Natalia Khutorskaya, PH.D.

ALTERNATIVES IN RUSSIA

At the beginning of the third millennium Russia was one of the world leaders in terms of the number of prisoners per 100 thousand people of the total population. The living conditions in many correctional institutions and remand prisons were unsatisfactory and the number of prisoners exceeded their capacities.

A wider use of alternatives to imprisonment was considered not only as a means of reducing overcrowding in the correctional system but as an important line of the criminal justice reform aimed at making it more humane and community-focused.

The new Russian Criminal and Criminal Execution Codes which came into force in 1997 introduced a number of alternatives to imprisonment: fine, compulsory community service (an analogue to unpaid community service in other countries), corrective labor, judicial restraint (supervised release), conditional sentencing, disqualification from holding specific positions. In 2011 compulsory works were added. At the same time the legislator excluded such a sanction as confiscation of property from the list of alternative sanctions and measures.

The statistical data on convictions in the Russian Federation in 2012 is as follows:

- Deprivation of liberty (including life imprisonment) – about 28.8 %;
- Judicial restraint – 3.5 %;
- Compulsory community service – 10.2 %;
- Corrective labor – 9.9 %;
- Disqualification from holding specific positions – 0.06 %;
- Fine – 15.5%;
- Conditional sentence to deprivation of liberty – 29.5%;
- Conditional sentence to corrective labor – 2.9 %;

- Other convictions in respect of militants – about 2 %.

The figures are not quite accurate but still they show that the deprivation of liberty does not prevail and constitutes less than 30 % of all sanctions and measures imposed by courts. The same tendency of wider use of alternatives can be seen while analyzing the figures for previous 4-5 years. The percentage of those sentenced to actual deprivation of liberty is decreasing steadily though slightly (from 33.8 % in 2008 to 28.8 % in 2012). As a result, the number of persons kept in the correctional institutions has reduced. In absolute figures, in 1995 it was equal to 1,018 thousand, in 2008 to 887 thousand, and to 697 thousand as of February 1, 2013. The most considerable reduction (more than two times) was recorded for those kept in pre-trial detention facilities and prisons. In 2005 the number was 205 thousand, in 2008 – 145 thousand and 113 thousand as of February 1, 2013. Unfortunately, the data for 2013 and the beginning of 2014 is not available.

Thus, over 70 % of offenders in Russia are not deprived of their liberty now.

The use of alternative sanctions and measures in respect of juvenile offenders is of utmost importance since this category of offenders needs special attention and more humane attitude on the part of the state.

In the past five years the number of convicted juveniles reduced approximately two times. The percentage of juveniles sentenced to actual deprivation of liberty reduced from 22.7 % in 2008 to 17 % in 2012. Simultaneously, the percentage of juveniles in the total number of those sentenced to imprisonment reduced from 7.6 % in 2008 to 5.7 % in 2011 and 2.4 % in 2012. As a result, the number of juveniles kept in juvenile correctional institutions has been reducing steadily: 8.6 thousand in 2008, 4.1 thousand in 2010, and 2.3 thousand as of February 1, 2013.

Thus, over 80 % of the juveniles offenders were not deprived of their liberty and sentenced to alternative sanctions and measures.

As of May 1, 2014 in all pre-trial institutions and correctional colonies of the Russian Federation 676.4 thousand persons were kept, among them 1.9 thousand juvenile offenders.

In criminal execution inspections (an analogue of probation service) 430.4 persons sentenced to alternative sanctions and measures were under supervision of 2.461 members of the staff.

Now I would like to say a few words on some of alternative sanctions and measures according to Russian law which may be imposed by court.

In the system of punishments in ascending order of severity, **the fine** is placed first which means that the legislator considers it the least severe one. Under the Russian law, a fine may be either the primary or an additional punishment. In terms of the frequency of imposition sanctions in respect of adult offenders as a primary sanction fine holds the second place after imprisonment. At the same time, fine is imposed much less frequently than in other European countries. For juveniles fine is used not quite often. The rate of persons sentenced to fine remains stable for a number of years (14-15 % for adults and 10-12 % for juveniles).

There are three methods of calculating a fine in Russia. The most common one is a fixed amount of money from one thousand to two million rubles, that is, from 20 to 40 thousand euros.

The amount of a fine may be calculated by court on the basis of an offender’s earnings or other income for a period from two weeks to five years.

For juveniles the maximum amount of a fine is much lower: from one thousand to fifty thousand rubles (20 – 1,000 euros).

In 2011 a new option of calculating fines was introduced. For such offences as bribery, corrupt business practice the amount of a fine is calculated as a multiple of the amount of the corrupt payment or the bribe. The limit is established as equal to the hundred-fold amount of the corrupt payment or the bribe but not less than 25 thousand rubles and not more than 500 million ruble (500 euros – 10 million euros).

The main problem of execution of fines is its relatively low enforceability. In practice, about a half of the fines imposed by courts is paid voluntarily within the time limit of 30 days established by law. About one third of convicts are granted a postponement of payment up to five years or are allowed to pay the fine by parts and one of four unpaid fines is recovered by the Bailiff Service through the enforcement proceedings.

In our opinion objective factors (economic situation in the country) and subjective ones (fine payment evasion) cause such a situation.

Disqualification from holding specific positions or conducting specific activities is the prohibition "to hold positions in civil service, local self-government bodies, or conducting specific professional activities" as it is put in law.

This sanction may be imposed either as the primary punishment (for the period from one to five years) or as an additional one (for a period from six months to three years), or up to twenty years in special cases provided for in law.

Disqualification as a primary punishment is imposed by courts very seldom (0.05 – 0.08 % of total number of sentenced adults and even less in respect of juveniles.

In practice, the persons are most often disqualified from driving transport vehicles, from holding positions in government service (including law enforcement bodies), as well as disqualification from activities in the sphere of trade, finance, public utilities, public health, and prohibition of hunting and fishing.

The figures mentioned above show that disqualification does not constitute any meaningful alternative to imprisonment and has no preventive function.

That's why there are proposals on the table to remove the sanction from the list of primary ones as it is imposed very seldom. It is also proposed to exclude it from law as a sanction and consider it as "a security measure" and the legal consequence of the respective crime.

The law considers **compulsory community service** more severe than the fine or the disqualification. It is similar to unpaid community service in many European countries. This sanction did not exist in the Soviet Union and was introduced in modern Russia in 1996. The criminal execution inspections are entrusted with their execution.

Initially, compulsory community service was imposed for a period from 60 to 240 hours (for adults). In 2011 the maximum possible time was increased to 480 hours. For juveniles this time is shorter from 40 to 160 hours and the nature of the work should be in compliance with a juvenile's physical capability.

The compulsory community service is not used in respect of disabled persons, pregnant women, women having children of the age below three years old and military servicemen.

Despite a high potential of this sanction and its compliance with the international standards, its use was postponed two times, first until 2001 and subsequently until 2004. There were two reasons preventing from imposing the compulsory community service. Initially, according to the law the sanction was unpaid for the convicts but the employers' duty was to transfer the money for the work performed to the local budget. This organizational problem was subjected to criticism and, as a result, the mentioned collision was removed from the law and compulsory community service became unpaid for convicts and charge-free for employers. That made putting the sanction into practice possible.

Second, the criminal execution inspections did not have any experience in execution of this punishment since it did not exist in the Soviet Union.

To solve the above mentioned problems in 2001- 2002 a project "Alternatives to imprisonment in the Russian Federation" was launched with the participation of the Federal Service for the Execution of Sentences (FSIN), Penal Reform International (PRI), academics and NGO people. The project embraced eight regions of Russia and made it possible to begin practical application (imposition and execution) of the punishment.

In recent years the number of offenders sentenced to the compulsory community service was growing steadily both for adults (from 5.6 % in 2008 to 10.2 % in 2012) and for juveniles (from 11.4 % in 2008 to 21 % in 2012).

In Russia with its vast territories and inadequate transportation there are serious problems with the execution of the compulsory community service. The offenders living far away from an inspection may be under no control and supervision and found themselves at the disposal of their employers.

A problem also exists with the offender's malicious evasion of serving compulsory community service. In such a case the law envisages the replacement of the sanction with compulsory works or imprisonment on the ratio "one day of compulsory works or imprisonment for eight hours of non-served term of the compulsory community service".

Since compulsory works have not been put into practice yet, the non-served portion of compulsory community service may be replaced only by the deprivation of liberty. A simple calculation (480 : 8 = 60 – four hundred and eighty to divide to eight) shows that the maximum term of deprivation of liberty that may be applied to an offender maliciously evading the sanction is equal to two months only. Actually such a threat is not meaningful for many convicts sentenced to compulsory community service, especially for those who previously served imprisonment or were kept in pre-trial detention institutions during the investigation and trial. There are cases when such offenders apply to the court for placing them to prison refusing to serve the compulsory community service.

Some Russian academics have made a proposal to amend the law with the following norms to ensure effectiveness of the compulsory community service. They are as follows:

- the maximum length of compulsory community service should be increased up to one thousand hours, that will make the punishment more severe and competing with actual deprivation of liberty;

- the possibility should be provided for reducing the length of the sanction by the court upon the recommendation of the criminal execution inspection or an offender's application after serving at least one half of the term;
- the ratio for replacing the compulsory community service with the deprivation of liberty should be "one day of deprivation of liberty for one hour of non-served compulsory community service".

Corrective labor as a punishment was widely applied in the Soviet period (some 22 – 25 % of all convictions). Now the share of the offenders sentenced to corrective labor is much lower. In 2008 – 2011 it was equal to 4 – 5 %. That was caused by a number of factors. The first one is unemployment in the country and lack of jobs for those sentenced to this punishment who have no work. The second one is that the legislator changed the law regulating the implementation of corrective labor several times: at first the punishment could be served either at the place of offender's principle job or in another place chosen by the inspector.

According to the Criminal Code of 1996 corrective labor could be imposed on persons having a job. In 2003 an amendment was introduced: only persons having no job could be sentenced to the punishment. And there was no logical and reasonable explanation for such a decision. Naturally, that narrowed the application of corrective labor.

At last in 2011 the legislator took into account the wide criticism and returned the procedure for imposition of corrective labor that had existed before 1996. Now the court can impose corrective labor on both categories of offenders: having a job or having none. The least can serve the sentence at the places determined by local self-government bodies by an agreement with an inspection. The most important thing about corrective labor is that according to the court decision from 5 to 20 % of the money earned by an offender is extracted to the budget. The punishment is imposed for the period from two months to two years.

Unlike compulsory community service that is unpaid corrective labor is a paid work regulated by the general labor legislation in terms of its duration, conditions, working hours, etc. An offender is an employee of an enterprise or an

institution having the same rights and duties as the others. Nevertheless, the annual paid leave of the convict is reduced and is equal to 18 days. In addition, such a person cannot be dismissed by the administration or change a place of work without a permission of an inspector. Besides, he must make regular visits to the inspection.

The problems which need to be solved are as follows:

- granting the criminal execution inspections the right to determine on their own a kind of a job for the offenders who have no job including the right of the inspection to act as an employer that must be prescribed by law;
- introduction of the possibility of conditional early release (release on parole) from corrective labor if, for example, a convict has served at least half of the term and had no breaches of the conditions of the punishment;
- changing the ration of replacement of corrective labor with deprivation of liberty, introducing “a day for day” ratio for malicious evasion of serving the punishment.

Judicial restraint, or limitation of liberty, is the last in the line of existing non-custodial sanctions according to the Russian legislation. From the time of the adoption of the Russian Criminal Code there were two kinds of judicial restraint, or, to be more accurate, two different kinds of punishment in terms of their legal nature.

According to the Criminal Code of 1996 judicial restraint was a punishment imposed for a period from one to five years which was to be served in special facilities of the correctional system – correctional centers. The offenders were to live there under supervision and with certain regime restrictions according to the law. The offenders were obliged to work at the places determined by the administration of the correctional centers. Due to the budgetary problems up to 2009 not a single correctional center was built that’s why in 2009 a new punishment referred to as “judicial restraint” was introduced, absolutely different and not involving living in a special institution and any mandatory work.

Judicial restraint in 2009 version may be used as a primary punishment from two months to four years and as an additional punishment to deprivation of liberty or compulsory works for a period from six months to two years.

In does not entail a change of a place of residence of an offender and it is executed by the criminal execution inspections.

The punishment comprises a number of restrictions imposed by the court which can be revoked during the term of the punishment or new restrictions can be added on the recommendation of an inspector supervising the offender.

The limitations imposed on an offender are aimed at the prevention of committing a new crime and at establishing control over his or her behavior. Two restrictions must be imposed by the court on a mandatory basis. They are: first, a prohibition to change a place of residence and a territory of the relevant municipality without an inspector's consent; and, second, to appear in the inspection from one to four times a month.

Notably, it is for the first time in Russia that for the implementation of an alternative sanction the law envisages the use of electronic monitoring including so-called "electronic bracelets".

In 2013 the system of electronic monitoring was operating in 80 of 83 areas of Russia covering over 9 thousand persons sentenced to judicial restraint. However, judicial restraint in itself and the practice of its implementation gave rise to a number of problems, the main of which is insufficiency of the bracelets which are very expensive and the system as a whole is inadequate.

As a result, judicial restraint has yet failed to take the place predicted to it as a good alternative to imprisonment. Now, almost five years after the introduction of a new version of the judicial restraint only 1 – 2 % of all offenders are sentenced to this punishment.

Besides, according to the official statistics during the period of electronic monitoring over one thousand violations on the part of the offenders were recorded and for about 700 offenders judicial restraint was replaced with imprisonment.

Compulsory works, or forced labor, consists in engaging the offenders in productive work in the places determined by the correctional authorities. From 5 to 20 % can be extracted from their salaries by the court decision. The offenders must be kept in correctional centers in each of 83 areas of Russia. If there is no such center, the sentence can be served in a separate section of a correctional colony.

Thus, the punishment actually cannot be considered as an alternative to imprisonment and does not meet the criterion formulated in the Glossary in the European Rules on Community Sanctions and Measures (1992) which reads: "community sanctions and measures are those which maintain the offender in the community"…

Conditional sentencing is a measure that has existed in the Russian legal practice since long ago including the Soviet period. Conditional sentence under the Russian law is, strictly speaking, a conditional release from serving imprisonment or corrective labor at the stage of pronouncing a sentence in court.

The statistics show that conditional sentences, namely, to deprivation of liberty, prevail among the alternative sanctions and measures (over a half of all of them). For the juveniles the proportion is even higher – over 60 %. The share of conditional sentences to deprivation of liberty is steadily exceeding the share of actual imprisonment: in 2012 for adults the proportion was 29.5 % to 28.8 %). The difference between actual and conditional deprivation of liberty is still more obvious for juveniles – 42.9 % and 17 % in 2012.

In October 2010 the Russian Government approved the Concept of the Development of the Correctional System for the Period up to 2020. Many provisions of the Concept were criticized by correctional workers, the academics and the public as early as at the drafting stage. The document was not based on academic research and evaluation of the resources needed for the reforms. Besides, the Concept did not take into consideration the results of the All-Russia census of the persons sentenced to deprivation of liberty and court practice.

The main idea of the reforms proposed for 10 years is to shift from correctional colonies (which are traditional institutions for Russia) to prisons with a rather severe regime: in many of them the prisoners will have no access to work, education and contacts with the outside world. So, the main line of the Concept contradicts the essential principles and recommendations of the European instruments, namely, the European prison rules.

It is according to the Concept that the Russian legislation was amended with such non-effective and, I would dare to say, stupid alternatives to imprisonment as judicial restraint and compulsory works.

The Concept proclaims the intention to establish probation service in Russia but up to now a package of documents regulating its structure and activities has been drafted which has not been discussed in public. The working group on probation does not include any academics, professionals in execution of alternatives and members of the NGOs who could contribute to drafting the legislation. Unfortunately, there is no information on the perspectives of probation service in Russia.

I may seem not modest, but still I must say that as early as the eighties of last century I made a doctorate research on probation in the world. Later for decades I wrote a number of books and articles on the topic but, to my regret, my views and ideas were not taken into consideration as well as my colleagues' findings.

But to finish my presentation with an optimistic note I must say that a draft law on probation in respect of juveniles is introduced in the Russian Parliament. But its content is unknown.

Thank you for your attention.