Collection of fines for misdemeanour

Are the fines imposed by the police an effective response to misdemeanours?

NAO report to the Parliament, Tallinn, 30 April 2008

Summary of audit results

The NAO sought the answer to the question whether the fines imposed by the police can be collected within a reasonable period, and if not, why. In the course of the audit, we analysed the fines imposed for misdemeanours which were overdue, and the accounting for such fines in 2005 and 2006.

If a fine imposed for misdemeanour is not paid in time and it cannot be collected by means of enforcement measures, the objectives of the penal policy shall not be met. A penalty which is not enforced within a reasonable period might not give the desired effect or prevent further offences. Accounting errors, however, may lead to incorrect management decisions. The audit of the annual report 2005 of the Ministry of the Interior led the NAO to the finding that the state budget was short of EEK 264 million of fines imposed by the police. By the end of 2006, the accounts included a total of EEK 344 million of uncollectible fines, and by the end of 2007, this amount had grown to EEK 407 million, according to the Police Board.

The police can penalise traffic violations and misdemeanours only by means of fines or request the imposition of detention by a court, if the law provides for detention as a penalty for the offence concerned. The use of community service, training courses or the like encouraging refraining from further violations has not been provided for misdemeanour cases. This has led to a situation where the detention houses are full and fines are imposed even when previous fines are outstanding.

Usually, it is not possible, by means of enforcement measures, to receive the fine payment from a person with insufficient funds on his bank account or with low or no income. Persons with low income rarely possess movables for which there is adequate demand and which could be sold in compulsory manner for an amount sufficient to cover the fine payment. If the court so rules, the fine can be replaced by detention, but this might not have the effect of a just penalty. Besides, replacement by detention is difficult, because the detention houses are overloaded and there is a waiting list for serving detention. Replacement detention gives rise to additional expenses to the government and must therefore be justified. The collection of all fines or replacement by detention is not possible in practice.

Penalties not enforced within a reasonable period do not encourage the person to refrain from new offences – the large number of habitual offenders is proof of that. The NAO finds that the penal policy needs to be reviewed. Other types of penalties and non-punitive sanctions should be applied besides fines and detention.

Some bailiffs and judges find that the limitation period of the fine claim is 18 months, and others argue that it is 30 years. Thus, the situation is unclear for the offender, the police and the bailiff. In practice, the period of 18 months could indeed be too short, but the application of the civil law limitation period of 30 years in penal law is unjustified in terms of legal theory. To the knowledge of the NAO, no agreement on the uniform interpretation of the law has been reached year, and thus specification of the provisions might be essential to harmonise the judicial practice.

If a fine is subjected to compulsory execution, the offender must pay the fine plus compulsory execution expenses, even if the fine is paid upon first notice from the bailiff. People would be encouraged to pay the fines in a timely fashion, if information on the potential additional expenses was readily available. In expedited procedure, the offender is immediately served with the decision, which informs him of the amount and the payment term of the fine. Plus, the decision states that overdue fines will be subjected to compulsory execution which will give rise to the bailiff fee. However, there is no information on other potential expenses arising in the course of enforcement proceedings. The expedited procedure is applied subject to the consent of an adult offender, if the facts relating to the commission of a misdemeanour are explicit. In general procedure, the offender is served with the misdemeanour report which does not refer to the expenses arising from the collection of a fine by means of enforcement measures. The decision imposing a fine must be picked up personally from the police authority – this is often forgotten and the person is suddenly facing the obligation to pay the bailiff fee and the collection expenses, in addition to the fine.

The enforcement proceedings database does not support the monitoring of bailiffs by the Ministry of Justice. The bailiffs do not enter the information in the database straight after each operation, and the database does not contain all the data required for analysis. It is pleasing to see that the Ministry of Justice is planning the development and introduction of a new enforcement proceedings register in co-operation with bailiffs. Plus, an increased number of surveillance operations were carried out in 2007.

The current information system of the police is incompatible with the enforcement proceedings database, which complicates data comparison and requires data to be entered manually in different databases. This constitutes a waste of working hours, increasing in the possibility of errors and reducing the reliability of information in the database.

Replies from the Ministers, the National Police Commissioner and the Chairman of the Plenary Assembly of Bailiffs:

The **Minister of Justice** agreed to most of the NAO recommendations and explained how the recommendations are already being or planned to be implemented. The Minister of Justice did not consider it necessary to amend the Penal Code, since the current wording does not prohibit taking into account the serving of an earlier punishment.

The **NAO** highlights once again the opinion of the expert involved in the audit that a fine imposed earlier but yet outstanding cannot be considered as a fact which characterises the offender or relates to a new offence and cannot be used as an aggravating circumstance in imposing a new punishment.

The **Minister of the Interior** agreed to the recommendations and explained how these are to be implemented. Furthermore, the Minister of the Interior suggested considering the possibility of linking the persons having unpaid fines with the database of the Tax and Customs Board to ensure the deduction of arrears from income tax refunds.

In principle, the **NAO** supports the suggestion of the Minister of the Interior, but believes that this subject needs to be analysed in depth.

The **Minister of Economic Affairs and Communications** agreed to the recommendations and explained that these have been taken partly into account in drafting the new Traffic Act.

The **National Police Commissioner** suggested legitimising the conditional release from a penalty for misdemeanour subject to the obligation to attend preventive courses, visit a psychologist etc, and in the case of non-compliance enforce the penalty. Such conditional release measures are appropriate especially for traffic misdemeanour cases, but could be used for other types of misdemeanour as well.

The **NAO** agrees with the Commissioner's suggestion and recommends the Minister of Economic Affairs and Communications to consider including such measures in the current draft of the Traffic Act.

The **Chairman of the Plenary Assembly of Bailiffs** has no suggestions or complaints concerning this report.

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