





Criminal Penalty Not Involving Convicts Isolation from Society as a Means of Criminal Counteraction to Crime

Ivan Vladimirovich Dvoryanskov¹^a, Ekaterina Aleksandrovna Maletina¹^b,
Irina Aleksandrovna Lakina¹^c and Lidia Petrovna Pitkevich¹^d
¹Research Institute of the Federal Penitentiary Service of Russia, Russian Federation

Keywords: Criminal law, criminal means, crime prevention, criminal penalty not involving convicts isolation from society, reasons for lowering of crime rates, the number of convicts, humanization of legislation, criminal policy and judicial practice, fines, deprivation of the right to hold certain positions and engage in certain activities, custodial restraint, community service, correctional labor, compulsory labor, probation, optimization of punishments associated with bringing convicts to work.

Abstract: Lowering of the crime rate is objectively confirmed by the official statistics of the Ministry of Internal Affairs of Russia and is due to a complex of criminological reasons, including the observed demographic decline, and a decrease in the crimes detection (latency increase), a decrease in the personnel of law enforcement bodies, primarily district inspectors, who are the primary link in the crime prevention system. At the same time, the decrease in the total number of crimes committed cannot indicate a favorable criminological situation. The research significance is due to the substantiation of the change in the punitive paradigm in crime fighting, the substantiation of the greater efficiency and, consequently, the preference for the use of punishments that are not involving isolation from society in combating crime. In particular, over the past relatively short period, the development of compulsory labor demonstrates high dynamics. In this regard, legal problems are identified, including those related to shortcomings in the punishment systematization, it is proposed to combine punishments involving labor. The research methodology is based on traditional methods of humanitarian research: dialectical, analysis and synthesis; comparative; technical; sociological; theoretical; modeling; forecasting. As the results of the research, the article presents a criminological and legal analysis of the currently observed phenomenon of lowering of crime rates and the number of convicts, especially to imprisonment. Its reasons are revealed, including interrelated (correlated) processes - the humanization of legislation, criminal policy and judicial practice.

1 INTRODUCTION


Today, the number of people held in prisons and pre-trial detention centers in Russia is less than 500,000. Although a few years ago, the number of people isolated from society reached a million.


From a social and criminological point of view, this phenomenon is of very great interest, since, undoubtedly, it reflects the essential processes taking place in society, on the one hand, and in the criminal policy of the state, on the other hand. Their detailed study is required, firstly, to understand the reasons


and conditions that determine the phenomenon under consideration, and secondly, to develop proposals for improving the criminal policy implementation that supports and enhances the above effect.


2 MATERIALS AND METHODS

As of February 1, 2021, there were 478,714 people in the penal system institutions. (-4,118 people by January 01, 2021).

^a <https://orcid.org/0000-0003-0542-5254>

^b <https://orcid.org/0000-0002-5104-0470>

^c <https://orcid.org/0000-0002-5342-2886>

^d <https://orcid.org/0000-0003-2040-0960>

The penal system includes 29 correctional centers and 81 isolated sections, functioning as correctional centers, in which 6,407 convicts are registered. Also, there are 81 federal state institutions "Penal Enforcement Inspectorate" and 1,348 of their branches, which are registered with 452,747 people sentenced to punishments not involving the convicts' isolation from society, 7,921 people suspected and (or) accused of committing crimes on house arrest, 3,009 - prohibition of certain actions, 40 - bail with the obligation to comply with the prohibitions provided for in Part 6 Art. 105.1 of the Criminal Procedure Code of the Russian Federation (Brief description of the penal system..., 2020).

According to the Judicial Department at the Supreme Court of the Russian Federation, the total number of persons sentenced to criminal penalties is also decreasing. If in 2009 it was 892,360 people, then in 2019 - 598,214 (Basic Statistical Indicators of Criminal Records..., 2020).

The research is based on the dialectical method. The following methods were also used: analysis and synthesis; comparative; technical; sociological; theoretical; modeling; forecasting.

3 RESULTS AND DISCUSSION

The main reasons for the decrease in the number of convicts in Russia can be divided into:

- 1) reasons associated with a lowering of crime rates;
- 2) the reasons associated with the criminal policy humanization, including legislation and judicial practice.

The lowering of crime rates is objectively confirmed by the official statistics of the Ministry of Internal Affairs of the Russian Federation (in 2010 - 2628799; in 2019 - 2024337) (The state of crime in Russia ..., 2020). Thus, over the past ten years, the registered crime has decreased by 604,462.

It cannot be admitted that this is always associated with the effective preventive work of law enforcement bodies. Researchers aptly note that the true reasons for such lowering are often: the decline in the birth rate in the 1990s and early 2000s, ill-considered decisions on regulating the number of convicts, sometimes low qualifications of law enforcement officers, imperfection of certain criminal norms (Santashov, 2019).

The lowering of crime is due to a complex of criminological reasons, including the observed demographic decline, and a decrease in crime detection (latency increase), a decrease in the

personnel of law enforcement bodies, primarily district inspectors, who are the primary link in the crime prevention system.

At the same time, the decrease in the total number of crimes committed cannot indicate a favorable criminological situation (Prozumentov, 2020).

An analysis of the judicial practice of sentencing shows that over the past 10 years there has been a general decrease in the number of sentences imposed, a change in the convictions structure (including an increase in the proportion of those sentenced to punishments not involving isolation from society) (Rakhmatulin, Rumyantsev, Shamsunov, 2019).

This is due to the second of the above groups of reasons: the humanization of criminal policy, including legislation and judicial practice.

The legislation humanization is associated, first of all, with the decriminalization of certain elements of crimes and the introduction of new grounds for exemption from criminal liability (Pudovochkin, 2020), in particular, exemption from criminal liability due to compensation for damage (Article 76.1 of the Criminal Code of the Russian Federation) (Federal Law of the Russian Federation № 420-FZ, 2011), as well as with the court fine imposing (Art.76.2 of the Criminal Code of the Russian Federation) (Federal Law of the Russian Federation № 323-FZ, 2016), a deferral of punishment (Kuznetsov, 2020).

However, one cannot speak of a uniform increase in the use of all so-called alternative punishments.

According to the Judicial Department at the Supreme Court of the Russian Federation, the number of *fines* decreased from 123,495 in 2010 to 74,752 in 2019 (Azarova, Dvoryanskov, 2020).

At the same time, a sharp increase demonstrates the use of this type of punishment as *deprivation of the right to hold certain positions and engage in certain activities*: from 9,924 in 2010 to 69,880 in 2019 (Borodina, Dvoryanskov, 2019).

Custodial restraint in 2010 (the first year of this punishment application in its modern form) was imposed 7,941 times, in 2019 - already 20,420 times.

The dynamics of *community service* assignments ranged from 79,874 in 2010 to 141,165 in 2016 (the maximum value in 10 years). In 2019, community service was assigned 99,652 times (Basic Statistical Indicators of Criminal Records, 2020).

There were 41,282 people sentenced to *correctional labor* in 2010, and 50,020 people in 2019. Thus, the peak-to-peak amplitude is practically absent.

Probation in 2010 - 307,206 times, in 2019 - 157,511 (Basic Statistical Indicators of Criminal

Records, 2020). The application of this measure has been significantly reduced.

As for *compulsory labor*, over the past relatively short period, the development of this type of punishment demonstrates high dynamics. So, according to the departmental statistics of the Federal Penitentiary Service of Russia, in 2017 there were 587 convicts in the correctional centers (isolated sections, functioning as correctional centers), in 2018 - 2,501 people, and in 2019 - already 7,386 people.

The potential for the compulsory labor application is due, on the one hand, to the financial and economic opportunities associated with the creation of a network of correctional centers (CC) and sections functioning as a correctional center (ISCC), and, on the other hand, by the legal conditions for the imposition of this type of punishment. The first group of factors is developing relatively favorably due to the possibility of creating special sections of correctional centers and colonies-settlements on the basis of organizations in which convicts will work (Federal Law of the Russian Federation № 179-FZ, 2019). The second is related to the legislative limitation of the circle of persons who can be assigned to compulsory labor. According to Art. 53.1. of the Criminal Code of the Russian Federation, compulsory labor is used as an alternative to imprisonment in cases provided for by the relevant articles of the Special Part of this Code, for the commission of a crime of little or medium gravity, or for the commission of a serious crime for the first time.

According to the Judicial Department at the Supreme Court of the Russian Federation, the number of people convicted for crimes of little and medium gravity is relatively stable and fluctuated accordingly:

- crimes of little gravity (309,522 - in 2010; 305,011 - in 2019);
- crimes of medium gravity (281,068 - in 2010; 131,824 - in 2019).

In 2019, a total of 129,548 people were convicted of serious crimes. For comparison, in 2010 - 203,979 people.

Potentially, an increase in the number of the CC contingent (ISCC) is possible due to the considered category of convicts who are assigned imprisonment for crimes of little and medium gravity, except for persons who are not assigned compulsory labor: women who have committed especially serious crimes or are pregnant or have children of age up to three years old, or those who have reached the age of fifty-five, as well as minors, invalids of the first or second group, men who have reached the age of sixty, as well as military personnel.

Of course, to this number one must also add those who were assigned compulsory labor initially or as a replacement in accordance with Art. 80 of the Criminal Code of the Russian Federation (replacement of the unserved part of punishment with a milder form).

Some of the persons who could potentially be assigned compulsory labor (sentenced to imprisonment for committing intentional crimes of little and medium gravity) are serving their punishments in colonies and settlements in accordance with paragraph "a" of part 1 Art. 58 of the Criminal Code of the Russian Federation. In 2019, their contingent was 20194, i.e. respectively:

- crimes of little gravity - 10,380 people;
- crimes of average gravity - 9,814 people.

The total number of persons, persons who could potentially be assigned compulsory labor (if aside other punishments and measures) was approximately 470,000 people in 2019.

At the same time, the institution of punishment substitution with a milder form has a serious resource for expanding the contingent of those sentenced to compulsory labor (Chernenko, Masalitina, 2019). Today, the number of such persons, according to the Federal Penitentiary Service of Russia, reaches approximately 190,000 people, including those who fall under the grounds for punishment substitution with a milder form.

The predicted further increase in the number of those sentenced to compulsory labor requires, in addition to practical measures, the introduction of amendments to the penal legislation regulating the procedure for the appointment and execution of sentences in the form of compulsory labor (Olkhovik, 2018).

The judicial practice of humanization is also expressed in the expansion of existing and new grounds for exemption from criminal liability (Zvonov, Savin, 2020).

Thus, the court fine imposition increased from 20,692 in 2017 to 52,460 in 2019, and its imposition is comparable to the appointment of correctional labor (50,020 in 2019). At the same time, not all innovations in criminal legislation have found wide application. For example, the growth in the use of such a measure of exemption from criminal liability as compensation for damage in economic cases is much less significant - from 39 in 2017 to 62 in 2019. At the same time, it is obvious that these measures application directly affects the decrease in the number of convicts.

So, in 2013, 201,803 people were released by court decisions, in 2014 - 188,610, in 2015 - 174,736,

in 2016 - 174,579, and in 2017 - 186,761 people. (Forensic statistics data, 2020)

Thus, the application of various types of punishments and criminal measures not related to imprisonment is uneven and demonstrates different dynamics. However, it is characterized by relative stability, which makes it possible to predict its preservation in the midterm.

It is also obvious that due to such a policy, the structure of the convicts contingent is also changing. In recent years, there has been a trend towards a steady decline in persons held in prisons. This is due to the widespread use of alternative punishments, without imprisonment, and in general with the liberalization of the penal policy. The number of convicts in colonies is decreasing, but the number of persons registered with penal enforcement inspectorates and correctional centers is increasing.

Accordingly, this should serve as the basis for the adoption of legislative and managerial decisions to ensure the proper execution of criminal penalties, optimization of financial, human and organizational resources of the penal system.

First of all, the problem of increasing the resources of the penal system requires a solution.

The currently emerging trend of expanding the application of punishments and other criminal and criminally-remedial measures not related to isolation from society directly affects the number of persons subject to penal enforcement inspectorates (hereinafter - PEI), increased according to the Management of the sentence enforcement not related to the isolation of convicts from the society by the Federal Penitentiary Service of Russia (Management of the sentence enforcement not related to the isolation of convicts from the society by the Federal Penitentiary Service) by 200 thousand people (2015 - 853,351 people, 2016 - 871,786 people, 2017 - 989,228 people, 2018 - 1,034,029 people, 2019 - 1,003,165 people). This, in turn, naturally leads to an increase in the workload on the PEI staff.

The problem of exceeding the limit of the number of CC (ISCC) remains not fully resolved. This is facilitated, firstly, by judicial practice, characterized by the expansion of the application of this punishment; secondly, unreasonably broader ground for replacing the unserved part of the punishment with a milder form, including imprisonment - compulsory labor (as when sentencing - part 2 Art. 53.1 of the Criminal Code of the Russian Federation, and in the process of serving - Art. 80 of the Criminal Code of the Russian Federation); thirdly, an increase of sanctions in the criminal law containing compulsory labor, which, by the way, directly

contradicts the provision of Art. 53.1 of the Criminal Code of the Russian Federation, according to which this type of punishment can be imposed only as an alternative, if the court comes to the conclusion that it is possible to correct the convicted person without actually serving the sentence in prisons.

At the same time, the CC (ISCC) possibilities are limited both legally and in fact. The limit for filling the institution (section) is strictly established by the issued order of the Federal Penitentiary Service of Russia for each CC (ISCC). Accordingly, areas, material and technical support, staffing and other parameters are calculated.

One cannot but take into account the factor of economic development, which is different in different regions. In the more industrially developed constituent entities of the Russian Federation, the employment of convicts to compulsory labor does not cause such noticeable difficulties as in those where agricultural production prevails, which is seasonal and does not allow to attract convicts to work on a permanent basis.

In this regard, it is easy to predict the uneven distribution of convicts in the CC (ISCC), subordinate to various territorial bodies of the PEI, which is already observed today.

4 CONCLUSIONS

Thus, the prospects for the application of punishments not involving isolation from society are conditioned by the state and dynamics of crime in Russia, on the one hand, and by the emerging trends in the criminal policy humanization, on the other hand, including legislation and judicial practice. At the same time, their analysis, based on the current situation and its extrapolation for the midterm, scientific forecasting is necessary for making legislative and managerial decisions to ensure the proper execution of criminal penalties, optimizing the financial, human and organizational resources of the penal system.

REFERENCES

- Federal Law of the Russian Federation № 420-FZ, 2011.
- Federal Law of the Russian Federation № 323-FZ, 2016.
- Federal Law of the Russian Federation № 179-FZ, 2019.
- On Amending the Penal Code of the Russian Federation”.
- Azarova, I.V., Dvoryanskov, I.V., 2020. Fine in the system of punishment for crimes against property and some

- problems of increasing its effectiveness. *In Penitentiary Science*. 14. 4(52). pp. 473-479.
- Borodina, A.M., Dvoryanskov, I.V., 2019. Evasion from serving a sentence in the form of deprivation of the right to hold certain positions or engage in certain activities: problems of prevention and regulation of liability. *In Man: Crime and Punishment*. 27(4). pp. 428-434.
- Denisova, A. V., 2017. Criteria for the correctness of criminal law standards. *In Russian Justice*. 11. pp. 21-24.
- Zvonov, A.V., Savin, A.A., 2020. Improvement of the mechanism for the application of compulsory measures of a medical nature, combined with punishments without isolation from society: from the sentence imposition to release from it serving. *In the All-Russian Journal of Criminology*. 14(5). pp. 735-744.
- Kazak, S.V., 2019. Socially useful labor as a means of correcting convicts serving sentences without isolation from society. *In the Bulletin of the Academy of the Ministry of Internal Affairs of the Republic of Belarus*. 1(37). pp. 117-122.
- Kuznetsov, A.I., 2020. Criminological and legal aspects of the application of the deferral of serving a sentence. *In the All-Russian Journal of Criminology*. 14(6). pp. 834-844.
- Olkhovik, N.V., 2018. The effectiveness of non-custodial criminal penalties execution. *In the All-Russian Journal of Criminology*. 12(1). pp. 51-59.
- Petrov, A.A., 2021. Execution of punishments without isolation from society related to the involvement of convicts in labor: problems of the execution of punishment in the form of correctional labor. *In Innovations. Science. Education*. 26. pp. 763-768.
- Prozumentov, L.M., 2020. The effectiveness of punishments and other measures provided for by the criminal law for juveniles who have committed a crime. *In the All-Russian Journal of Criminology*. 14(2). pp. 305-312.
- Pudovochkin, Yu.E., 2020. Socio-criminological characteristics of exemption from criminal liability. *In the All-Russian Journal of Criminology*. 14(4). pp. 581-592.
- Rakhmatulin, Z.R., Rumyantsev, N.V., Shamsunov, S.Kh., 2019. On the issue of judicial discretion limits in the regulation of the non-penitentiary regime of restriction on freedom and probation. *In Revista Turismo Estudos & Práticas*. S2. pp. 1-9.
- Santashov, A.L., 2019. Theoretical foundations for the differentiation and individualization of the responsibility of minors in criminal and penal law: Abstract of the dissertation of the doctor of legal sciences. pp. 46.
- Skobeleva, N. G., 2019. Criminal and penal aspects of the application of deferral of serving a sentence. *In Penitentiary Science*. 3(13). pp. 335-340.
- Sukhodolov, A.P., Marenko, V.A., Bychkova, A.M., 2019. The cognitive model of "the spread of drug addiction. *In the All-Russian Journal of Criminology*. 13(4). pp. 535-546.
- Filippova, O.V., 2020. General social determinants of recidivism). *In the Bulletin of Tomsk State University*. 457, pp. 261-265.
- Chernenko, T.G., Masalitina, I.V., 2019. Some problematic issues of replacing criminal punishment with a milder type of punishment. *In the Bulletin of Tomsk State University. Law*. 32.