Criminal and Legal Protection of Binding Nature of Court Decisions in the Republic of Azerbaijan and Ukraine

Vusal Ahmadov
PhD in Law,
The Head of Research and Judicial-Precedent Department of the Academy of Justice of the Ministry of Justice of the Republic of Azerbaijan,
Azerbaijan

Criminalization of encroachments on social relations while implementing the principle of the unavoidability of legal liability is an important element of criminal and legal protection of justice.

According to the Criminal Code of Ukraine the crimes of this group are the following: failure to comply with a judgment (the Art. 382), illegal actions in relation to a property, which is seized or distressed, or subjected to confiscation (the Art. 388), evasion of any punishment other than imprisonment (the Art. 389), deliberate non-execution of an agreement on reconciliation or a plea bargain (the Art. 389[1]), evasion of restraint of liberty or imprisonment (the Art. 390), persistent disobedience to authorities of a correctional institution (the Art. 391), disorganization of activity of correctional institutions (the Art. 392), escape from a penitentiary institution or custody (the Art. 393), escape from a specialized treatment facility (the Art. 394), violation of rules related to administrative supervision (the Art. 395)[1].

In accordance with the Criminal Code of the Republic of Azerbaijan the crimes of this group are the following: illegal actions in relation to a property, which is seized or distressed, or subjected to confiscation (the Art. 303); escape from a penitentiary institution or custody, or prison breaking (the Art. 304); evasion of restraint of liberty or imprisonment (the Art. 305); failure to comply with a judgment, order of a court or other court rulings (the Art. 306)[2].

Majority of scholars consider social relations on judicatory activity and justice interests regarding proper service of sentences on restraint of liberty or imprisonment and normal activity of penitentiary institutions, as

[1] Уголовный кодекс Украины: Закон Украины от 05.04.2001 № 2341-III // Ведомости Верховной Рады Украины (ВВР). – 2001. – № 25-26. – Ст. 131.

[2] Уголовный кодекс Азербайджанской Республики: по состоянию на 01 февр. 2017 // Собрание законодательства Азербайджанской Республики. – 2000. – № 4. – Ст. 251.

a generic object of crimes violating the service of sentence in special institutions.[3]

However, the mentioned position is not a dominating one. Often the generic object of these crimes is defined by fundamentals of state administration and civil security; fundamentals of state administration and civil order protection; defense of public order and civil security. Such diverse approaches to the definition of generic crime's object are primarily determined by the complicated structure of studied crimes. This crime has encroached not only on one object, but several objects of criminal and legal protection. Apart from the mentioned objects of criminal and legal protection, these crimes may harm people's life and health, property relations, sexual freedom, liberty, honor and dignity and others, which will be considered optional direct objects within the specified crimes.

Besides, it's worth mentioning the influence of Soviet criminal legislation, under which the above mentioned crimes were referred to the crimes against the state security, but public order and civil security were considered as additional direct objects. Since Ukrainian law-maker subsumed in 2001 these crimes to the Section "Crimes against Justice" of the Special Part, the issue of generic object determination was voided. Along with this, nowadays the legislator of the Republic of Azerbaijan foresees the crime "violation of regular activity of penitentiary institutions or investigation cells", i.e. the threat of violence against officers of penitentiary institutions or investigation cells, as violence against such persons that is dangerous or not dangerous for their life or health in the Chapter 34 of the Criminal Code of the Republic of Azerbaijan "Crimes against Administrative Order" (the Art. 317).

In our opinion, the idea to include crimes that violate the execution of sentences to the group of crimes different from the crimes against justice is based on the "narrow" understanding of justice. Instead, we are confident that the process of justice lasts longer than the trial itself and it covers also pre-trial investigation and subsequent execution of a punishment. Taking into account that mentioned crimes are aimed at disruption of sentence execution, hence they encroach on the principles of the unavoidability of legal liability and mandatory nature of judicial decisions and intended to failure achieving the justice goals; it is considered rational to subsume these crimes to the crimes against justice.

At the modern stage of Ukraine's development, it is found necessary to provide

[3] Научно-практический комментарий Уголовного кодекса Украины / под ред. М. И. Мельника, М. И. Хавронюка. – [3-е изд., Перераб. и дораб.]. – М.: Атика, 2004 – С. 888-891.

the criminal and legal protection of social relations with the established order of judgment enforcement and serving a sentence. In our estimation, criminal legislation of Ukraine contains a wider list of crimes encroaching on the relations ensuring proper enforcement of judgments, decisions, rulings, court orders and punishment in comparison to the Criminal law of the Republic of Azerbaijan. In particular, the Criminal Code of the Republic of Azerbaijan does not criminalize such deeds as evasion of punishment other than imprisonment, deliberate non-execution of agreement on reconciliation or a plea bargain, persistent disobedience to authorities of a correctional institution, disorganization of activity of correctional institutions, escape from a specialized treatment facility, and violation of rules related to administrative supervision.

According to the opinion of scholars, Ukrainian legislator has criminalized deliberate non-execution of agreement on reconciliation or a plea bargain due to the necessity to meet commitments made by Ukraine before the Council of Europe on reforming national criminal and criminal procedural legislation. One of such reforms is an improvement, enlarging and ensuring proper protection of restoration procedures, as well as procedures aimed at significant simplification of criminal proceedings. In general, the introduction of criminal liability for deliberate non-execution of agreement on reconciliation or a plea bargain corresponds to the grounds and principles for the criminalization of socially dangerous acts elaborated by the doctrine of Criminal Law.

The main direct object of this crime is the relations in justice area concerning proper enforcement of judgments made by Ukrainian courts under special criminal proceeding based on the agreements. The matter of the crime foreseen in the Art. 389-1 of the Criminal Code of Ukraine is a reconciliation agreement or a plea bargain. The conciliation with a victim is understood as an agreement between a victim and a suspect or accused person, which provisions stipulate the fact of compensation for caused damage or elimination of caused damage by a suspected or accused person caused by a criminal offense, and consent of a victim for exemption from criminal liability. The reconciliation agreement is an agreement between a victim and suspected or accused person, which stipulates an obligation to take actions by a suspected or accused person intended for compensation of a damage caused by the crime or obligation to take any other actions not related with reimbursement of such harm, and consent of a victim on assignment of a punishment or exemption from criminal liability with probation. Legal content of a plea bargain lies in the consensus between a suspected or accused person and a prosecutor on the qualification of a committed act, term and type of punishment, always supposing a confession

of a suspected or accused person in the committed encroachment. The actus reus of deliberate non-execution of agreement on reconciliation or a plea bargain is specified by the following forms of criminal omission: a) nonfulfillment of agreement on reconciliation or a plea bargain (complete); b) undue performance of agreement on reconciliation or a plea bargain (partial); c) evasion of obligations under agreement on reconciliation or a plea bargain. The subjective aspect of deliberate non-execution of agreement on reconciliation or a plea bargain may be specified by the guilt of direct, as well as indirect intent.[4]

Existing criminal liability for persistent disobedience to authorities of a correctional institution also complies with principles, which determine the necessity of its criminalization. The social danger of the crime foreseen by the Art. 391 of the Criminal Code of Ukraine is concluded in the circumstance that it impedes enforcement of a judgment, achieving goals of a punishment and infringes normal functioning of authority at penitentiary system ensuring enforcement of a court judgment and a punishment assigned by it.[5] The Art. 391 of the Criminal Code of Ukraine combines various socially dangerous actions of convicted persons and provides criminal liability for committing deliberate disobedience to lawful demands of penitentiary institution administration and other counteraction to the authority performing its functions.

The social danger of the mentioned actions is evident. The assignment of the punishment to a person for previously committed crime is targeted at his/her correction. Such correction must take place in penitentiary institutions. The demands of the regimen of serving a sentence may be treated as means of correction. By disregarding the regimen of serving a sentence, by violating stipulated order in a penitentiary institution, a convicted person consequently threatens a key goal of punishment, which is correction, and encroach on the sentencing process established under the criminal executive legislation.[6]

The crime "violation of rules related to administrative supervision" (the Art. 395

[4] Ященко С. А. Уголовная ответственность за умышленное невыполнение соглашения о примирении или о признании виновности: автореф. дис. ... канд. юрид. наук. 12.00.08 – уголовное право и криминология; уголовно-исполнительное право / Ященко Светлана Александровна. – Харьков – 2016. – С. 13.

[5] Уголовный кодекс Украины: Научно-практический комментарий / под общ. ред. В. Т. Маляренко, В. В. Сташиса, В. Я. Тация. – Изд. 2-е, перераб. и дораб. – М.: Одиссей, 2004. – С. 1024.

[6] Орел Ю. В. Уголовная ответственность за злостное неповиновение требованиям администрации исправительного учреждения: дис. ... канд. юрид. наук. Специальность 12.00.08 – уголовное право и криминология; уголовно-исполнительное право / Орел Юрий Викторович. – Харьков, 2008. –С. 34.

of the Criminal Code of Ukraine) also subsumed by the law-maker to the crimes against justice based on the assumption that this crime encroaches on the interests of strict execution of judgments. At the same time, some authors stated that infringement on the functioning of law-enforcement agencies is similar to the crimes against the administrative order. For instance, A. Lebedev admits that by its objective features the violation of rules related to administrative supervision has certain similarity with encroachments on normal functioning of state apparatus: the authority of state apparatus, normal functioning of state agencies and authorities, activity of these authorities' officials, i.e. with crimes against administrative order, all the more so heads of law enforcement agencies, heads of penitentiary institutions and other staff are considered as state officials[7]. T. Dobrovolskaia in her turn stated that functioning of authorities that directly execute judgments, decisions, courts' orders is beyond the scope of justice; such activity represents the implementation of already produced judiciary decision came into legal force.[8]

Still, we consider more relevant the position of the researcher I. Vlasov, who specified that law enforcement and penitentiary authorities even though do not execute justice themselves, but create necessary conditions for efficient court functioning and, consequently, actively promote justice. The exercise of justice would not be possible without these authorities. On the other hand, the functioning of the authorities assisting justice only makes sense as long as it serves to the implementation of justice tasks, and follows from such activities.[9]

The generic object of the violation of rules related to administrative supervision is normal functioning of governing agencies devoted to enforcement of proper rules of behavior by convicted persons. The direct object of a crime is considered the established procedure of staying under administrative supervision as a condition for continuation of correction in relation to persons, who had already served a sentence and prevention them from committing new crimes[10]. It worth noticing, that social relations ensuring normal functioning of law enforcement agencies may constitute the object of the mentioned crime

[7] Лебедев А. К. Об уголовной ответственности за злостное противодействие администрации исправительно-трудовых учреждений // Вопросы совершенствования уголовно-правовых норм на современном этапе: межвуз. сб. науч. трудов. – Свердловск: Свердловский юридический институт, 1986. – С. 91.

[8] Добровольская Т. Н. Понятие советского социалистического правосудия // Ученые записки ВИЮН. – М., 1963. – Вып. 4. – С. 23.

[9] Власов И. С. Об объекте преступлений против правосудия // Ученые записки ВНИИСЗ. – М., 1964. – Вып. 1 (18). – С. 94-95.

[10] Кафаров Т. М. Проблема рецидива в советском уголовном праве. – Баку: Изд-во АН АзССР, 1972. – С. 129.

only, because they are appropriate for certain area of justice. Notably, Professor V. Tiutiuhin emphasizes that social danger of violation of rules related to administrative supervision lies in the fact that such actions obstruct justice and affect the regular activity of the authorities responsible for prevention, timely detection, and clearance of crimes[11].

The crime foreseen by the Art. 395 of the Criminal Code of Ukraine is relevant to formally defined crimes due to the completion of its actus reus by a commission of a certain action. Following its objective features, the violation of rules related to administrative supervision may be committed in both ways: action and omission. This crime is referred to the so-called "mixed crimes" interpreted in the criminal law theory as socially dangerous actions, which actus reus may consist of the combination of actions and omission making a single whole, or which are committed both by action and by omission. During violation of the rules related to administrative supervision the combination of forms of illegal behavior by action or omission is not unusual (notably one action frequently combines with single or several omission acts, and vice-versa), which in its totality leads to the encroachment on social relations ensuring normal activities of law enforcement agencies within administrative supervision.

Different types of socially dangerous behavior of some persons released from places of imprisonment are determined by the fact that rules of administrative supervision are established over them for prevention of new crimes, implementation of preventive and educational influence, as well as ensuring such order abidance. The mandatory features of actus reus of this crime except for socially dangerous action (act or omission) also include time and location of the violation of rules on administrative supervision[12].

As the result of the conducted research, we may conclude that formalization of elements of crimes encroaching on principles of the unavoidability of legal liability and mandatory nature of judicial decisions is a lasting process in Ukraine. Currently Ukrainian legislation provides the wider list of such crime elements as compared to the legislation of the Republic of Azerbaijan. Legislative admission of such *corpus delicti* as, for instance, deliberate non-execution of agreement on reconciliation or a plea bargain,

[11] Уголовный кодекс Украины: научно-практической. комментарий / [Баулин Ю. В., Борисов В. И., Гавриш С. Б. и др.]; под общ. ред. В. В. Сташиса, В. Я. Таций. – М.: Концерн Издательский Дом «Ин Юре», 2003. – С. 1072.

[12] Назаренко Д. А. Уголовная ответственность за нарушение правил административного надзора дис. ... канд. юрид. наук. Специальность 12.00.08 – уголовное право и криминология; уголовно-исполнительное право / Назаренко Дмитрий Александрович .– Днепропетровск, 2008. – 220 с.

persistent disobedience to authorities of a correctional institution, disorganization of activity of correctional institutions, violation of rules on administrative supervision, corresponds to the general principles on criminalization and intended to reach the goal of criminal legal protection of justice.