bishop[8].

"Dzeglisdeba" of Giorgi Brtskinvale broadly applies compensation by property for murder offences, but that punishment is paid not in favour of the state but is used for victim's needs[9]. In such a case proprietary is private in nature.

As of 16th century, the punishment becomes more severe; the fine becomes a public payment at that time and is paid by an offender in favour of the state. Law of Vakhtang VI envisaged various offences, including those which did not allow redemption; such offences included disclosure of

4 *Javakhishvili Iv.,* History of Georgian Law, B. 2, Section 2, Tbilisi, 1929, 503 (in Georgian).
5 *Vardzelashvili I.,* Goals of Punishment, Tbilisi, 2016, 9 (in Georgian).
6 *Abramishvili L.,* Punishment prescribed for Bribery according to Old Books of Law of Georgia, "Journal of Law", № 1, 2011, 5.
7 *Metreveli V.,* History of the Georgian State and Law, Tbilisi, 2003, 257-158 (in Georgian).
8 Ibid, 273-275.
9 Ibid.

military secrets (article 221); however, article 173 envisaged the following: "…if anybody steals or misappropriates anything, then he shall pay 6 tenners as a public fine and return a stolen thing to its owner". Article 242 of the Law of Vakhtang VI envisages a fine for blanket snatcher, but a fine here is not a public penalty, as it is given to the victim[10]. As we see, at that time, a fine is as public as well as private remedy and the offender had an obligation of repairing damages, returning of stolen things or compensating their cost; at the same time reparations/retributions were paid to the state as well.

"Torment by fines" (same as fine) was caused by: arbitrariness, false accusation, slander, violation of articles of war, baring sword in the fist-fight. Together with public, private (ownership) fines existed, too. King, as well as courts and landlords and masters defined and imposed fines on "ignominious men". Fines paid in favour of the state (i.e. King or Queen) was left to care of a special person or "plant" (i.e. warehouse). Payment of fine was ensured (enforced) by feudal lords' bailiffs (estate managers) or other servants, who were entitled to a share of the paid fine – for being "mean men"[11].

Georgian customary law contained the most common proprietary punishment for private offences. Payment of property fine – retribution – was possible in kind, or money had to be paid. Namely, in mountainous regions of Eastern Georgia cattle was used for payment of fines, in Svaneti – it was land; commodities, which were common in those areas. Cattle and land were used as equivalent to payment of fine. In Svaneti, Pshav-Khevsureti and Tusheti a fine for murder was pre-defined. In Pshav-Khevsureti it was called "tavsiskhli" and in Svaneti – "Tsori". In Mtianeti and Svaneti they had a whole system of proprietary retributions for wounding and injuring, as well as for other felonies. Fine was quite a common type of retribution. It was mainly imposed in case of public/societal offences, but it could have been imposed in case of private (proprietary) violations, too; such fines were paid either in favour of the state or a private person. "Darbeva" (ravaging) is one of the forms of fines. This term is used to indicate the form of recovering the payment. During "darbeva" people (or their representatives) would withhold cattle, wine or other products from the house of the fined person without permission of an owner and then the whole community would feast on it. Other proprietary types of retribution are seen in various corners of the country and used in separate cases"[12].

Soviet Criminal Law envisaged not only requital, but correction of an offender and prevention of an offence. Well-known Russian scientist Tagantsev clearly indicated at the fact that in its content and meaning an offence is like Roman Pantheon God – two-faced Janus: with one face looking back to the past – already committed crime and its subject; and with the other looking forward – to correction of the offender for him/her to not reoffend in the future after discharging the punishment.

"Historic-legal analysis allows to say that the fine in criminal law has established itself as an alternative to classical punishment (deprivation of liberty, capital punishment, etc.). Application of the

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10 Ibid, 264.

11 *Putkaradze I.,* Georgian Soviet Encyclopedia, V. 11, 541-542, Tbilisi, 1987, 541-542 (in Georgian).

12 *Davitashvili G.,* Crime and Punishment in the Georgian Customary Law, "Journal of Law", № 2, 2011, 290-291.

fine as an alternative sanction is associated with certain proprietary (monetary) losses, which is considered as sufficient and adequate by the state".[13]

3. Fine as a Primary and Supplemental Punishment and its Goals

For every specific offence, a legislator defines not only a sanction or criminal responsibility but limits of the sanction as well; for sentencing purposes the judge usually uses the established boundaries; therefore, it is impossible to impose a sentence which is not prescribed by law; there is no punishment without the law – "*nulla poena sine lege*"[14]. Obligation of legal determination applies to criminal sanctions, too.

Punishment, as the negative response of the state to guilty criminal injustice, as well as its type and measures, shall be determined by legislation, and in case of violation of the law, the established sanction shall be predictable for the addressee[15].

System of punishment with specific types of punishments is exhaustively described in Article 40 of the Criminal Code. Namely, the types of crimes are: fine, removal from position or restriction of activities, community work, correctional labour, restriction of military service, deprivation of liberty, term or life-time imprisonment, property confiscation.

It shall be noted that criminal legislation distinguishes between primary and supplemental/additional punishment. Pursuant to Article 41 of the Criminal Code, a fine is attributed to both, primary and supplemental, categories of punishment.

As to limits of criminal responsibility, it represents the discretionary limits for judges to assess guilt and crime.[16] Legislative limits of punishment represent the foundation on which specific punishment is built[17]. At sentencing the judge first of all takes into consideration punishments prescribed by law, then limits of such a punishment, and, in addition, circumstances under the Article 53 of the Criminal Code of Georgia, like gravity of the act, personality of the offender, etc. Punishment imposed by the judge shall ensure goals of punishment as prescribed by the Article 39 of the Criminal Code (restoration of justice, prevention of re-offence and resocialization of the offender). "In the process of sentence individualization, and in order to ensure fair punishment it is crucial to apply correct principle of selecting relevant punishment, which is an important guarantor of principle of fairness"[18].

"Fine is explained as an ideal criminal sanction from liberal point of view. It is given a priority among other sanctions since its enforcement is possible by means of saving state resources and by

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13 Decision № 3/2/416 of July 11 2011, The Constitutional Court of Georgia, "Public Defender of Georgia vs. Parliament of Georgia", para 49.

14 *Turava M.*, Overview of the general part of the Criminal Law, 9th ed., Tbilisi, 2013, 353 (in Georgian).

15 See, BverfGe 105, 135.

16 *Viktor A.,* Geburt der Strafe. Klostermann, Frankfurt am Main, 1951, 81.

17 Zipf/Dölling, in: *Maurach R. V., Gössel K. H., Zipf H.,* Strafrecht, AT, Teilband 2, 8. Aufl., Heidelberg, 2014, 762, §62 Rn. 60.

18 *Lekveishvili M.,* Goals of punishment and criminal and criminological aspects of sentencing, "Justice and Law", № 4(43) 14, 2014, 22 (in Georgian).

imposing less damage and burden on law enforcement authorities. For purposes of criminal justice, the fine has a punishing effect and it is individualized with the focus on individual offence/charges. Fines are used individually for the offender by means of restriction of rights, and recovery of property (money)"[19].

According to Article 42 of the Criminal Code of Georgia, the fine is a monetary sum minimal amount of which constitutes GEL 2 000. However, if the sanction under the relevant provision of the Criminal Code envisaged a punishment of liberty deprivation for up to three years, then the minimal amount of the fine would constitute GEL 500. Generally, a problem of Georgian Criminal law is that it establishes only a threshold – minimum amount. Law does not establish ceiling and it may contradict the principle of predictability of punishment.[20] German criminal law also establishes the maximum amount of the fine and the court defines its exact amount by taking into consideration gravity of the offence and financial conditions of the offender. It is interesting to know that this type of punishment may be used by the judge as a primary or supplemental punishment. In addition, such a punishment can be used in cases where the relevant provision of the Criminal Law does not envisage the fine, except for some exceptions[21]. As indicated in legal literature, the fine historically was considered as an expression of the principle of composition and it has been called "retribution"[22].

Fine as an effective type of punishment that fully responds to the principle of inevitability of punishment, since based on the gravity of committed crime, the offender shall be given a sentence/verdict proportionate to his/her crime and it should be fair[23]. Minimum UN standard (Tokio rules) speaks about meaning of fixed fines since their application will help avoid difficult questions regarding the amount of fine to be applied in a specific case. [24] However, at the same time the document indicates that such fixed (flat-rate) fines are more complex and are a heavier burden on poor people rather than rich. Therefore, equality requires the Court to study income of the offender. This ensures rough equivalency between offenders with different financial conditions.[25]

Pursuant to Article 39 of the Criminal Code purpose of punishment is restoration of justice, prevention of re-offence and resocialization of an offender. Almost no country in the world has a criminal law requiring affirmation of punishment goals at the legislative level. For instance, the law of Germany does not contain a similar record.[26] Considering all that it could be said that the goal of punishment is not to torment an individual, neither it is to damage dignity of the person. By using the

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19 Decision № 3/2/416 of July 11 2011, The Constitutional Court of Georgia, "Public Defender of Georgia vs. Parliament of Georgia", para. 50.

20 *Adrian L.,* Speichern und Strafen. Die Gesellschaft im Datengefängnis, C. H. Beck, München, 2019, 5.

21 For instance, this principle does not apply to domestic violence cases.

22 *Tkesheladze G.,* General Part of the Criminal Justice, Text-book*, Nachkebia G. (ed.),* Tbilisi, 200, 358 (in Georgian).

23 *Ivanidze M.,* Trends of Criminal Law liberalization in Georgi, *Todua N. (ed.)*, Tbilisi, 2016, 322 (in Georgian).

24 *Winfried H.,* Warum Strafe sein muss. Ein Plädoyer. Ullstein, Berlin, 2009, 15.

25 United Nations Office On Drugs and Crime, Handbook of basic principles and promising practices on Alternatives to Imprisonment, Vienna, 2007, 29-30.

26 *Friedrich K.,* Etymologisches Wörterbuch der Deutschen Sprache. Walter de Gruyter Verlag, Berlin, 1963, 31.

punishment, the state protects an individual, society and their rights from criminal breach[27]. Constitutional Court of Georgia indicates that in a democratic society the basis and the goal of which is a free man, torture, inhuman, violent or degrading treatment of an individual is impermissible. Therefore, authorities or a law that allows for torture, inhuman and degrading treatment, may not create, protect or ensure democracy in the country.

Application of punishment requires certain resources and because of that the state costs are high.[28] It is especially visible in countries which do not have economic stability and thus, have high crime rates. For instance, custodial sentences require high expenditures by the state, as their execution require construction and relevant arrangement of prisons and other correctional facilities. In addition, such facilities are serviced by personnel whose remuneration is also an additional cost[29].

4. Decisions of the European Court for Human Rights on Use of Fines as a Measure of Punishment

In the case *Mamadakis v. Greece* a Greek national was an applicant; he was a Director of the Oil company Mamidoil-Jetoil SA. In 1997 the Court imposed on him a fine in amount of EURO 3,008,216 for contraband of oil products and violation of customs regulations; total of EURO 4, 946, 145. The applicant appealed to the amount of the fine; the Supreme Court did not uphold the appeal. The applicant stated to the European Court for Human Rights (hereinafter ECHR) that this excess amount of fine violates Article 6 of the European Convention (the right to fair trial) and 1st Additional Protocol to the Convention (protection of property).

The Court stated that goal pursued and the imposed measure shall be proportionate. The restriction in the case under review was envisaged by law and was justified by public interest, namely, by combating smuggling. As to interference with the Applicant's right and protection of common interest and proportionality thereto, the Court decided that the imposed fine was disproportionately high. Despite the fact that the state has a freedom in assessing such issues, considering financial stands of an applicant, the imposed fine was deemed as disproportionate for achieving the goal. Therefore, the Court unanimously decided on violation of provisions of the 1st Additional Protocol[30].

In the case *Grifhorst v. France* the applicant stated that at the border crossing from France to Andorra he did not declare to Customs Officers the amount that he had on him as requested (EURO 233,056). The applicant was found guilty for failure to abide by requirements of the Customs Law and based on the same Law he was deprived of this amount (which he did not present to the Customs); in addition, the Court imposed a fine in amount of half of the seized sum of money as well as imprisonment. The applicant argued before the Court that Art. 1 of the 1t Additional Protocol of the Convention has been violated. The Court indicated at the standards established in many prior decisions that fair balance shall be kept between restricted rights and the achievable goal. In addition, the Court

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27 *Gamkrelidze O.,* Explanation of the Criminal Code of Georgia, Tbilisi, 2008, 49 (in Georgian).
28 *Janusz K.,* Wie man ein Kind lieben soll, Göttingen, 1978, 111.
29 *Gamkrelidze O.,* Problems of Criminal Law, Vol. III, Tbilisi, 2013, 11 (in Georgian).
30 Case of Mamidakis v. Greece [11.01.2007], ECHR, App. №35533/04.

underlined that the State has a freedom to assess, define types of fines and decide whether the imposed sanction serves public interest and achievement of the goal determined by the law.

ECHR noted that the fine was prescribed by the Law, which met requirements of the Convention. However, the Court focused on proportionality of sanctions imposed by State and deemed that fair balance was not achieved – fine and other sanctions were disproportionate to committed act. Thus, the Court established violation of the Art.1 of the 1st Additional Protocol to Convention[31].

Unlike cases described above in case of *Konstantin Stefanov v. Bulgaria* the Court did not establish violation of the Art. 1 of the 1st Additional Protocol to the Convention.

The Applicant was a Bulgarian lawyer who was to pay a fine of EURO 260 for refusing the client his legal services. The Applicant stated that this fine violated Art. 1 of the 1st Additional Protocol of the Convention. The Court found that amount the Applicant was to pay as fine is a property, therefore Art. 1 of the 1st Additional Protocol to Convention shall apply. It falls under the part 2 of the named article, which gives the state a right to restrict use of property to ensure payment of a fine. As to legality of restriction, the Court noted that the national court fined an applicant based on the national legal provision, which was a part of the Criminal Procedural Code. ECHR deemed that the law met requirements of the Convention and that the fine was not arbitrary. Also, the applicant had procedural guarantees to appeal to the decision of the fine. In the end it was found that the fine was not strict or disproportionate, but served public interests. Considering all these aspects the Court established that there was no violation of the Art. 1 of the 1st Protocol to Convention[32].

Analysis of above cases shows that by hearing possible violation of guaranteed by the Convention rights to imposition of fines, the Court takes into account proportionality of the imposed fine for achieving the relevant goal; it also pays attention to issues like fair balance between the achievable goal and the imposed sanction. As mentioned above, the ECHR holds that the matter under question falls under the field of free assessment; however, it constitutes a violation anyhow if and when the restriction fails to meet requirements of the Convention, despite the fact that at one glance, the ECHR recognizes discretion of states in defining amount of the fine, but it also states that the imposed monetary liability shall be proportionate.

On March 9 2005 citizens of Georgia Amiran Natsvlishvili and Rusudan Togonidze filed an application with the ECHR against Georgia on violation of Article 34 of the Convention on Human Rights and Fundamental Freedoms. Applicants stated that by using the plea bargain for them, the Article 6.1 of the Convention and Art. 2 of the 7th Additional Protocol were violated. In addition, applicants claimed that presumption of innocence and Art. 1 of the 1st Additional Protocol were violated in case of the 1st Applicant. Applicants claimed that the state had violated provisions of the Article 34 of the Convention.

Both applicants claimed that by forceful compensation of damages and, in lieu of the fine, termination of the criminal case, Art. 1 of the 1st Additional Protocol to the Convention was violated.[33]

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31 Grifhorst v. France [26.02.2009], ECHR, App. №283362.

32 Konstantin Stefanov v. Bulgaria [27.10.2015], ECHR, App. №353399/05.

33 "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law

The Court explained that based on the plea agreement, compensation of damages and other monetary payments derived from criminal responsibility of the first applicant; such monetary payments may not be separated from fairness of the plea agreement. Thus, the Court held that there was no violation of the Art. 1 of the 1st Additional Protocol to the Convention.[34]

5. Fine Enforcement

Law of Georgia "On Enforcement" regulates fines enforcement procedures, related statute of limitation and termination of enforcement. Article 2.b of the Law states that the Law applies to judicial decisions in force with regard to natural and/or legal persons prescribing payment of the fine as a form of punishment"[35]

In the process of enforcement of cases under this category, the bailiff uses coercive mechanisms provided by this Law, including proposals to debtors on voluntary compliance, inquiries into property of the debtor and application of lien, registration of the debtor in the debtors' database, requests the debtor for submission of the comprehensive property list. If the debtor fails to voluntarily comply, i.e., pay the imposed fine, the Bailiff may sell the property of the debtor through the auction and transfer the recovered amount in favour of the state budget.

It shall be noted that provisions of the Law "On Enforcement" envisages transfer of the bail of the offender to the state budget, namely, in accordance with the Article 28^1, the National Enforcement Bureau shall execute the writ within 10 days upon its submission based on the consent of the offender and written agreement on payment of the bail (and if the payer of the bail is the offender him/herself or bail is paid in the name of the offender – without his/her consent) and the amount of the fine shall be deposited to the deposit account as prescribed by this Law.

It shall also be noted that below is given statistical data on information requested from the National Enforcement Bureau, containing the list of pending and completed cases by types of payments between 2014 and July 1, 2018:[36]

Year	Number of received cases	Number of completed cases
2014	8355	6807
2015	8182	9047
2016	8426	7429
2017	7389	6252
2018 (till July 1)	2890	2629

and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

34 Natsvlishvili and Togonidze v. Georgia [25.06.2013], ECHR, App. 9043/05.

35 See, Law of Georgia on Enforcement, Legislative Herald of Georgia, 14/04/1999.

36 Letter of National Bureau of Enforcement of Georgia № 81781 of November 26, 2018 – the request for public information on criminal cases.

Given figures do not indicate grounds for enforcement in specific criminal cases – in accordance with provisions of the Article 28[1] of the Law on Enforcement cases were subject to enforcement.

Termination of enforcement of pending cases is regulated by Article 34 of the Law on Enforcement. Namely, in accordance with the named article's paragraph 1.e, enforcement may terminate for a reason of statute of limitation on enforcement; or if 10 years have passed after commencement of enforcement, except alimonies, labour related disability or other injuries, claims on compensation based criminal or administrative offences, as well as enforcement of cases in favour of the state, autonomous republics or local budgets.

Thus, mentioned provisions are established for possible termination of enforcement in case of expiration of established deadlines (article 34.1.e), and, on the other hand, for termination of cases requiring proceedings in favour of the state budget or budgets of autonomous republics or local self-governance institutions after passage of 10 years as established by law.

It shall be noted that there was an instance at the National Enforcement Bureau, when the Debtor requested termination of the case based on Article 34.1.e of the Law on Enforcement, due to statute of limitation for enforcement of the offence under the Article 76.1 of the Criminal Code of Georgia.[37]

Bailiff filed a motion with the Tbilisi City Court and requested exemption of the offender under the Article 76.1.c of the Criminal Code of Georgia from additional penalty.

Tbilisi City Court rejected motion of the bailiff. Decision of the City Court was appealed to the Tbilisi Court of Appeals, which admitted the appeal and the debtor (offender) was exempted of the fine payment. The Court of Appeals indicated at the circumstance that the 6 years period established for enforcement of the lawful judicial decision under the Article 76.1.b of the Criminal Code of Georgia has expired and therefore, the defendant shall be released of an obligation to pay a fine as an additional punishment. This aspect became a basis for termination of the enforcement case as prescribed by the Article 34.1.e of the Law on Enforcement[38].

The Court of Appeals took into consideration provisions of the Article 34.1.e of the Enforcement Law of Georgia.[39] The Court indicates that although definition under the mentioned provision somewhat contradicts provisions of the Article 76.1.b but despite such a contradiction, the Chamber held that for making a decision it should have been guided by the Criminal Code of Georgia, which is more humane and which does not contain any reservations, thus the right of a defendant shall not be restricted as guaranteed by this Law.[40]

In analyzing a fine from the point of view of punishment and enforcement, it would be interesting to get acquainted with interpretations provided on April 14, 2014 by the Supreme Court of

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37 Enforcement shall be terminated, if the statute of limitations for enforcement of the enforceable decision has expired.

38 In the case of expiration of the enforcement deadline.

39 According to which enforcement shall be terminated if 10 years elapsed after commencement of enforcement except for cases concerning alimonies, labor related disability or other injuries, claims on compensation based criminal or administrative offences, as well as enforcement of cases in favor of the state, autonomous republics or local budgets.

40 Ruling № 1b/531-17 of August 1, 2017, Tbilisi Court of Appeals.

Georgia. The above-mentioned interpretation of the Supreme Court of Georgia concerns addition of the additional penalty to the previous penalty awarded by the court in case of unity of judgments[41]. By decision of the Tbilisi City Court from October 28 2009, accused was sentenced to 3 months of imprisonment (as a provisional sentence, with 1 year of probation) and a fine in amount of GEL 2000 was used as an additional penalty.

The same Court adopted a decision on April 29 2019 with regard to the same accused and sentenced a defendant to 1 year of imprisonment for the crime committed under the article 273 of Criminal Code of Georgia. According to the court decision accused had to spend 3 months in the penitentiary facility and the remaining 9 months were to be served as a provisional sentence with 1 year and 9 months as probation. In addition, pursuant to Art. 67.5 of the Criminal Code of Georgia, the Court abolished part of the previous sentence – provisional sentence – and the unserved part of 3 months were added to the new penalty; as a result of unity of judgments, accused was sentenced to 1 year and 3 months of imprisonment. Out of this term, the defendant had to spend 6 months in a penitentiary facility and remaining 9 months were considered as provisional punishment with 1 year and 9 months of probation.

Neither the Tbilisi City Court (February 21, 2014) nor the Tbilisi Appellate Court (March 18 2014) approved the plea agreement between accused and the Prosecutor's Office.

Chamber of Cassations of the Supreme Court of Georgia explained that according to provisions of the Article 59.2 of the Criminal Code of Georgia, in deciding on a final verdict based on unity of cases, in this particular instance the Tbilisi City Court should have applied not only the primary punishment but also the additional penalty – the fine. Certainly, in this case D.K. never paid the fine since only unpaid fine could have become a subject to interpretation by the Supreme Court. The Supreme Court of Georgia also clarifies that according to Article 59.3 of the Criminal Code of Georgia, the 1st instance court should have added the fine of GEL 2000 from the previous sentence, which was not the case. Namely, the Court abolished the previous decision only the part of provisional sentence and never discussed an additional penalty of the unpaid fine. Thus, the judgement of the Criminal Chamber of the Tbilisi City Court from October 28 2009 is not enforced in the part of the fine. In opinion of the Chamber of Cassations, if the Criminal Collegium of the Tbilisi City Court in a new judgment from April 29 2010 took into account the fine from the previous decision (which would have been enforced by now) then the Court would have been authorized to approve a plea agreement between the Defendant D.K. and the Prosecutor's Office in a presented form. Therefore, the Supreme Court did not admit the cassation petition of the Prosecutor's Office, thus not approving the plea agreement between the defendant and prosecution.

In addition, the Cassations Chamber explained that if the defendant was sentenced to imprisonment in case of the guilty verdict in a new case, based on the motion of the Chair of the Penitentiary Department and the place of the sentence service, the 1st instance Court would review all unexecuted judicial decisions based on Article 286 of the CPC of Georgia. Even if the person is sentenced to non-custodial penalty, all un-executed non-custodial decisions under this or previous

[41] Decision № 2K-100AP-14 of April 14, 2014, The Criminal Chamber of the Supreme Court of Georgia.

judgments were to be enforced by the Enforcement Bureau or the National Bureau for Probation as prescribed by the Law on Enforcement and the Law of Enforcement of Non-Custodial Penalties and Probation.[42]

6. Conclusion

Fine is penalty prescribed by Law, which may be used as a primary penalty against a person infringing the law. In using this type of punishment, various aspects and factors shall be taken into consideration. The Judge, as a person deciding the case takes into consideration all relevant circumstances as well as proportionality of the penalty.

The fine may be imposed as an additional/supplemental or as a primary penalty; however, it is not indicated that in case of application of the fine as a primary penalty, a fine as an additional penalty may not be used – which is a legislative gap – because if the fine is a primary penalty, then it may not play a role of an additional penalty.

According to the Criminal Code of Georgia, imposition of several additional penalties is possible, but the law does not indicate what other additional punishment it can be combined with. It is not advisable to use a fine and a community service together because the community service – as a rule – is imposed on those unable to pay a fine. Also, as a rule, the fine shall not be imposed if imprisonment is used as the primary penalty; clearly, in such a case exists a risk of imposing a disproportionate penalty. There is an exception, however, and that concerns unlawful enrichment or an attempt of such.

Fine, as a rule, is imposed in misdemeanor cases, where compensation of damages is impossible. The fine shall not be used as a primary penalty in grave crimes. This is why an approach of the law – for instance, Article 180.3 of the Criminal Code of Georgia – is unacceptable as the law prescribes imprisonment for a term of 6-9 years. It is unacceptable to use a fine as an alternative to imprisonment. Criminal Code of Germany distinguishes between misdemeanor and a criminal offence and the fine is used only in misdemeanor cases.

When a person fails to pay a fine, it is then replaced by other penalty and the Criminal Code offers a calculation rule for cases like that; but the law does not offer any solution for cases where the fine is replaced with imprisonment. Quite problematic are cases there the fine is replaced with imprisonment in cases (articles) which do not envisage imprisonment as a form of punishment. It may contradict the principle of lawfulness. If the fine is not paid, an individual's criminal history may not be erased since no record is made to start a criminal history countdown.

It shall also be noted that imposition of penalty only is not sufficient for its enforcement; imposition of the fine is just one part accompanied by the other – enforcement, and that requires additional procedures.

As a conclusion it may be said that the statute of limitations for enforcement of fines imposed in the area of criminal law and termination of enforcement, therefore, is not clearly regulated by the Law

[42] Decision № 2K-100AP-14 of April 14, 2014, The Criminal Chamber of the Supreme Court of Georgia, see <http://www.supremecourt.ge/files/upload-file/pdf/n63-mnishvnelovani-ganmarteba.pdf> [02.06.2020].

of Georgia on Enforcement and in this regard, this Law is rather vague. Therefore, we believe that the given matter requires legislative corrections and improvements to ensure that the debtor's as well as defendant's rights are duly protected if the reason for termination of enforcement – statute of limitation – exists; on the other hand, the enforcement legislation establishes a possibility of infinite enforcement procedures.

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