

PROBLEMS OF IMPOSITION OF CRIMINAL PUNISHMENT ALTERNATIVE TO IMPRISONMENT

Tatiana V. Nepomnyashchaya

*Dostoevsky Omsk State University, Omsk,
Russia*

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The subject. The article is devoted to problems of appointment some criminal punishments alternative to the deprivation of liberty by courts in Russian Federation. The author gives an answer to the question, why punishments not related to imprisonment in the Russian Federation, especially deprivation of the right to occupy certain positions or engage in certain activities, corrective labor, restriction of freedom, forced labor, are rarely appointed by courts, and the most common alternative punishments are only fine and mandatory work.

Methodology. Author uses such researching methods as analysis and synthesis, formally legal, comparative legal.

Results. The author proposes some concrete measures, aimed at expanding the practice of appointment some criminal punishments alternative to the deprivation of liberty.

It is necessary to reduce the size of the fine established in the Criminal Code of the Russian Federation. It is necessary to establish a penalty in the sanction of norms on crimes of small and medium gravity, committed for mercenary motives and connected with causing material damage.

In order of more effective serving of punishments in the form of compulsory and corrective works, it is necessary to interest employers, it can be expressed in granting tax credit benefits. The searching of specific facilities for serving corrective labor should be assigned to employment centers.

It seems expedient to introduce deprivation of the right to occupy certain positions or engage in certain activities as the main type of punishment to all sanctions of the norms about the responsibility for crimes of small or medium gravity related to the professional activities of the person.

It is necessary to eliminate gaps in the legislative regulation of punishment in the

form of restricted liberty and to solve the problem of electronic monitoring of convicts using elec-tronic bracelets.

Conclusions. The punishment in the form of deprivation of liberty should be appointed by courts only in cases, when the crime is highly dangerous, the identity of the criminal is also characterized by a high degree of public danger. Serious changes are also needed in the legislative regulation of sentences not related to deprivation of liberty, and a number of other organizational measures aimed at expanding the practice of applying these punishments.

1. Deprivation of liberty as one of the most common types of punishments , appointed courts in the Russian Federation.

One of the most common sentences imposed by courts in the Russian Federation is imprisonment. From 1997 to 2009 approximately every third convict was condemned to imprisonment in our country every year. But starting from 2010, due to the change in the course of Russian criminal policy towards liberalization of criminal punishment and punitive practices, the number of convicts to this punishment is gradually decreasing. So, if in 2009 to imprisonment were sentenced to 32.7% of the total number of prisoners, in 2010 - 31.4%, and in 2016 already 27.8% . And if on November 1, 2009. In places of imprisonment in the Russian Federation there were 875,800 people, then as of February 1, 2018, there are already 600,262 human, i.e. 8 years x number of convicted to imprisonment decreased by more than 275 000 people. At the same time, as of the end of 2017, there were 503 registered at the penitentiary inspectorates in the Russian Federation 865 people convicted of all penalties not related to deprivation of liberty and probation.

Thus, despite a slight decrease in the imprisonment for a certain period in the overall structure of the sentences imposed by the courts, it continues to be one of the most common punishment. At the same time, as Hans-Jorg Albrecht rightly points out , overcrowding in prisons is a serious problem that has existed for many decades in different states [1, p. 1].

The problem of overcrowding in correctional facilities is relevant because it has a negative impact on the prisoners themselves and on the whole society. Overcrowding leads to aggressive behavior of prisoners, leading to higher morbidity, Stand yshennoy probability of recidivism, reduce opportunities for redress for inmates, as well as their participation in vocational training or education [2, p.42]. For convicted prisoners, prisons are often a "school of crime", and an underdeveloped system of rehabilitation and adaptation after release also does not facilitate their return to society [3, p.61].

And one of the ways out of the current situation in the Russian Federation is the development of the institution of punishment without isolation from society - alternative punishments. As noted in the Concept for the Development of the Penitentiary System of the Russian Federation until 2020, "the effective use of punishments alternative to deprivation of liberty against persons who commit crimes of small and medium gravity should ensure the protection of society from the perpetrator, reduce the level of criminalization of society, community, a decrease in the number of people held in the institutions of the penal system ... ".

2. The problems of the appointment of a fine and compulsory labor as alternatives to imprisonment.

Currently, in our country the most common punishments not related to deprivation of liberty, which are appointed by the courts, are fine and compulsory work.

Thus, the number of people sentenced to a fine as the main punishment in the whole country gradually grew, since 2000. If in the period from 2000 to 2004, condemned to a fine year 6.2 - 6.5% of the total number of convicts in 2005 - 2006. - 10.3 - 10.8%, in 2007 - 12.8%, in 2008 - 2011 - 14.4 - 14.6%, and in 2012 - 2014. - 15.3 - 15.8% of the total number of convicts. Only in 2015 the number of convicts to the fine decreased and amounted to 11.8% of the total number of convicts, but in 2016 again increased to 13.5% of the total number of convicts. But in general, it should be noted that the penalty as the main type of punishment is appointed by courts in our country is quite rare.

First of all, in our opinion, this is due to the fact that the amount of the fine is rather high and the courts can not assign this punishment to persons who do not have a stable and high salary, a constant source of income. As A.A. Cousin, The main factor influencing the small prevalence of the fine "in the political, economic, social and cultural conditions of our country is a weak social and economic sphere" [4, p. 241].

At the same time, one should agree with the fact that "it is quite difficult to make a correct prediction of the socio-economic situation of a convicted person to a court. In view of this, the court subsequently has certain difficulties with the execution of the fine, connected with the fact that the convicted person does not have both monetary funds that can be forcibly recovered, as well as property, through the implementation of which a fine can be paid" [5, p. 112].

Thus, one of the most important is the question of the procedure for calculating and the amount of fine in the criminal legislation. But the maximum amount of a fine is up to 5 000 000 rubles. - is too high. And for crimes related to bribery, the amount of fines is "absolutely unimaginable, gigantic" [6], and the maximum penalty for these crimes exceeds the minimum of 20 thousand times!

In this regard, in our opinion, the question arises about the need to reduce the size of the fine as a form of criminal punishment". Criminal punishment in the form of a fine must be such that it is possible to fulfill it realistically, otherwise the meaning of this criminal punishment will lose its significance [7, p. 20].

It is also necessary to further expand this type of punishment in the sanctions of the Special Part of the Criminal Code of the Russian Federation. First of all, the penalty should be provided for in sanctions of crimes of small and medium gravity, committed for motive reasons, as well as related to causing material damage (for example, Part 2, Article 274, Part 2, Article 254 and other Criminal Code of the Russian Federation). This will establish the relationship between the motivation for the commission of a crime and the nature of the punishment. It is a fine as punishment, related to the impact on the property interests of convicts, is appropriate in this case. At the same time, it is hardly possible to use a fine as the main punishment for committing grave and especially grave crimes, as it looks like giving those who committed such crimes the opportunity to "pay off" from a more severe punishment.

In recent years, there has been a trend in our country to increase the number of convicts and to compulsory work. So, in 2004, 0.1% of the total number of convicts were sentenced to this punishment, in 2011 it was 11.5 %. But then the number of those sentenced to this punishment began to decline and in 2012 it was already 10.3 %, in 2013 - 9.9%, in 2014 - 9.8% of the total number of convicts, then in 2015 again increased to 10.0%. And in 2016 there was a sharp increase in the number of people sentenced to compulsory labor to 19%.

If we proceed from the content of punishment in the form of compulsory works, this process is natural, since this punishment is included in the execution of free public benefit works for those convicted in their free work or study. At the same time, the costs for the execution of this punishment are minimal, for the performance of compulsory work it is not required that the convicted have special professional skills and qualifications.

One of the problems limiting the appointment of compulsory labor courts, according to some scholars, is the legal prohibition of their use in respect of certain categories of people, set in the h. 4 Art. 49 of the Criminal Code. In connection with this, it is proposed to assign this type of punishment to pregnant women and women with children under the age of three [8, p.172; 9, p.309;

10, p.141]. No on our view, this proposal can hardly be accepted, since it contradicts the principle of humanism.

Considering the problems associated with the appointment of compulsory work, it must also be noted that, in accordance with Part 2 of Art. 27 PEC of RF the time of compulsory work in working days cannot exceed two hours *after the end of work*, service or study. This indication is in contradiction with the provisions of Part 1 of Art. 49 of the Criminal Code of the Russian Federation, according to which compulsory work is the performance of free public benefit works in their spare time from work or study. And with a free convict can have time both before and after the end of the main work or school. Therefore, the enforcement legislation should be brought into line with the Criminal Code of the Russian Federation, stating that compulsory work can be served both before the beginning, and after the termination of the basic work or study, taking into account the convict's shift schedule [8, p. 175; 11, p.341].

It is also important to note that in order to more effectively execute punishment in the form of compulsory work it is necessary to interest employers, which can be expressed, in particular, in granting benefits on tax payments [12, p.185].

All of the above measures may contribute to the further wider application of this punishment in practice.

3. The problem of appointing other alternative punishments.

Considering the problems of the appointment of punishments not related to deprivation of liberty, one cannot fail to note that, in addition to the fine and compulsory labor, all other alternative punishments are appointed by the courts quite infrequently.

So, in recent years, the number of people sentenced to correctional labor has decreased. If in the 2000 - 2003 the number of convicts sentenced to this punishment was quite stable and amounted to 5.0 - 5.2% of the total number of convicts, then in 2004 – 2007 slightly decreased to 4.6 - 4.8%, and in 2011 again increased to 5.1% of the total number of convicts. Since 2012, there has been a trend towards a slight increase in the number of prisoners sentenced to correctional labor: from 9.5% in 2012 to 10.5% in 2014, but then again to 8.3% in 2015 and 7.0% in 2016.

In our opinion, the decrease in the number of convicts to correctional labor is due to the fact that it is rather difficult to assign correctional labor to people who do not have a job. List of species and of correctional labor is annually consistent with bodies of local self-government, but these legal acts absolutely do not guarantee the employment of convicts, since there are practically no effective levers of influence on the management of enterprises by local authorities. According to the majority of scientists, one of the key steps to overcome this situation is the adoption of regulatory legal acts on preferential taxation of organizations that use the labor of convicts to correctional labor. The solution of this problem is also possible by creating a mechanism for quoting jobs for such convicts [13, p. 55; 14, p.15]. It is important that in a number of subjects Specified economic measures are already implemented at the regional level, for example, in the Chechen and Mordovian republics, the Jewish Autonomous Region, the Trans-Baikal Territory, Murmansk and Other De [13, p. 55].

In order to expand the range of people who can be assigned corrective labor, some scientists suggest that this type of punishment be applied to pregnant women and women with children under the age of three. So, in particular, according to E.A. Cherenkov, the inability to apply correctional labor to such categories of individuals contradicts the norms of labor legislation, as well as other provisions of criminal and penal enforcement legislation, rules of formal logic [16, p. 88].

In our opinion, the wider application of corrective labor can be facilitated by the expansion of their sanctions in the penal code of the Criminal Code of the Russian Federation: they should be included in the sanctions of all criminally-legal norms providing for the responsibility for committing crimes of small and medium gravity and, not only the individual ones, crimes related to breach of professional duties.

Rather rare in our country, the courts imposed a punishment alternative to imprisonment, as the deprivation of the right to occupy certain positions or engage in certain activities. At the same

time, the number of prisoners sentenced to this punishment as the main one is fairly stable. In the period from 2010 to 2016 in the Russian Federation to it annually condemned by 0.03% of the total number of convicts.

But the opinions of scientists about the application of this punishment in practice as a primary divided. So, referring to the statistics given above, some scholars write that the given data, of course, can only testify to the unjustified lack of demand for judicial practice of this type of punishment [17, p.214], while others propose to withdraw deprivation of the right from the system of criminal punishments and include it in the list of other criminal- legal measures [18, p. 18] or to provide both statutory security measure [19, p. 61].

The first point of view seems more correct. Prospects for this punishment as the main all the same is. One of the reasons that the deprivation of the right to occupy certain positions or engage in certain activities for a rarely used practice is that this type of punishment is rarely included by the legislator in the sanction of the norms of the Criminal Code of the Russian Federation. In view of the fact that the nature of the punishment must correspond to the nature of the crime committed, it seems appropriate to impose a deprivation of the right to occupy certain positions or engage in certain activities as the main type of punishment in all sanctions of the rules on liability for crimes of small or medium gravity associated with professional or other activities persons (for example, it is part 1 of article 124, part 1 of article 141, part 1 of article 143, part 1 of article 147 and other CC of RF).

At present, in many sanctions of the Criminal Code of the Russian Federation, the form of punishment in question is envisaged in an alternative with a fine and correctional labor. But for crimes of small or even average severity, related to the performance of a person's professional and other functions, the most effective punishment would be the deprivation of the right to occupy certain positions or engage in certain activities, rather than a fine, and even more so , not correctional work.

Another alternative punishment, which is rarely appointed by the courts, is the restriction of freedom.

The maximum number of people sentenced to restraint of liberty as the main punishment in the Russian Federation - 4.3% - falls to 2013. In 2010-2012, there is a slight increase in the number of convicts sentenced to this punishment from 0.9% in 2010 to 3.4% in 2012, then a decrease in 2014 to 3.8%, and in 2015 to 2.8% but in 2016 the number of people sentenced to restraint of liberty increased slightly and made up 3.4% of the total number of convicts.

Most researchers rightly believe that the restriction of freedom is rarely appointed by the courts because of deficiencies in the normative requirements of the Criminal Code of the Russian Federation and the PEC of the Russian Federation regulating the execution of this punishment, including: a) the inconsistency of the punitive content of the criminal penalty in the form of restraint of liberty to his place in the criminal penal system; b) there is not enough scope of its legal limitations to achieve the goals of criminal punishment; c) convergence of the institute restrictions on the freedom to institutes of probation and administrative supervision; d) insufficient legal regulation of the stipulated part 1 of Art. 53 of the Criminal Code of the Russian Federation restrictions [20, p. 210-211; 21, p. 62-63].

It should be noted that the main content of the restriction of freedom is a number of limitations. Therefore, this punishment makes sense only when establishing a mechanism for monitoring the implementation of these restrictions. But according to the FSIN, in particular, in 2016, under electronic control, there were only 14,000 people out of 25,339 people sentenced to restraint of liberty, i.e. 56.8%. In our view, without a well-functioning electronic monitoring mechanism by electronic bracelets punishment of imprisonment does not make sense.

Without eliminating the above gaps in the legislative regulation of freedom restrictions and solving the problem of electronic monitoring, it can hardly be expected that this type of punishment will be widely appointed by the courts.

On January 1, 20 17, the Russian Federation applies such an alternative to imprisonment as punishment for forced labor.

According to the official data of the Federal Penitentiary Service, there are currently four correctional centers for serving this punishment, as well as 9 isolated sections of correctional facilities functioning as correctional centers. In 2018 it is planned to open another 8 correctional centers and 38 isolated teaching stkov correctional institutions . Thus, by 2019, correctional centers will function in most of the constituent entities of the Russian Federation with the possibility of accommodating more than 5,000 convicts. But according to preliminary calculations on the use of forced labor, the average annual number of convicts may be about 30 thousand people, who must serve a sentence in 150 correctional centers, where the full provision of the institution should be carried out by about 4,500 staff units. At the same time, the costs of creating a correctional center with a filling limit of up to 200 people range from 67.6 to 72.2 million rubles. The maintenance of the activity of all correctional centers requires about 12 billion rubles [22, p. 24]. In this connection, the question arises: will the state allocate such serious sums of money for the implementation of this punishment?

It seems problematic and attract sentenced to forced labor for work in places determined by the institutions and bodies of the correctional system, as regularly reduces the specific athletic weight of labor activity. Education of new industrial complexes is difficult and unsuitable for development of production and the correctional system [23, p.201].

Also, a serious problem is the establishment in Art. 53.1 of the Criminal Code of the Russian Federation for forced labor as an alternative to imprisonment, and in Art. 44 of the Criminal Code as an independent punishment. At the same time, in some sanctions (for example, in part 1 of article 159.1-159, 159.5-159.6.200 of the Criminal Code), forced labor is indicated as an independent form of punishment, without the possibility of their application as an alternative to punishment in the form of deprivation of liberty, since it does not exist in them. It is logical to assume that the judges, in conditions of such uncertainty, simply will not take the risk appoint forced labor [25, p. 229-230].

Thus, the above problems are unlikely to contribute to the widespread use of forced labor in practice.

4. The conclusion. Discussing the situation in the practice of appointing the courts of criminal penalties the situation, some scholars note that " prison punishment (deprivation of liberty) will be applied increasingly - as a consequence of the increase in crime... In the next few decades, we should expect widespread use of alternatives to imprisonment (deprivation of freedom) for the types of punishment" [26, p.408].

But with this, in our opinion, it is difficult to agree. Punishment in the form of deprivation of liberty should always be perceived by the courts only as a really "extreme measure" and appointed in cases where the crime represents an increased danger, the identity of the offender is also characterized by a high degree of public danger. Serious changes are also needed in the legislative regulation of sentences not related to deprivation of liberty, and a number of other organizational measures.

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ИНФОРМАЦИЯ ОБ АВТОРЕ

Непомнящая Татьяна Викторовна – доктор юридических наук, доцент, профессор кафедры уголовного права и криминологии
Омский государственный университет им. Ф.М. Достоевского
644077, Россия, г. Омск, пр. Мира, 55а
e-mail: nepomnyashchaya@rambler.ru
SPIN-код: 5460-9270; AuthorID: 394436

БИБЛИОГРАФИЧЕСКОЕ ОПИСАНИЕ

СТАТЬИ

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INFORMATION ABOUT AUTHOR

Tatiana V. Nepomnyashchaya – Doctor of Law, As-sociate Professor; Professor, Department of Crimi-nal Law and Criminology
Dostoevsky Omsk State University
55a, Mira pr., Omsk, 644077, Russia
e-mail: nepomnyashchaya@rambler.ru
SPIN-code: 5460-9270; AuthorID: 394436

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