

**DISCHARGE OF SERVICE SENTENCE,
CONNECTED WITH THE TERMINATION OF THE PERIOD OF
LIMITATION
OF AN EXECUTION OF SERVING SERVICE
(SEVERAL ISSUES OF COURT PRACTICE)**

Paper investigates criminal rules of law about the impunity in connection with the statute of limitation of a conviction (Art. 80 of Criminal Code). Theoretical and applied problems of application of these criminal rules of law are covered.

Keywords: *impunity, the impunity in connection with the statute of limitation of a conviction.*

In the Criminal Code of Ukraine (hereinafter – CC) are set limits on the State's ability to bring the guilty to criminal responsibility and apply to it the punishment of certain terms ago committing the offence (art. 49, and part 5 of article 74 of the CC, respectively) or verdict of the Court (art. 80 of the CC). Exemption from serving punishment in connection with the expiry of the terms of limitation execution of a conviction (art. 80 of the CC) due to the irrationality of bringing to court verdict against convicted during the period defined by the law not shielded away from punishment and not committed new crimes.

Analysis of the legal literature allows us to conclude that in studies of domestic footwear (in particular, Y. Baulina, O. Dudorova, O. Zhitny, O. Pismensky, V. Skibitsky) solved the problem of the application of this kind of exemption from serving punishment in judicial practice. Therefore, the purpose of this paper is the coverage of the individual (the most common) problems release from serving a sentence in connection with the expiry of the terms of limitation execution of a conviction. An indictment verdict is accepted by the Court in case the accused is guilty of an indictable offence (part 2 of article 369 CCP). Court decision that has come into legal force, unless otherwise provided by the CPC, refers to no later than three days from the day of entering him into legal force or return material criminal

proceedings before the Court of the first instance of the Court of an appeal or cassation instance court or the Supreme Court of Ukraine (p.1 art. 535 CPC)

The beginning of the period of limitation. The term limitation execution verdict begins to progress from the day of entering him into legal force. Study of us criminal cases indicates that courts often mistakenly fired from serving the punishment of prisoners on the basis of art. 80 of the CC before the entry into legal force court verdict [1]. Thus in all the countries examined by us for guilty would be freed from punishment for another reason – in connection with the expiry of the terms of limitation for bringing to criminal responsibility (art. 49, ch. 5, art. 74 of the CC). However, this is incorrect application of the criminal law often leads to cancellation of the verdict.

For example, the sentence of Lychakiv District Court of Lviv from January 11, 2012, in particular, is convicted: ch. 3, art. 191 CC up to 4 years imprisonment with deprivation of right to hold posts related to execution of organizational-administrative and administrative and economic duties, for a period of 3 years; under § 1 art. 366 CC up to 2 years of restraint of the gerrymander hugging posts related to execution of organizational-administrative and administrative and economic duties, for a period of 3 years; for part 3. 358 of the CC (as amended on April 7, 2011) up to two years imprisonment; for art. 358 of the CC (as amended on April 7, 2011) to one year restriction of liberty. The same sentence in the grounds of Art. 80 QC released from serving sentence for art. 358 and part 1 Art. 366 of the CC in connection with the expiry of the terms of limitation execution of a conviction.

Looking at this sentence in appellate procedure judges judicial Chamber in criminal matters appeal court, believe has reached a reasonable conclusion that, since the sentence concerning the not yet entered into legal force, then releasing the convicted from serving punishment on the basis of art. 80 of the CC could not be applied. Since the criminal law has been applied incorrectly stated the verdict was quashed, and the matter concerning the new trial sent to the Court of first instance in another part of the judges [2].

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Substance release from serving a sentence in connection with the expiry of the terms of limitation execution verdict of the Court. Grounds for exemption from serving punishment on the basis of art. 80 QC is a favourable limitation period expired from the date of entry into legal force of the court verdict. Periods of limitation are differentiated depending on the legislator intended the Court judgment and the severity of the perfect crime: the stricter penalties and increased the severity of the crime, the more lengthy is the term limitation of verdict. In paragraphs 1–5 including 1 Art. 80 of the CC.

The term “limitation execution” of Court's verdict in the case of sentencing for the totality of crimes or sentences is determined proceeding from the General term of punishment assigned by articles 70 to 72 of the CC, as in the case of a conviction to imprisonment is taken into account, the most serious crime that forms a set. Time limitation on additional penalties are determined by the main punishment assigned by conviction (part 2 of article 80 of the CC). For example, the judgment of the Court of the city of Kaniv, Cherkasy District from July 25, 2002, sentenced for Art. 191 of the CC to a fine in the amount of 2000UAH, custodial rights hold positions with doing and taking into account commodity-material assets for 3 years, with confiscation of all property that is privately owned. The property achieved (apartment belonging to her on the right of private property) was described and arrested by DVS Headman protected on October 2, 2002. However, as on March 4, 2010. the property of sentenced and has not been implemented due to lack of buyer.

Given that the period of implementation of the additional punishment in the form of confiscations of property is achieved on the basis of paragraph 1 part 1 article. 80 CC pop back in August 2004, Kaniv, Cherkasy District of the Decree from

March 4, 2010 dismisses from serving this additional punishment in connection with the expiry of the terms of limitation execution verdict of the Court [3]. Questions about the application of the limitation to persons sentenced to life imprisonment, is decided by the Court. If the Court does not deem appropriate the use by prescription, life imprisonment is replaced by imprisonment (including article 80 of the CC).

When the pop term limitation execution of Court's verdict is favorable? Expired term of limitation execution of Court's verdict is favorable if convicted: 1) has not shied away from serving the designated him the punishment; 2) did during the term of limitations of verdict new medium severity, grave or particularly grave crime. The question of whether it is favorable for the convicted, must be addressed in every case necessarily. However, in practice, unfortunately, not uncommon there are instances of ignoring the courts establish the above mentioned circumstances. For example, the following incomplete trial allowed, in our opinion, the Golopristsansky District Court of Kherson region in the case of solving the question of releasing convicted based on paragraph 1 part 1 article. 80 CC from serving punishment in connection with the expiry of the terms of limitation execution of a conviction, the Court is generally not explored the question: shied away convicted from serving the punishment or not shied away [4].

Evasion from serving the punishment is usually willful acts of convicted, aimed at avoiding bringing the verdict the Court for execution. About dodging the convicted from serving the punishment might indicate change checks or looks, fake documents, change of place of residence or work. So, Irpin, Kyiv district municipal court, examining the views of the representative of the criminal enforcement inspection on the release of from serving punishment in connection with the expiry of the terms of limitation verdict, sustained, incidentally, the Prosecutor, refused to deny this view. The basis for the adoption by the Court such reasonable, we believe, the decision was the fact that call criminal enforcement inspection for staging on accounting has not appeared and disappeared from the place of residence [5]. Methods of evasion from serving particular sentences depend on the type of the designated court punishment.

Evading punishment, not connected with the restriction or deprivation of liberty.

So, evasion from serving the punishment in the form of a fine should admit failure to convict the verdict amounts if there is a real possibility of its pay (presence of income from entrepreneurial activities or independent professional activity, income in the form of wages, pensions, scholarships, as well as revenue from sales of goods manufactured in its own production, revenue from the provision of services, royalties, income from the sale of movable and immovable property, renting it for rent, etc.). If the failure to pay the fine because it had been impossible to convict charged due to lack of income, it cannot be regarded as an evasion from serving punishment. In this case, if the elapsed time limitation provided for by paragraph 1 part 1 article. 80 of the CC the sentenced is released from serving a sentence in connection with the expiry of the terms of limitation execution verdict the Court [6].

Evasion from serving the punishment in the form of disqualification of certain positions can be considered as a further tenure, it is prohibited by the Court, on a similar post in another enterprise, institution or organization. And evasion from serving the deprivation of the right to engage in certain activities is a further seizure activity, which is prohibited in (e.g., continuation of the sports business, continuation of the vehicle). About evasion from serving public works can testify, for example, failure to appear to carry out such work, a direct refusal to perform an organ of local self-government for the convicted. For example, it is for these reasons, the Verhniodnìprovsky District Court of Dnepropetrovsk region was denied release from serving punishment in connection with expiry of the term of limitation execution of a conviction. This decision is substantiated, the Court correctly noted: being fore stall with the announcement of the verdict of the turnout, Verhniodnìprovsky district, it fails to appear without good reason, changed the place of his residence, without notifying the Criminal Executive inspection, then the following should be regarded as an evasion from serving punishment [7].

Evasion from serving correctional or official restrictions for military personnel is dismissal from work or service, moving to another district, etc. For evasion from serving these sentences (except for official limits for servicemen) provides criminal liability (parts 1 and 2 of article 389 of the CC). Avoidance of punishment associated

with the restriction or deprivation of liberty. Evasion of punishment associated with the restriction or deprivation of liberty, there is usually no vision for serving these sentences or manifestation of an even more audacious behaviour of the convicted. So, as evasion from serving the punishment in the form of restraint should be considered illegal abandonment place of restraint, return to the place of serving punishment of the person was allowed brief departure, after check-out etc. For evasion from serving the punishment in the form of restriction of liberty for criminal liability (parts 1 and 2 of article 386 of the CC).

Evasion from serving the punishment in the form of arrest, detention in bound Battalion soldiers, imprisonment for a definite term or lifelong imprisonment is to escape from the place of execution of the punishment (detention facility, disciplinary battalion, criminal-executive agencies, special educational institutions). Concerning evasion from serving imprisonment for a certain period, then such actions should also be considered a return to the place of serving punishment of the person was allowed brief departure, after check-out. For evasion from serving the punishment in the form of arrest or imprisonment for a definite term is criminal liability (part 3 of article 390, 393 CC). If convicted, shies away from serving the punishment, then the limitation stops and rebounding from the day appearing convicted for serving a punishment or from the day of his detention.

Vision statement for serving a punishment is personal, self-imposed appeal convicted to bodies of State Executive service of Ukraine or the institutions of the State prison service of Ukraine with the purpose to be served the intended verdict of Court punishment. Detention is temporary safety measure applied with grounds and in the manner described Shapoval. Since the vision statement for the serving of the penalty or his detention the limitation is restored (and not first begins). At the same time that elapsed from the day of entry into legal force of the court verdict, the day when the convict started to shy away from serving the punishment does not lose its value. He is saved and added to the General period of limitation that continues to emerge. In this case, the period of limitation provided for in clauses 1-3 of ch. 1 of art. 80 of the CC, are doubled.

In the case at the moment of detention of convicted that shied away from serving the punishment, ended terms of limitations provided for in clauses 1–3 of ch. 1 of art. 80 of the CC, and even after a doubling of these deadlines, the person is subject to dismissal from serving punishment in connection with the end of terms. For example, the judgment of the District Court of Chyechyelnyk Vinnytsia District from May 12, 1996 was convicted under § 3 of art. 206 CC (in the Edition 1960) 2 years 1 month imprisonment. In conjunction with the evasion from serving the designated court of punishment it was announced on the wanted list. 4 September 2012 sh was detained in the town of Magnitogorsk, Chelyabinsk oblast, Russian Federation. Considering that from the moment of entry into legal force court verdict of 12 May 1996 passed the deadline provided 3 ch. 1, part 3. 80 of the CC, and it was not performed for ten years (until June 13, 2006), Vinnytsia t Tyvriv District Court on its Decree of February 4, 2013 dismisses from serving punishment in connection with the expiry of the terms of limitation execution verdict the Court [8]. That is not an evasion from serving punishment? If the accusatory verdict

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Do not treat the courts as evading punishment and stay on steady treatment [10]. Believe that cannot be regarded as an evasion from punishment when change (cancellation) of the Court of first instance sentence (how about persons have applied article 75 of the CC), the Court of appeal (pursuant to the conviction that a person sentenced to a punishment) convicted was not known for objective reasons. Thus sentenced is not changed residence, work, not travelled abroad, etc. So, Tysmenytsya District Court of Ivano-Frankivsk regional decree of May 8, 2007 dismissed X on the basis of paragraph 2 of part 1 of article. 80 CC from serving the punishment, a verdict of the military court of appeals in the Western region of Ukraine dated July 16, 2002, This decision is substantiated, the Court said: the appeal against the sentence and his view X was not known (in court he was not present and subscription 6,600 didn't give), places of residence X did not leave and has not shied away from the execution of the sentence. The Court also considered that the verdict of the military court of appeals in the Western region of Ukraine dated July 16, 2002 (of which the convict did not know) fault of the Court in Tysmenitsya RP, was sent to

perform only on February 16, 2007 (i.e. after the end of late terms) [11].

The Commission during the period of limitations of verdict new medium severity, grave or particularly grave crime. If sentenced to the time limitations stipulated in parts 1 and 3. 80 CC, committed a new offence of medium gravity (ch. 3, art. 12), hard (4.12), or a particularly serious crime (including 5 art. 12), this entails termination of terms of limitation. Calculation of limitation in this case begins with the day of committing a new crime. In this respect such person begin to float separately: 1) the term of limitation execution verdict for the previous offence (article 80 of the CC); 2) the term of limitation for bringing to criminal responsibility for a new offence (article 49 of the CC).

If the person before the expiration of the Statute of limitations stipulated in parts 1 and 3. 80 of the CC, perpetrators of the new crime of small gravity, then the limitation execution verdict for first offense is not interrupted, and continues. Simultaneously with this term in parallel and independently starts to float the term of limitation for bringing to criminal responsibility for a new crime of small gravity from the day of its committal. And if the person has committed a new medium gravity serious or especially serious crime after the end of the terms of limitation execution verdict? In that case, if the person has committed a new medium gravity serious or especially serious crime after the end of the terms of limitation execution verdict, then this may not be the grounds for denial in releasing her from serving punishment in connection with the end of late terms.

For example, the sentence of the Lviv Regional Court dated April 18, 1995, he was sentenced for art. 19, ch. 4, art. 81, cent. 44 of the CC (revised 1960) up to 4 years of imprisonment with confiscation of property. Starting from January 16, 2001 Y was wanted in connection with the execution of this sentence. According to Protocol of detention of a person suspected of committing a crime, from October 22, 2011 j. was detained by the militia of Mukachevo of Ukraine in Zakarpattia Region as a suspect under § 4.185 of the CC of Ukraine and sent on November 26, 2011 to Kateriniv penal colony in Rivne Region (No. 46) for serving a punishment in accordance with the verdict of the Lviv Regional Court dated April 18, 1995.

Sarny District Court of Rivne region, using about the same dispositions of part 2 of article. 49 of the CC (revised 1960) in its resolution of April 10, 2012 freed him from serving the punishment, the verdict of the Lviv Regional Court dated April 18, 1995, in connection with the end of the period of limitation execution verdict, which ended on April 18, 2010. When this Court reasonably was not taken into account the fact of committing the same offence under sec. 4 c. 185 of the CC (revised 2001), since this crime was brought to him after the end of the period of limitation execution verdict [12]. Limitations will not apply in the case of a conviction for a crime against the peace and security of mankind, under articles 437 – 439 and part 1. 442 of the CC (part 6 of article 80 of the CC). Finally, we note that due to limited publication of us there are not all theoretical and applied problems of an exemption from serving punishment on the basis of art. 80 CC. Therefore, further research and coverage of these issues is highly relevant for the proper application of the criminal law in judicial practice.

LIST OF USED SOURCES

1. See, in particular, regional archives: Court of Pryluky, Chernihiv oblast. Case No 1-102/2011; Bakhchisaray District Court, Autonomous Republic of Crimea. Case No 1-215/2011.
2. Archive of the appeal court. Case No. 1/1312/2/12. 3. Archive of Kaniv, Cherkasy Region Regional Court. Case No. 5-26/10. 4. Archive of the Goloprystansky District Court of Kherson region. Case No 1-144/10. 5. Archive Mayor Municipal Court of Kyiv region. Case No. 5-187/11. 6. Archive of the Kalanchacky District Court of Kherson region. Case No. 5-76/08. 7. Archive of the Verhnodnìprovsky District Court of Dnipropetrovsk Region. Case No. 406/51/2012. 8. Archive of Chyechyelnik District Court of Vinnitsa region. Case No. 145/6/13-k. 9. archive of Berdičivs'kogo regional court in Zhytomyr Oblast. Case No. 0603/745\2012. 10. Archive of Poltava District Court, Poltava oblast. Case No. 5-838/2010. 11. archives of the Tismenic'kogo District Court of Ivano-Frankivsk Oblast. Case No. 5-25 2007. 12. the Archive in Sarnenski District Court of Rivne region. Case No. 1718/160/12.

Received 20.12.2013