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SUBSTITUTION OF FINE WITH OTHER PENALTIES: EXISTING PROCEDURE AND ROOM FOR ITS IMPROVEMENT

Summary

More and more legal scholars believe that sentencing practice and the policy of legal regulation in Lithuania should be improved, in particular by increasing the imposition of alternative sentences, including fines, instead of imprisonment. In 2017 fine became the most commonly imposed sentence to finally overtake the imprisonment. Therefore, the purpose of this study is to analyze current legal regulation and case-law related to the execution of a fine and to submit suggestions for the improvement of the aforementioned institute.

In this study, authors submit a comprehensive analysis of Paragraphs 7, 8 of Article 47 of the Criminal Code of the Republic of Lithuania (Criminal Code) as well as the other legal acts related to this provision. Furthermore, the ideas presented by the legal scholars on the improvement of these provisions are summarized and the legal regulation of foreign countries in the same field is reviewed in this study. As a result of such an analysis, specific amendments to the aforementioned provisions are proposed. These amendments concern the statutory requirements for the attorney-at-law’s offer to change the fine and the possibility of substituting the fine with imprisonment.

Authors also suggest that sentenced person should be allowed to execute (pay) the fine even in the case when this fine had been replaced by another sentence (arrest) due to improper execution.

The next chapter assesses the need for the application of criminal liability in accordance with Article 243 of Criminal Code when the circumstances stated in Paragraphs 7 and 8 of Article 47 of Criminal Code appear. However, according to the authors, it is not always necessary to apply criminal liability in accordance with Article
243 of Criminal Code even when it is determined that the sentenced person did not execute the fine properly.

The study also analyzes how different calculation methods influence the effectiveness of fine. Authors suggest considering the possibility to use daily rates as a measure to define the size of the fine, determining the fixed amount of the fine in exceptional cases where it is impossible to verify the data on the person's assets and income.

Finally, authors evaluate the effectiveness of other alternatives to imprisonment and the possibility to substitute them with the other sentences. Authors suggest foreseeing the possibility to substitute the imposed but non-executed public service punishment not only with fine and with arrest, but also with the restriction of liberty, which in its essence is a more lenient punishment than arrest. In addition, according to the authors, the proportions of the conversion of public service punishment into arrest should be modified, since currently Article 65 of the Criminal Code provides that both arrest and fine are equal to the same number of hours of public service, although the severity of the said penalties varies. In order to avoid mistakes in the practice of changing sentences, it is suggested to establish that twenty-four hours of arrest is equated to twelve hours of public service. Possibility to provide dependency treatment to the persons during the execution of an arrest sentence should also be given consideration.