



V.A. Utkin

**ALTERNATIVE
SANCTIONS IN RUSSIA:
STATUS,
PROBLEMS
AND PROSPECTS**

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BACKGROUND

At the beginning of the third millennium Russia was the world leader in terms of the number of prisoners per 100 thousand people of the total population¹. The conditions of keeping in the places of deprivation of liberty remained unsatisfactory in many respects, and the total number of prisoners exceeded the capacities of pre-trial detention facilities and correctional institutions. At the same time, extension of applying alternative sanctions was considered even then not only as the means of reducing the overcrowding of the penal institutions and the cost of maintenance thereof, but also as an important line of the criminal justice reform and making it more humane and community-focused.

Such a line was designed when the process of elaboration and adoption of a new criminal and correctional legislation was already on way though the Russian legislator not always acted consistently in this field.

The Criminal Law of the Russian Federation, most of the provisions of which entered into force on January 01, 1997, provided for 12 kinds of punishment in Article 44. Four of them (deprivation of liberty for a specific period, deprivation of liberty for life, custody in a penal military unit, and arrest) involve keeping a convict isolated from the community. The other eight kinds of punishment do not provide for such isolation. The law has also provided and remains providing for the possibility of imposing on a convict such alternative criminal sanctions as conditional sentence (Articles 73, 74 of the RF Criminal Code) and deferred sentence (Article 82 of the RF Criminal Code)².

In addition, the Criminal Code contains a number of provisions on release from criminal liability such as release from liability owing to active repentance (Article 75 of the Criminal Code), by settlement with the injured party (Article 76), and owing to expiry of the limitation period (Article 78 of the Criminal Code)³. The most

extensive additional legal opportunities of release from criminal liability and punishment are established by the Criminal Code with respect to minors. These include, without limitation, application to offenders of compulsory measures of educational nature (Articles 90, 91 of the Criminal Code) and placement of offenders to special closed-type educational and instructional institutions functioning under educational authorities.

Execution of all punishments under the criminal law, conditional sentences and deferred sentences is governed by the RF Correctional Code, which entered into force on July 01, 1997.⁴

However, some kinds of punishments were not imposed in practice at the time of introduction of a new system of punishments in the Criminal Code. Capital punishment was not executed in the Russian Federation from September 1996 owing to Russia's joining the Council of Europe and signing Protocol No. 6 of 1983 on prohibition of death penalty, and no death sentences have been delivered after 1999 (according to two judgments by the Constitutional Court delivered in 1999 and 2009).

The provisions of the Criminal Code and Correctional Code on punishment in the form of arrest have not been implemented yet. Arrest is to be served in special facilities – “detention houses”, but they have not been built so far as the related financial and economic costs are too high, and it is unlikely that they will be established in the future.

For certain organizational and economic reasons, the provisions of the Criminal Code on such alternative sanction as compulsory community service (an analogue to unpaid community service in other countries) remained not implemented for seven years after entry of the Criminal Code into force. Imposition of this kind of punishment began as late as the beginning of 2004.

In 2003, the legislator excluded confiscation of property from the list of punishments. In 2006, it was returned to the Criminal Code (Articles 104¹-104³), but as a legal consequence of an offence (“other measure of criminal law nature”) rather than a punishment.

However, the Correctional Code does not govern implementation of such confiscation unlike execution of punishment.

In this connection, the situation with such alternative punishment as judicial restraint (supervised release) deserves mentioning. In its original version it was intended to hold an “intermediate” position between deprivation of liberty (that involves isolation) and the measures not involving isolation from the community. It was supposed that this punishment should be served in so-called “correctional centers”, with the convicts staying in special hostels without guard but under supervision of the authorities in charge of execution of punishment and engaged for work in an orderly manner⁵.

However, the government did not allot any funds for establishment of correctional facilities, and engagement of a large number of convicts for work was not promising in terms of economy. Therefore, the deadline for putting judicial restraint into practice was postponed once and again beginning from 1996, and a fully different punishment was introduced into the Criminal Code under this title in December 2009, much closer in terms of its contents to conditional sentence and, generally, to probation.

Unfortunately, the situation with judicial restraint in the version of 1996 repeated with another punishment intended by its initiators to be an alternative to deprivation of liberty. In December 2011, provisions on so-called “compulsory works” were introduced into the Criminal Code (Article 53¹). Similarly to judicial restraint in the version of 1996, those are supposed to serve in “correctional centers” (Articles 60¹-60² of the RF Correctional Code). However, at the time of introduction the legislator set aside putting this punishment into practice to January 01, 2013. Later, it was postponed again to January 01, 2014.

Information on the practice of applying punishments under criminal law and other measures related thereto in Russia is provided by judicial statistics data. It is given in Table 1, made up on the basis of annual official data of the Judicial Department at the Supreme Court of the Russian Federation with respect to all the convicts in the period from 2008 to 2012.

Table 1

General Statistical Data on Convictions in the Russian Federation in 2008-2012⁶

Year	2008		2009		2010		2011		2012	
		%		%		%		%		%
Punishment										
Deprivation of liberty for life	71	0.008	71	0.008	74	0.008	60	0.007	84	0.01
Deprivation of liberty for a period	316146	33.8	295963	32.8	276570	32	236901	29.5	218539	28.8
Judicial restraint	0	0	0	0	7893	0.9	11761	1.5	26886	3.5
Compulsory community service	52379	5.6	67187	7.5	81530	9.4	92170	11.5	77904	10.2
Corrective labor	46229	4.9	43000	4.8	41446	4.8	42885	5.3	75507	9.9
Disqualification from holding specific positions as the primary punishment	476	0.05	433	0.05	493	0.06	682	0.08	448	0.06
Fine	133787	14.3	132433	14.7	127578	14.8	117868	14.7	117565	15.5
Conditional sentence to deprivation of liberty	368983	39.4	344266	38.2	312995	36.2	285890	35.6	224075	29.5
Conditional sentence to corrective labor	17568	1.9	18201	2	16045	1.9	13786	1.7	18455	2.9
Deferred punishment (Article 82, RF Criminal Code)	1852	0.2	1814	0.2	2212	0.26	1845	0.23	1784	0.2

Year Punishment	2008		2009		2010		2011		2012	
		%		%		%		%		%
Confiscation (Article 104-1)	511	0.05	587	0.07	679	0.08	671	0.08	565	0.07
Disciplinary military unit							718	0.09	417	0.09
Restraints related to military service							142	0.02	148	0.02
Disqualification from holding specific positions as an additional punishment	8290	0.9	10180	1.1	11812	1.4	12052	1.5	11947	1.6

Without pre-judging all of the possible conclusions, we would like to draw attention to the following. The statistical data for the past five years shows that the punishment in the form of actual deprivation of liberty is not prevailing in the court practice any longer, as was the case in the Soviet period and in the years preceding the adoption of a new RF Criminal Code. In addition, 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 the persons kept in the places of deprivation of liberty has reduced. In 1995, it was equal to 1,018 thousand, in 2008 to 887 thousand, and to 697 thousand as of February 01, 2013. The most considerable reduction (more than 2 times) was recorded for those kept in pre-trial detention facilities and prisons. Their number was equal to 205 thousand in 1995, to 145 thousand in 2008, and to 113 thousand as of February 01, 2013.

At the same time, comparison of the Russian practice with the statistical data of foreign (first of all, European) countries shows

that actual deprivation of liberty remains imposed times more frequently in relative terms in Russia than in the West.

Thus, over 70% of the convicts in Russia are not deprived of liberty now. Simultaneously, the percentage of those sentenced to conditional deprivation of liberty has been reducing (39.4% in 2008 and 29.5 % in 2012). The remainder is re-allocated in favor of actual alternative punishments, which is a positive trend in itself. And those are neither a fine (14.3% in 2008 and 15.5 % in 2012) nor deprivation of a right as a primary punishment (0.05% and 0.06%, respectively) nor corrective labor (4.9% and 5.3%)⁷ nor judicial restraint, widely publicized at the time of introduction in 2010 but imposed on as little as 0.9% of the convicts in 2010, on 1.5% of the convicts in 2011, and on 3.5% of the convicts in 2012.

In addition to conditional sentences, compulsory community service is becoming gradually but steadily the main reserve for reducing the application of actual deprivation of liberty (5.6 % in 2008, 10-11% in 2011-2012), and that necessitates paying special attention to execution of this kind of punishment.

Deprivation of liberty for life, disqualification from holding specific positions or conduct specific activity as the primary punishment, conditional sentence to corrective labor, confiscation of property, custody in a penal military unit, and restraints related to military service account for a negligible percentage of court practice.

Let us turn to the similar data in respect of minor convicts. It is given in Table 2.

The figures in the table show that the number of convicted minors reduced in the past five years approximately two times. The percentage of the minors sentenced to actual deprivation of liberty reduced from 22.7% in 2008 to 17% in 2012. Simultaneously, the percentage of minors in the total number of those sentenced to actual deprivation of liberty reduced from 7.6% in 2008 to 5.7% in 2011 and 2.4% in 2012. As a result, the number of minors kept in juvenile correctional facilities has been reducing steadily (8.6 thousand in 2008, 4.1 thousand in 2010, and 2.3 thousand as of February 01, 2013).

Table 2

Statistical Data on Convictions of Minors in the Russian Federation in 2008-2012

Year Punishment	2008		2009		2010		2011		2012	
		%		%		%		%		%
Deprivation of liberty for a period	16071	22.7	11437	21.2	8567	19	6311	17	5309	17
Judicial restraint	-	-	-	-	483	1.1	675	1.8	990	3.2
Compulsory community service	8090	11.4	7094	13.2	6893	15.3	6573	17.7	6572	21
Corrective labor	1372	1.9	833	1.5	577	1.3	434	1.2	513	1.6
Disqualification from holding specific positions as the primary punishment	-	-	3	0.005	1	0.002	10	0.03	1	0.003
Fine	7061	10	5730	10.6	4675	10.4	4285	11.5	3879	12.4
Conditional sentence to deprivation of liberty	36688	51.7	27705	51.4	23065	51.2	18422	49.5	13385	42.9
Conditional sentence to corrective labor	1630	2.3	1123	2.1	774	1.7	504	1.4	582	1.9
Placement to special facilities	510	0.7	497	0.92	447	1	439	1.2	346	1.1
Other measures of compulsion	1693	2.4	1367	2.5	1311	2.9	952	2.5	908	2.9
Disqualification from holding specific positions as an additional punishment	52	0.07	56	0.1	71	0.15	62	0.16	54	0.17

The figures in the table show that the number of convicted minors reduced in the past five years approximately two times. The percentage of the minors sentenced to actual deprivation of liberty reduced from 22.7% in 2008 to 17% in 2012. Simultaneously, the percentage of minors in the total number of those sentenced to actual deprivation of liberty reduced from 7.6% in 2008 to 5.7% in 2011 and 2.4% in 2012. As a result, the number of minors kept in juvenile correctional facilities has been reducing steadily (8.6 thousand in 2008, 4.1 thousand in 2010, and 2.3 thousand as of February 01, 2013).

Thus, over 80% of the convicted minors are convicted without actual deprivation of liberty. In most cases, conditional sentences are imposed on them (though the share of conditional sentences in the total number of the cases where alternative sanctions are applied is reducing). For all that, conditional sentences are delivered in respect of minors more frequently compared with adults (42.9% and 29.5%, respectively, in 2012). This results from a wider range of actual alternative punishments that may be applied by the court to those of age (fine, corrective labor). Thus, in 2011 fines were imposed on 14.7% of adult convicts and on 11.5% of minor convicts, and sentences to corrective labor were imposed on 5.3% of adult convicts and on 1.2% of convicts below 18 years old. At the same time, sentences to compulsory community service are imposed on minors relatively more frequently compared with adults, since the courts prefer, where possible, an actual alternative punishment to a conditional sentence. Suspended sentences (Article 82 of the Criminal Code) are imposed on minors very seldom (10 times less frequently than on adults). That is quite understandable, since deferred sentencing is applicable to pregnant women or to parents of children below 14 years old.

Although the share of the persons convicted without deprivation of liberty in the total number of the convicts grew in the past years from 66% in 2008 to 70-71% in 2011-2012, the total number of such persons has reduced considerably. That was caused

by the reduction in the total number of convicts in Russia (from 935,642 in 2008 to 760,032 in 2012). As a result, the number of the persons convicted without isolation from the community and recorded with special state authorities – correctional inspectorates – is also reducing. The idea of the process may be given by Table 3, made up on the basis of statistical data of the Federal Penitentiary Service (FSIN)⁸.

Table 3

**Number of the Persons Convicted without Isolation
from the Community and Recorded with
Correctional Inspectorates⁹.**

Year		2008	2009	2010	2011	2012
Number						
Recorded during the year		1,124,350	1,091,149	1,052,492	998,751	955,285
Recorded as of the end of the reporting period		558,346	534,409	491,257	474,775	465,740
Including those sentenced to	Compulsory community service	12,867	15,329	18,822	21,419	21,375
	Corrective labor	32,702	30,554	29,211	30,007	50,122
	Judicial restraint	0	0	6,444	11,539	24,285
	Disqualification from holding certain positions	22,301	22,580	23,713	22,260	21,799
	Conditional sentences	503,048	477,539	425,179	399,081	356,135
	Suspended sentences	7,428	8,407	7,888	7,971	8,125

The number and the structure of the body of the persons recorded with correctional inspectorates is generally (subject to the above stated reservations) corresponding to the structure of application of non-custodial measures. Among the latter, conditional sentences hold the first position though their percentage has reduced to a certain extent (from 90% in 2008 to

77% in 2012). Among the sentences to actual alternative punishments, the first position is held (at a large distance behind conditional sentences) by sentences to corrective labor (5.7% in 2008 and 10.8% in 2012). The share of conditional sentences and sentences to corrective labor was reducing in 2008-2011 largely owing to wider application of unpaid compulsory community service by the courts (from 2.3% of the recorded persons in 2008 to 4.4% in 2011). In 2012, the number of those sentenced to corrective labor grew as a result of the changes in the legislation and amounted to 75,507.

In October 2010, the RF Government approved by its Order the Concept of Development of the Correctional System of the Russian Federation for the Period until 2010¹⁰. First of all, the Concept determined the principal lines of reforming the penitentiary facilities for shifting from correctional camps to prisons. One of its sections (Section 5) deals with the issues of execution of non-custodial punishments. It is supposed that effective application of alternative sanctions to persons having committed offences of minor or medium gravity “is to ensure protection of the society from an offender, reduction in the level of crime in the society, fragmentation of the criminal community, reduction in the number of the persons kept in the facilities of the correctional system”. To achieve the above said goals, the Concept provides, among other things, for extension of the set of alternative sanctions, improvement of the legislation governing execution thereof, rendering the activity of correctional inspectorates community-focused, and engagement of local self-government bodies and general public for participation in their work.

However, many provisions of the Concept were subjected to criticism as early as the drafting stage. In particular, it was stated that the Concept, developed on the basis of the departmental resources, had no economic substantiation and does not rely to the required extent on scientific data, including the results of the All-Russia census of the persons sentenced to deprivation of liberty

and court practice¹¹. The Concept inevitably touched upon the issues of the punishment systems established in the Criminal Code and the policy in the sphere of criminal justice, but no representatives of the legislative authorities, the General Prosecutor's Office, the Supreme Court, the Ministry of Internal Affairs were engaged for direct participation in the elaboration of a draft Concept. As a result, many essential provisions of the Concept remain not implemented, and the adoption of the Concept, as may be seen from statistical data, has had almost no impact on the court practice. For example, early in 2012 some media, promoting the Concept and referring to senior administrators of the Federal Penitentiary Service (FSIN), forecast that over 100 thousand persons would be sentenced each year to a new punishment in the form of judicial restraint, owing to which the "prison population" would reduce dramatically¹². The table given above shows that of the total number of the persons recorded with the correctional inspectorates, the number of those sentenced to judicial restraint in Russia was equal to 6,444 (1.3%) in 2010, to 11,539 (2.4%) in 2011, and to 24,285 (5.2%) in 2012.

The punishment in the form of compulsory community service, which has changed to a certain extent the overall structure of convictions, was introduced about a year before approval of the Convention (by Federal Law dated December 27, 2009). As for compulsory works, widely publicized but not yet put into practice, the Concept does not provide for this kind of punishment at all. Significant inconsistency is obvious between the current criminal (including judicial) policy and the correctional policy. After adoption of the Criminal Code in 1996, over 120 federal laws were adopted, making amendments and additions thereto. A large portion of new provisions was adopted spontaneously, without proper criminological, economic and penological substantiation. Many articles of the Criminal Code, including those related to punishments, were changed more than once. A similar situation exists in the sphere of correctional legislation. The RF Correctional

Code was amended over 60 times in the 17 years of its existence. As a result, serious shortcomings of a systemic nature have developed in the legislation in question, to which attention has been turned many times by legal scholars and practitioners.

The most significant shortcomings of the punishment system established by the criminal law are the following:

- insufficient elaboration of and account for social and criminological basics of the punishment system on the whole, actual disregard therein of typical features of specific categories of criminals (for example, in the cases of imposing corrective labor before 2012 or judicial restraint in the version of 2010);

- “excessiveness” of some punishments under criminal law (in particular, for independent kinds of deprivation of liberty, two kinds of punishments restricting an individual’s employment rights, and availability in the law of death penalty not applied for more than fifteen years;

- introduction of knowingly “abortive” punishments (arrest) into the Criminal Code’;

- actual disregard of a number of fundamental international acts (for example, introduction of compulsory works into the Criminal Code);

- inconsistency between the legal and the actual repressiveness (severity) of certain kinds of punishment (a fine, especially in its newly established large amounts, compulsory community service);

- unreasonable competition between punishments and other similar measures of criminal law nature (judicial restraint in the version of 2010 and conditional sentence);

- insufficiently specific or incomplete definition of the contents of and the grounds for imposition of a number of punishments (judicial restraint, disqualification from holding specific positions or conducting specific activity);

- discrepancy between the legal and the actual (applied by the courts) system of measures of criminal law nature (including an

excessively high percentage of conditional sentences in court practice);

- absence of a required “step structure” in the system of punishments under criminal law, including absence of an “intermediary” punishment between “liberty” and “non-liberty”;

- non-compliance of the ideal (reflected in the law) and the real (applied in practice) logic of imposing punishments and applying other criminal law sanctions;

- violation of important criminal law principles when determining the contents and the procedure for execution of certain punishments (judicial restraint in the version of 2010, disqualification from holding specific positions or conducting specific activity, a fine in respect of a minor offender);

- insufficient substantiation, inconsistency and incoherence of many legislative provisions (2003, 2006, 2010, 2011).

The above said shortcomings of the system of punishment established by the law and the practice of imposition thereof are aggravated by inadequacy of the organizational and legal mechanism of execution of punishments.

That manifests itself, in particular, in the following:

- discrepancies between the law (the RF Correctional Code) and subordinate legislation acts issued by the Ministry of Justice and governing execution of most of alternative sanctions;

- “excessiveness” of subordinate regulation (overlapping of instructions of the Ministry of Justice and the provisions of the RF Correctional Code, existence of more than one instruction on similar issues to be governed by the law);

- absence of required unification (in the law and subordinate legislation acts);

- staying of the Correctional Code behind the sector-wide legislation (for example, behind Federal Law On Local Self-Government of 2003, by which the structure of local self-government bodies was changed);

- failure to reflect in the law and the subordinate legislation acts changes in the administration structure in the correctional system (for example, transformation of correctional inspectorates into sub-offices);

- the anxiety for permanent “reformation”, typical of bureaucratic structures, which entails lack of confidence among the officers of correctional inspectorates, erosion of the key personnel body, and loss of meaningful objectives by many officers.

In view of the foregoing, the need is obvious for shifting from spontaneous “cosmetic” improvements to the punishment system to deep modernization thereof in the Criminal Code with due account for current political, social and economical conditions and changing crime rate, and on the basis of the necessary sufficiency principle¹³.

The first aspect thereof means that the system of punishments must be free of any gaps and discrepancies preventing from full-fledged implementation of criminal law sanctions. Therefore, the number of kinds of punishment should not exceed that determined by the needs of criminal policy and special features of certain categories of prosecuted individuals. The second aspect means that there should not be any sanctions that actually overlap each other and, therefore, subject to “devaluation” and preventing from full-fledged implementation of each other. In view of the foregoing, let us turn to specific alternative sanctions.

INDIVIDUAL KINDS OF PUNISHMENT

Fine

In Article of the Criminal Code, establishing the system of punishments in the ascending order of severity, the fine is placed first, which means that the legislator considers it the least severe punishment. Under the Russian law, a fine may be either the primary or an additional punishment. In terms of the frequency of imposition on adult convicts as the primary punishment the fine holds the second place among the actual punishments, conceding the first place to deprivation of liberty. At the same time, the fine as a punishment under the criminal law is imposed much less frequently in Russia than in Europe. For minors, the fine holds the third position in terms of the frequency of imposition, with compulsory community service ahead. The share of the persons sentenced to a fine has remained stable for a number of years (14-15% for adults and 10-12% for minors).

According to Article 46 of the RF Criminal Code, there are three methods of calculating a fine in Russia. The most common method used in court practice consists in determination of a fine as a fixed monetary amount from five thousand to two million rubles (depending on the vindictory part of the applicable article of the Special Part of the Criminal Code). It is much less frequently that the amount of a fine is calculated by the court on the basis of the convict's earnings or other income for a period from two weeks to five years. For minors, the maximum amounts of a fine are much lower: from one thousand to fifty thousand rubles or in the amount of the convicted minor's earnings or other income for a period from two weeks to six months.

In 2011, a new method of calculation of a fine was added to the Criminal Code: for corruption-related offences (bribery, corrupt business practices) the amount of a fine is calculated as a multiple

of the amount of the corrupt payment or the bribe. The limit of the fine is established 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 rubles.

The above said circumstances make it impossible to consider a fine the most lenient punishment as was the case in 1996, and this fact has an adverse impact on execution thereof. Improvement of the mechanism of execution of a fine is an important reserve of enhancing its effectiveness.

According to Article 16 of the RF Correctional Code, the punishment in the form of a fine is to be executed by court bailiffs/enforcement officers at the place of the convict's residence (work). At the same time, court bailiffs and the authorities effecting administration thereof are not included into the correctional system. The Federal Bailiff Service is an independent executive structure, similarly to the Federal Penitentiary Service, subordinate to the Ministry of Justice and operating on the ground of special laws, namely, RF Federal Law On Court Bailiffs of 1997 and RF Federal Law On Enforcement Proceedings of 2007 (as subsequently amended and supplemented).

Individual provisions on the procedure for execution of punishment in the form of a fine are also contained in the RF Correctional Code (Articles 31-32) and the Criminal Procedure Code (Articles 397-398).

The main problem of the fine is its relatively low enforceability. In practice, about a half of the fines imposed by the courts is paid voluntarily within the time limit (30 days) established by the Correctional Code and these fines are not the largest ones¹⁴. About one third of the remaining convicts are granted a postponement of payment (up to 5 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 addition to objective (lack of funds) and subjective (fine payment evasion) factors giving rise to such a situation the

inadequacy of the legal mechanism of execution of a fine plays its role. The point is that recovery of a fine by enforcement officers is now permissible, as a rule, only if a fine is an additional punishment. Where a fine is imposed as the primary punishment, malicious evasion of payment may entail only replacement of a fine with other punishment, and, as a general rule, replacement of a fine with deprivation of liberty is not permissible in such cases, except for the persons convicted under corruption-related articles of the Criminal Code. But, actually, as all the other existing punishments not involving actual deprivation of liberty are more lenient than a fine, replacement of a fine with any such punishment is not a significant threat at all.

A rising level of people's welfare together with development of the legal mechanism of execution of fines will make it possible in the future to increase the share of fines in the structure of the punishments imposed by courts from 14-15% to 20-25%. Recordation of individuals sentenced to a fine (in the period of postponement of payment thereof or payment thereof by parts) with correctional inspectorates will create the legal basis for carrying out preventive work with convicts, which will facilitate prevention of repetition of offences thereby.

Disqualification from holding specific positions or conducting specific activity

Under the Russian law (Article 47 of the RF Criminal Code) this punishment consists in the prohibition against "holding positions in civil service, local self-government bodies, or conducting specific professional activity". It corresponds with the system of sanctions recommended by the Tokyo Rules (paragraph (c), Clause 8.2) and is placed in the second position after the fine in the list of the punishments established by Article 44 (paragraph (b) of the Criminal Code, thus being considered one of the least severe punishments.

This punishment (hereinafter referred to as “disqualification”) may be imposed either as the primary punishment (for a period from one year to five years) or as an additional punishment (for a period from six months to three years, or up to twenty years in the cases expressly provided for by the relevant Articles of the Special Part of the Criminal Code).

Disqualification as the primary punishment is imposed by courts very seldom (0.05–0.08% of the total number of convicted adults and even less frequently for minors). It is imposed slightly more frequently as an additional punishment (1–1.5% of convicted adults and less than one percent of convicted minors). Of the individuals recorded with correctional inspectorates, those sentenced to disqualification are one of the smallest groups (21,799 in 2012).

In practice, convicts are most often disqualified from driving transport vehicles; the second position in terms of frequency is held by disqualification from holding positions in government service (including law enforcement bodies), followed by disqualification from activity in the sphere of trade, finance, public utilities, health care activity, and disqualification from hunting and fishing.

Although disqualification is common for the system of punishments and has always been applied to some or other extent in court practice, it does not constitute any meaningful independent alternative to deprivation of liberty, which is shown by the statistical data given above and by some other circumstances.

Seldom applied by the courts, the punishment in the form of disqualification is imposed in most cases as an additional one and combined with deprivation of liberty (actual or conditional). When combined with actual deprivation of liberty, it does not serve as an alternative to isolation from the community but, on the contrary, adds to such isolation. When combined with a conditional sentence, a fine or other measures not involving isolation from the community, disqualification as such also does not facilitate to any extent application of such measures, performing largely the prevention functions.

Proposals are on the table to remove this punishment from the list of primary punishment as it is imposed very seldom. It is also proposed to remove it from the list of punishments under criminal law at all and render it the nature and the meaning of a “security measure” as a legal consequence of the respective crime. Such proposals are not groundless all the more that the legislator’s position on the issue is not consistent.

According to Article 47 of the Criminal Code, disqualification is a punishment under criminal law. Such punishment, having the length in time (duration) established by the law and the sentence, shall contain in “deprivation of the offender of his rights and freedoms or limitation thereof” (Article 43 of the Criminal Code). The measure (amount and quality) of the punishment must be fair, that is, determined by the gravity of the deed with due account for the personality of the offender and the conditions of his life (Article 60 of the RF Criminal Code). In fact, these well-known principles of the “classic” punishment theory are neglected by the legislator with respect to the punishment in the form of disqualification.

Term of punishment. Its limits are specified in the law, both in the General Part and in the Special Part for individual kinds of offences. However, the Criminal Code contains a clause stating that, in addition to the term of this punishment, disqualification as a punishment additional to deprivation of liberty shall be applicable to the period of deprivation of liberty served by the convict. That is, the actual period of disqualification is ultimately determined by the actual duration of deprivation of liberty rather than the court sentence.

In 2009, an ultra-long term of disqualification as an additional punishment – up to 20 years – appeared in the RF Criminal Code. This does not allow considering disqualification the second-lenient punishment under criminal law in the Russian Federation any longer and, on the other hand, seems to be obviously unfair in respect of the person that has committed the offence. Certainly, the state should protect itself, the community and other persons from

potential manifestations of the offender's anti-social activity in relation with the committed offence. However, to do that by way of imposing an ultra-long punishment, with the individual retaining the status of a convict for dozens of years, is unfair both with respect to the offender (as such states in itself gives rise to limitations in other positive social spheres) and with respect to his relatives and close ones. One can hardly expect that the children of a convicted person will have a chance to apply for positions of judges, public prosecutors, police officers, etc.

Contents of the punishment. According to Article 43 of the Criminal Code, the contents of the punishment shall be determined in the provisions of the Code. When disqualification is imposed, Article 47 also provides, in addition to the positions and activities listed in the law, for imposition by the court on a convict of the prohibition against conducting "other activity". The Criminal Code does not determine the activity meant in the said provision, leaving determination thereof to the law applying body. It hardly complies with the legality principle established in Article 3 of the Criminal Code and stating that "the criminal nature of a deed as well as its punishability and other consequences under criminal law shall be determined only by this Code. Application of the criminal law by analogy shall not be permissible".

If to understand and to apply disqualification as a punishment, a violation of the legality principle may be also found in the particulars of the procedure for imposition thereof. According to Part 1, Article 60 of the RF Criminal Code, "on a person recognized guilty of commitment of a crime shall be imposed a fair punishment within the limits provided for by the relevant Article of the Special Part of this Code and with due account for the provisions of the General Part ...". However, Part 3, Article 47 of the RF Criminal Code reads that disqualification may be imposed as an additional punishment "in the cases where it is not provided for by the relevant Article of the Special Part of this Code ... if, taking into consideration the nature and the extent of public danger of the

committed crime and the personality of the perpetrator, the court finds it impossible to retain with him the right to hold specific positions or to conduct specific activity". Thus, disqualification is clearly understood by the legislator first and foremost as a preventive measure rather than a punishment under criminal law.

Finally, it may be seen from special legal consequences provided for by the law of a convict's evasion of observance of the prohibitions imposed on him by the court. In the event of malicious evasion of serving a punishment, two options are usually applied in the Russian criminal law and correctional law (with different effectiveness). The first one is replacement of the punishment by a more severe one (fine, compulsory community service, or corrective labor) or replacement of a conditional sentence with actual deprivation of liberty. The second one is taking to criminal liability for malicious evasion of serving the punishment (Part 1, Article 314 of the Criminal Code in the event of malicious evasion of serving a judicial restraint). The legislator does not use these options where evasion of serving a punishment in the form of disqualification is concerned. However, the time during which a convict was holding the positions or conducting an activity from which he was disqualified is not reckoned against the term of punishment (Article 36 of the RF Correctional Code).

In addition, judging from the practice of application of the legislation on administrative liability, disqualification from driving a transport vehicle as an administrative punishment (Article 3.8; Part 3, Article 32.7 of the RF Code of Administrative Offences), allowing unlimited summing up of the periods at execution of the punishment, exceeds in fact the maximum period of disqualification as a punishment under criminal law many times (in some cases up to 50 years or more).

Therefore, it would be reasonable to exclude disqualification from the system of punishments under criminal law in the future and to provide it as a "security measure" in the Criminal Code or in a branch (constitutional, labor, administrative, etc.) of the general law.

Compulsory Community Service

Proceeding from the logic of formation of Article 44 of the Criminal Code, the legislator considers the punishment in the form of compulsory community service more severe than the fine or the disqualification from holding specific positions or conducting specific activity but less severe than corrective labor, judicial restraint or compulsory works. This punishment is similar to the punishment in the form of unpaid community service referred to in paragraph (i), Clause 8.2 of the Tokyo Rules and to other punishments of this kind in the legislations of most European countries. No such punishment was provided for by the criminal codes of the Soviet period, and it appeared for the first time in the RF Criminal Code of 1996 (Article 49). The procedure for execution of this punishment is determined by the RF Correctional Code (Articles 25-30), and execution thereof is entrusted to correctional inspectorates.

The contents of this punishment consist in performance by a convict in the time beyond his regular business or study hours of unpaid community works. The kind of the works and the facilities where they are to be performed are determined by the local self-government bodies by agreement with the correctional inspectorates. In practice, convicts are usually engaged for work at public utility enterprises and organizations, municipal trade enterprises, land improvement works, or at simple repair and maintenance works.

Initially, compulsory community service was imposed for a period from 60 to 240 hours (for adults). In 2011, the maximum possible time thereof was increased to 480 hours. For minors, this time is shorter (from 40 to 160 hours), and the nature of the work must be corresponding to the convict's physical capabilities.

Compulsory community service may not be imposed on the persons with disability of the first and the second grade, pregnant women, women with children in the age below three years old and military servicemen.

Despite a high potential of this punishment (especially in the conditions where unemployment exists) and its compliance with the international standards, the punishment in the form of compulsory community service was not put into practice immediately. After 1996, introduction thereof was postponed two times, first until 2001 and subsequently until 2004. There were two factors preventing from introduction. First, the RF Criminal Code established that compulsory community service must be unpaid, but the Correctional Code first imposed on employers the duty to transfer funds for the works performed by convicts to the local budgets. As a result, in addition to having organizational problems, employers were also deprived of the incentive for using the labor of the convicts. Such a situation was subjected to criticism, and the above said provision was removed from the law in 2003. As a result, compulsory community service became unpaid for the convicts and charge-free for employers, which made their putting into practice possible.

Second, the correctional authorities did not have any experience in execution of this punishment as it was not provided for by Soviet-time criminal codes. The regulatory framework of delegated legislation for execution thereof was not established, either. Overcoming those obstacles was the goal of the experiment carried out in 2000-2001 in three regions of Russia (Ryazan, Samara and Tomsk regions) under the aegis of an international organization Penal Reform International and with assistance from the administration of the Russia's correctional system¹⁵. Generally, the results of the experiment were positive, which made it possible to begin practical application (imposition and execution) of this punishment. It was put into practice in January 2004 and is fairly widely used in court practice now.

In the recent years, the share of the convicts sentenced to compulsory community service was growing steadily both for adults (from 5.6% in 2008 to 10.2% in 2012) and for minors (from 11.4% in 2008 to 21% in 2012). In the past period, the number of

the convicts sentenced to compulsory community service and recorded with correctional inspectorates grew almost two times.

Generally, increase in the share of compulsory community service as an actual non-custodial punishment in the total body of alternative measures is a positive factor. However, the practice of application of this punishment has revealed a number of problems impeding implementation thereof in the most effective way. Correctional inspectorates often have difficulties in finding the facilities where unpaid labor of the convicts may be used, since the number of municipal enterprises is relatively small and is decreasing steadily due to their transformation into joint stock companies. Private entrepreneurs are less willing to provide convicts with work despite its unpaid nature. The point is that legal aspects of the issues of employers' duties related to payment of insurance contributions and compensation for harm caused to convicts at the time of performance thereby of their labor duties have not been determined yet.

In the conditions of Russia with its extensive territory and inadequate transport infrastructure, a problem arises of effective control over performance of work by convicts on the part of correctional inspectorates, especially in rural districts, often covering the areas of dozens of thousands square kilometers, with settlements situated at a distances of dozens of kilometers from their district centers.

Due to the above, correctional inspectorates and their sub-offices situated in district centers have to delegate to employers a large portion of immediate control over performance of compulsory community service by convicts, which is fraught in itself with violations on their part and also requires control on the part of inspectorates. However, such control cannot be always exercised in due time. As a result, convicts sometimes found themselves at the disposal of their employers, to whom both the recordation of the works performed by convicts and determining the nature of such work is delegated. That is in contravention,

among other things, of ILO Convention No. 29 concerning Forced or Compulsory Labor (1930), Article 2 of which, prohibiting forced or compulsory labor, does not include in such labor, in particular, “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person **is not hired to or placed at the disposal of private individuals, companies or associations**” (*emphasis added* – V.U.).

In terms of their severity, compulsory community service is actually more lenient than a fine, especially amounting to dozens of thousands of rubles or more. Therefore, compulsory community service cannot be an effective threat in the event of malicious evasion of payment of a fine.

A problem also exists with malicious evasion of a convict of serving compulsory community service as such. According to Article 49 of the RF Criminal Code, compulsory community service shall be replaced in such case with compulsory works or deprivation of liberty on the basis of the ratio “one day of compulsory works or deprivation of liberty for eight hours of non-served portion of compulsory community service”.

Compulsory works have not been put into practice yet, and, therefore, the non-served portion of compulsory community service may be replaced only with deprivation of liberty. A simple calculation ($480:8=60$) shows that the maximum term of deprivation of liberty that may be applied to a convict maliciously evading compulsory community service is equal to two months only. Actually, such a threat is not meaningful to whatever extent to many convicts sentenced to compulsory community service, especially for those who formerly served deprivation of liberty or were kept in the pretrial detention facility during the investigation and trial. Some cases have been even recorded where such convicts refuse serving compulsory community service and apply to the court in demonstrative manner for placing them to prison.

In addition, conscientious work of those sentenced to this punishment is not encouraged with the possibility of early release from serving compulsory community service, which also impedes educational and preventive work of correctional inspectorates.

Therefore, making the following changes in the RF Criminal Code is reasonable to ensure effectiveness of compulsory community service:

- the maximum length of compulsory community service should be increased up to one thousand hours, which will make this punishment more severe and, consequently, more capable of competing with actual deprivation of liberty, facilitating as a result to reduction in application of the latter;

- the possibility should be provided for of reducing the length of compulsory community service by the court upon recommendation from the correctional inspectorate or a petition from a convict on condition of conscientious serving thereby of at least a half of the total number of the hours, non-committing any administrative offences and observance of the requirements established by the correctional inspectorate;

- a “punitive” nature should be rendered to replacement of compulsory community service with deprivation of liberty in the event a convict’s malicious evasion of compulsory community service, on the basis of the ratio “one day of deprivation of liberty for one hour of non-served compulsory community service”.

Resolution of these problems will allow making compulsory community service (as an independent punishment or a sort of a wider punishment) even more attractive and effective alternative both to actual deprivation of liberty and to conditional sentence.

Corrective Labor

This alternative punishment is directly provided for in the Tokyo Rules (unlike, for example, compulsory community service). However, its existence in the RF Criminal Code is not in contravention of the Tokyo Rules, since paragraph (l), Clause 8.2 of

the Rules allows as an alternative sanction “any other mode of non-institutional treatment”.

Corrective labor as a punishment under criminal law was applied fairly widely in the Soviet period, with 22-25% of the convicts sentenced to this punishment. Now, the share of convicts 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 of them is reduction in the number of jobs for employment of convicts sentenced to corrective labor and not having a job. The second one is inconsistency of the legislator, who changed three times its attitude towards the categories of convicts to whom corrective labor may be applied. Under the RSFSR Criminal Code of 1960, this punishment might be served by convicts both at their principal jobs (in the overwhelming majority of the cases) or in other places to which they were sent by the inspectorate. The place of residence of a convict and his way of life remained unchanged.

Upon adoption of a new RF Criminal Code in 1996, corrective labor began to be imposed only on convicts having a job, perhaps owing to unwillingness to give rise to competition between convicts and unemployed. In 2003, the position of the Code on this issue underwent a fundamental change, and only the individuals having no job began to be sentenced to corrective labor. That narrowed the scope of application of corrective labor and seriously worsened the social and criminological profile of those sentenced to corrective labor and recorded with correctional inspectorates.

Late in 2011, the legislator at last responded to wide criticism and returned the procedure for imposition of corrective labor that had existed before 1996. Now, according to Article 50 of the RF Criminal Code corrective labor is imposed on convicts who have a principal job and on those who have not. The convicts having a principal job serve their sentences to corrective labor at their principal jobs. Those who have not a principal job serve this punishment at the jobs determined by local self-government bodies by agreement with the correctional inspectorates.

Corrective labor is imposed for a period from two months to two years.

Unlike compulsory community service that is unpaid and is served on the basis of the number of working hours, corrective labor is paid for in accordance with the existing labor remuneration systems, and the labor of the convicts (its nature, duration, conditions, working hours, etc.) is regulated by the general labor legislation. A convict is a regular employee of an enterprise or an institution, and the time of his work is included into the total employment time.

At the same time, monthly withholdings are effected from a convict's earnings in the amount determined by the court sentence (from five to twenty percent). The annual paid leave for such convicts is reduced and is equal to 18 business days. In addition, a convict may not discharge at his own will without permission of the correctional inspectorate, and he must make regular visits to the inspectorate at call.

In the recent years (from 2008 to 2011) the number of the convicts sentenced to corrective labor and recorded with correctional inspectorates remained approximately unchanged (30-32 thousand a year). In 2012, when corrective labor began to be imposed on individuals having a job, that number grew up to 50 thousand and it seems that it will remain growing in the coming years.

The problems that need to be solved to strengthen the role of this kind of punishment as an alternative to deprivation of liberty include the following:

- granting to correctional inspectorates the right to determine on their own the jobs for those sentenced to corrective labor and having no job, including by way of assigning to correctional inspectorates the functions of an employer in accordance with the procedure established by the law;

- introduction of an incentive in the form of the possibility of conditional early release (release on parole) from corrective labor

if, for example, a convict has served at least a half of the period thereof and showed his correction;

- changing the ratio applied to replacement of corrective labor with deprivation of liberty in the event of malicious evasion of serving corrective labor from “one day of deprivation of liberty for three days of non-served corrective labor” with a “day for day” ratio.

Finally, in view of an obvious similarity of corrective labor and compulsory community service in terms of the rights a convict is deprived of (labor rights) and similarity of its purposes as the purposes of punishment (Article 43), it is reasonable to combine these punishments in the future into one punishment having three modifications applied by the court depending on the features of the convict’s personality and way of life. As a result, a punishment in the form of three kinds of corrective labor would appear in the Criminal Code:

- corrective labor at the convict’s job;
- corrective labor at the places determined by the authorities executing the punishment;
- unpaid corrective labor (now called “compulsory community service”).

Such a combination will facilitate strengthening the role of corrective labor as an alternative to actual deprivation of liberty. Taking into account the current and the past experience of applying this punishment, a growth of the share of those sentenced to this punishment (in its combined form) up to 25-30% will be quite probable in the future, which will also make it possible to considerably reduce the number of prisoners in Russia.

Judicial Restraint

Judicial restraint is provided for by Article 53 of the RF Criminal Code and is the last in the line of existing non-custodial punishments in the system of punishments established by Article 44 of the Criminal Code. Accordingly, the legislator considers this punishment to be the most severe of them.

However, from the time of adoption of the RF Criminal Code the Russian law has known two kinds of judicial restraint or, more accurately, two punishments having identical designations but fully different in terms of their legal contents.

According to the RF Criminal Code in the version of 1996, judicial restraint is a punishment imposed for a period from one year to five years, which was to be served by convicts in special facilities of the correctional system – correctional centers. The convicts were to live there without isolation but under supervision and with certain regime restrictions determined by the Correctional Code. In addition, they were obliged to work at the places determined by the administration of the correctional center. Although federal budget financing of the correctional system was steadily and considerably growing in the first decade of the 21st century (for example, from 48 billion rubles in 2004 to 156 billion rubles in 2009), such correctional centers have not been established in the period after adoption of the Criminal Code for financial and economic reasons. As a result, repeated postponements of putting into effect the provisions on judicial restraint in the version of 1996 ended with repealing them in 2009.

A new punishment introduced in December 2009 and also referred to as “judicial restraint” is fully different and does not involve compact living of convicts under supervision in “correctional centers” and their mandatory work. In terms of its contents it is much closer to conditional sentence.

Judicial restraint in the version of 2009 may be applied as the primary punishment (from two months to four years) and as an additional punishment to deprivation of liberty and compulsory works (for a period from six months to two years). It may not be imposed on military servicemen, stateless persons and the persons having no permanent residence in the territory of the Russian Federation.

Imposition of this punishment does not entail a change in the place of residence of a convict and therefore it is served thereby

and executed by the correctional inspectorate in the place of residence of the convict.

The contents of the punishment in the form of judicial restraint comprise a number of restrictions imposed upon a convict. During the term of the punishment the court may partly repeal the restrictions previously imposed on a convict or add new restrictions on recommendation from the correctional inspectorate.

The restrictions imposed on the convicts are aimed, first, at prevention of new crimes and, second, at ensuring control over their conduct on the part of correctional inspectorates. Two restrictions must be imposed by the court on a mandatory basis. These are a prohibition against changing the place of stay or residence without consent of the correctional inspectorate and prohibition against leaving the territory of the relevant municipality, with the duty to appear at the correctional inspectorate for recordation from one to four times a month.

The duties that may be imposed by the court on an optional basis according to Article 53 of the Criminal Code include a prohibition against leaving the house (apartment, other housing unit) in a specific time of a day, prohibition against visiting specific places within the territory of the municipality, and prohibition against appearing at the places of mass events and other events and against participation in such events.

Supervision over serving judicial restraint on the part of correctional inspectorates have the form of supervision over a convict and checking him in the places of his employment, study and residence. The procedure for the activity of correctional inspectorates is determined, in addition to the provisions of the RF Correctional Code (Articles 47¹-60), by a special Instruction approved by the order of the Minister of Justice in 2010.

Notably, it is for the first time in Russia that for implementation of alternative measures the law (Article 60 of the Correctional Code) empowers correctional inspectorates to use for the purposes of judicial restraint the “electronic monitoring”

means, including so-called “electronic bracelets” (tracking devices)¹⁶. Specific means to be used for such electronic monitoring were determined by the Decree of the RF Government in March 2010. The system of electronic monitoring of supervised persons, widely publicized by the Ministry, has developed in the recent years into a kind of “brand” of judicial restraint, and the extent of introduction thereof has come to be seen as the indicator to a successful activity of correctional inspectorates¹⁷.

In 2013, the electronic monitoring system was operating in 80 of 83 constituent entities of the Russian Federation, covering over 9 thousand convicts sentenced to judicial restraint. However, judicial restraint in itself and the practice of its implementation has given rise to a number of problems. As a result, judicial restraint has yet failed to take the place predicted to it in the line of alternative punishments or, at least, the place in which it was seen by representatives of the Federal Penitentiary Service and journalists accredited thereby¹⁸. It was forecast at the time of putting judicial restraint into practice that it would be imposed on more than one hundred thousand convicts each year, which would allow considerable reduction in the load on the places of deprivation of liberty¹⁹. For that purpose, the legislator has extended the list of offences for which judicial restraint may be imposed. In 2009, judicial restraint as the primary punishment was introduced into 21 articles of the Criminal Code, in addition to 66 articles already including it, and as an additional punishment into 22 articles of the Criminal Code.

However, introduction of judicial restraint has failed to be equal to such optimistic expectations. Now, three years after introduction of judicial restraint, it remains holding one of the last positions among the punishments imposed by courts, amounting to 1-2% of the total number of punishments and other measures of criminal law nature, both for adults and for minor convicts. The number of the persons sentenced to judicial restraint and recorded with correctional inspectorates is growing. It was equal to 6,444 in

2010, to 11,539 in 2011, and to over 24 thousand in 2012²⁰. However, taking into account the terms of this punishment (up to four years if it is imposed as the primary punishment), it is obvious that the growth of the number of recorded convicts is to be attributed largely to additions to the number of the already recorded convicts, though the rate of imposition of this punishment by the courts is also growing. Had the forecasts made by the Federal Penitentiary Service come true, the number of the persons sentenced to judicial restraint and recorded with correctional inspectorates would have been equal to at least 300 thousand in 2012. Now, this figure is 12 times less. Those sentenced to judicial restraint amount to slightly over 5% of the total number of the persons recorded with inspectorates. Division of the total number of those sentenced to judicial restraint by the total number of correctional inspectorates in Russia (about 2.4 thousand) shows that, on the average, only 10 persons sentenced to judicial restraint are recorded with each correctional inspectorate, whereas the number of the persons with conditional sentences is 15 times more. Therefore, one can hardly read without irony the articles in departmental printed media reading that judicial restraint has shown its effectiveness in practice²¹, let alone the statements that with introduction of this punishment “Russia has actually settled down to the course towards humanization and liberalization of the legislation”²².

As a result of the legislator’s shifting to a new version of judicial restraint (unlike that served in correctional centers), this punishment inevitable started to compete in practice with conditional sentences, with obvious prevailing of the latter. This probably would not have happened if the legislator had left conditional sentencing only in its “classic” form when elaborating and introducing judicial restraint, without any special preventive duties and prohibitions. Those are in fact similar to the duties and prohibitions imposed at judicial restraint. For example, Article 73 establishes that the court may impose on a person sentenced to a

conditional punishment the duty “not to appear in specific places”. A similar prohibition may be imposed by the court on a person sentenced to judicial restraint. However, unlike judicial restraint, conditional sentences have been familiar for a long time in the court practice and are widely applied therein. In addition, the scope of potential application of conditional sentences is much wider than that of judicial restraint. Thus, a conditional sentence may be applied if a person is sentenced to deprivation of liberty for up to eight years with a probation period up to five years, whereas judicial restraint, which has similar contents, may be imposed only if it is expressly specified in the vindictory part of the relevant article of the Special Part of the Criminal Code and for up to four years.

Thus, judicial restraint in the version of 2009 as the primary punishment is obviously inferior to conditional sentencing, having failed to become an effective alternative to deprivation of liberty. Moreover, practice shows that those relatively few persons who are sentenced to judicial restraint are similar in terms of their social and criminological profile to those sentenced to conditional punishment. In fact, introduction of judicial restraint in the recent years was actually carried out by way of reduction in the number of those sentenced to conditional punishment rather than reduction in the number and the percentage of prisoners. As a result, a kind of “an alternative to an alternative” has arisen, which is hardly a positive factor in view of the principle of “necessary sufficiency” of criminal law sanctions. As regards judicial restraint as an additional punishment, the sphere of its application is still narrower. As an additional punishment to deprivation of liberty, judicial restraint may be imposed under the articles of the Criminal Code that provide, as a rule, relatively long terms of deprivation of liberty (5 to 10 years or more). Therefore, judicial restraint has not become widely applicable as an additional punishment since 2010. Some cases where it was applied by correctional inspectorates relate to conditional early release (release on parole) of convicts from places of deprivation of liberty.

At the same time, imposition of judicial restraint as an additional punishment to deprivation of liberty is still more unpromising, first of all because this measure inevitably competes in terms of its preventive contents and potential with early release on parole.

According to Article 79 of the Criminal Code, the court, when applying early release on parole, has the right to impose on a convict a number of preventive duties and prohibitions similar to those imposed in the event of conditional sentence. For example, a convict is prohibited from appearing in specific places, changing his place of residence, job, or place of study without notification of the specialized state body, etc. The above said duties and prohibitions must be complied with and observed by a released person during the probation period, which is equal to the non-served portion of the term of deprivation of liberty. In the event of malicious evasion of observance thereof, a released person may be returned to the places of deprivation of liberty.

Control over the persons released on parole is now effected according to Federal Law On Police (2010) by police officers²³. Control over those sentenced to judicial restraint is effected by officers of correctional inspectorates. Release of a convict with an additional punishment in the form of judicial restraint on parole from places of deprivation of liberty gives rise to numerous organizational problems.

The meaning of judicial restraint as an additional punishment became still more unclear after adoption in 2011 of Federal Law On Administrative Supervision over the Persons Released from the Places of Deprivation of Liberty²⁴.

The institute of administrative supervision is also clearly aimed at prevention. Supervision is established by the court in the place of release of a convict and is implemented by the bodies of internal affairs. The duties and prohibitions imposed on the persons under supervision are also very close in terms of their contents to the contents of the punishment in the form of judicial

restraint, an this fact gives rise to bringing complaints by citizens to the RF Supreme Court about alleged non-constitutionality of administrative supervision²⁵.

Generally, early release on parole and administrative supervision has a number of undisputable advantages over an additional punishment in the form of judicial restraint, which makes using judicial restraint in this capacity obviously unpromising. And this is understood clearly by the courts, the correctional inspectorates and the police.

Failure of judicial restraint as an alternative punishment is aggravated by the shortcomings of organization of its execution. The number of the duties and prohibitions provided for by judicial restraint requires continuous and systematic monitoring on the part of officers of correctional inspectorates. In view of regional specificity of work of the inspectorates (especially in rural districts where settlements are at long distances from each other and infrastructure is poorly developed), one cannot expect that such control will be effective in all or most cases. As a result, the cases are not an exception in practice where officers of inspectorates in districts of RF constituent entities (regions and territories) apply to courts informally for reducing the application of the punishment in the form of judicial restraint to the possible minimum with re-allocation in favor of fines or conditional sentences. Such applications are not groundless and, as may be seen from statistical data, are not fruitless in fairly many cases.

As was stated above, special hopes were put at introduction of judicial restraint on so-called “electronic monitoring”. According to the Federal Penitentiary Service, over 9 thousand of the persons sentenced to judicial restraint are controlled through electronic monitoring in 2013. In the period of electronic monitoring with the help of “electronic bracelets” over one thousand of violations were detected on the part of convicts, and for about 700 convicts judicial restraint was replaced with a custodial punishment²⁶.

Immediately before introduction of judicial restraint involving electronic monitoring, a number of legal scholars, including the author of this paper, warned against excessive enthusiasm about the technological aspect of the issue, drawing attention to insufficient elaboration of criminological, criminal policy-related, organizational, legal and economic aspects of “electronic monitoring”²⁷. Unfortunately, their apprehensions were largely confirmed.

Practice has shown that “electronic bracelets” are very expensive and costly, and the system for their maintenance and support is inadequate and vulnerable. Seeking for achievement of the planned figures and willing to ensure safety of “electronic bracelets”, officers of correctional inspectorates often prefer to use them not in respect of convicts from “the group of risk” but to “reliable”, trustworthy convicts. That actually disavows the very concept of “electronic bracelets” as a means of intensifying control over the persons who are especially inclined to committing offences. As a result, as is frequently the case in a bureaucratic system, a means has turned into a goal.

In addition (and this is largely a Russia-specific feature) departmental bureaucracy has given rise to the patterns that have become known to general public and media after resignation of a former Director of the Federal Penitentiary Service and even constituted a ground for instituting a number of criminal cases. It was established, in particular, that 4.5 billion rubles was allotted in 2009-2012 for introduction of the electronic monitoring system in Russia, of which 850 million was allotted in 2010 alone. The cost of the “bracelets” supplied by the firm selected by the Federal Penitentiary Service was many times higher than the cost of their analogues from foreign and Russian manufacturers. Compared with the similar devices used by the Ministry of Internal Affairs, the difference amounted to about 300 million rubles in 2010 alone²⁸. In addition, the quality of the supplied devices leaves much to be desired.

As for attractive and undoubtedly positive aspects of alternative measures, their relative inexpensiveness compared with isolation of convicts in penitentiary facilities is usually mentioned. However, the practice of “electronic bracelets” in Russia disproves that where judicial restraint is concerned. If to take the above stated data and to divide the total amount of financial expenses on “electronic bracelets” (4.5 billion) by the number of the convicts bearing such devices (over 9 thousand), a conclusion may be made that each such convict costs federal budget about 600 thousand rubles, which is much more than the costs related to keeping a convict in a correctional facility.

In view of the foregoing, one can hardly give a conclusively positive assessment of a three-year experience of judicial restraint in Russia in general and “electronic monitoring” in particular. A positive aspect may be found in the fact that officers of correctional inspectorates have gained some experience in dealing with electronic devices. No doubt, it will be of use when application of such devices is optimized on the basis of technological improvements thereto and a clearer criminological substantiation thereof. Eventually, “electronic monitoring” must take its place among various means of preventive control related to the non-custodial punishments, with mandatory account for the personality of a convict and the “risk factors”.

As for judicial restraint in its current version, it may exist in our opinion only if supported artificially, in particular, through availability of criminal law and correctional law provisions and regular informational events. But even in such case it would be a second-rank alternative measure with almost no influence on the number of cases of actual deprivation of liberty. Introduction of this punishment was useful to a certain extent as it has shown once more the consequences of decisions that are not thought-out. Unfortunately, subsequent course of events (related to introduction of the punishment in the form of compulsory works) has shown that such experience is not always taken into consideration by the legislator.

Compulsory Works

In December 2011, a new article – Article 53¹ Compulsory Works was introduced to the RF Criminal Code. In its Part 1 this punishment is positioned as an alternative to deprivation of liberty for offences of minor and medium gravity or for grave offences committed for the first time. This punishment may not be imposed on minors, persons with the first or the second disability grade, pregnant women, women with children below three years old, women after 55 years old and men after 60 years old, and on military servicemen. The term of compulsory works shall be from two months to two years.

The contents of this punishment are determined in Part 3, Article 53¹ of the Criminal Code: “Compulsory works consist in engagement of a convict for work in the places determined by facilities and bodies of the correctional system”. In addition, withholdings are made from the earnings of a person sentenced to compulsory works to the revenues of the state in the amount determined by the court sentence and lying between five and twenty percent of the earnings.

Simultaneously, Chapter 8¹ (Articles 60¹-60²¹) was introduced to the RF Correctional Code, governing in detail execution of compulsory works.

Such a detailed regulation of execution and serving of compulsory works, with the extent of detailing inferior only to the legal regulation of serving the punishment in the form of deprivation of liberty and similar to that in terms of the nature of regulation, results from the fact that the actual essence and contents of compulsory works can hardly be reduced to engagement of a convict for work as specified in Article 53¹ of the Criminal Code.

The persons sentenced to compulsory works must serve their punishment in special facilities – correctional centers. As a general rule, such centers must be situated within the territory of the

constituent entity of the Russian Federation in which the convicts resided or were sentenced, or, if no such center is available in the territory of a RF constituent entity, in other correctional centers or even in separated sections of correction facilities functioning as correctional centers.

It is known, however, that formerly (in the RF Criminal Code in the version of 1996) it was supposed that correctional centers should be established for serving a fully different punishment, namely, judicial restraint. Article 53 of the Criminal Code determined that “judicial restraint consists in keeping a convict who is 18 years old or more at the time of delivery of the sentence, in a special facility without isolation from the community under supervision”.

Certainly, the punishment served in correctional centers, though being to a certain extent an alternative to isolation from the community, is not fully corresponding to the letter and the spirit of alternative sanctions provided for by relevant international acts. It is not mentioned in Article 8.2 of the Tokyo Rules. Formally, the Tokyo Rules allow “any other mode of non-institutional treatment” (paragraph (l), Clause 8.2). However, within the meaning of the Rules, such mode of treatment may not involve taking a convict out of his customary living conditions. A more detailed position in this respect is stated in the European Rules on Community Sanctions and Measures (1992). The Appendix (Glossary) to the European Rules reads that “community sanctions and measures” are those “which maintain the offender in the community...”. This criterion is obviously not met if convicts are kept in correctional centers with strict regime requirements.

However, the need is obvious for such facilities taking a position between “liberty” and “non-liberty”, not only from the viewpoint of reduction in actual deprivation of liberty but also from the viewpoint of typical features of certain categories of offenders. In this respect, all the convicts may be divided into three groups: those who objectively need separation from their social

environment and isolation from the community; those who need separation from their social environment without isolation from the community; and those who need neither separation from their social environment nor isolation from the community. There is no difficulty in understanding that with respect to the first and the third category these tasks are resolved in some or other way by deprivation of liberty in all its modifications and by the existing alternative measures (including conditional sentences), whereas no adequate measures exist with respect to the second category. Before 1994, this task was resolved by conditional sentencing with compulsory labor (so-called "*khimiya*" – "a chemical plant") provided for by Article 242 of the RSFSR Criminal Code. In the RF Criminal Code of 1996 this "niche" was to be filled with judicial restraint served in correctional centers. However, such centers have not been ever established, and, as stated above, the judicial restraint put into practice from 2010 is fully different from the punishment with the same designation in the RF Criminal Code of 1996.

Formerly, a number of scholars and practitioners proposed that correctional centers should be established on the basis of penal settlements, facilities of a semi-closed type existing in the correctional system. The conditions of serving punishment therein were almost identical to the legal structure of the regime determined by the Correctional Code for correctional centers. Among other things, it would allow reducing the number of prisoners by dozens of thousands. In 2013, about 40 thousand convicts were kept in 130 penal settlements in Russia. However, penal settlements, where no isolation from the community is supposed, are not places of deprivation of liberty in the full sense of this term now²⁹.

However, the legislator did not follow the course towards transformation of penal settlements into correctional centers and refused from the latter in 2009 owing to impossibility of establishment thereof and the difficulties related to organization of engagement of a large number of convicts for work.

Therefore, a rather strange and spontaneous seems the concept of establishing similar correctional centers for serving a punishment with a different designation, namely, compulsory works.

Being aware of the difficulties related to organization of correctional centers, the legislator postponed introduction of the provisions on compulsory works, first to January 01, 2013. As no correctional center as an autonomous facility was established in the above said period, a new postponement was adopted, now to January 01, 2014. It would be too naive to believe that any funds for establishing correctional centers will appear in the budget of the correctional system in the current year, since they have not been even planned. Therefore, the future of compulsory works seems unclear. Most probably, this punishment will be repealed.

A factor for making such decision is that this punishment (“compulsory works”) is formally in contravention of a number of international documents prohibiting compulsory labor. These are the International Covenant on Civil and Political Rights of 1966 (Article 8), the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1955 (Article 10), Convention No, 29 of the International Labor Organization of 1930 (Article 4). All these documents have been ratified by the Russian Federation or by the Soviet Union, to which the Russian Federation is a legal successor.

According to Part 4, Article 15 of the RF Constitution, “if an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied”. Furthermore, Part 2, Article 37 of the Constitution determines expressly that “compulsory labor shall be prohibited”. A similar prohibition is also contained in Article 4 of the Labor Code of the Russian Federation.

Turning to the history of the Soviet-period criminal law, the punishment in the form of compulsory works was provided for by Article 20 of the RSFSR Criminal Code of 1922, with execution

thereof in accordance with the provisions of the RSFSR Correctional Code of 1924 (Chapter 4, Articles 23-43). However, the legislator partly rejected such vocabulary as early as late 1930s, with final rejection thereof in the mid-1950s, in connection with entry into force of the above said ILO Convention No. 29 and ratification thereof by the USSR in 1956.

Therefore, the attempts to re-introduce compulsory works under current conditions, where Russia has declared its adherence to human rights, are groundless, and the prospects for establishment of new “correctional centers” are illusory.

However, such punishment is necessary from the criminological viewpoint as an “intermediate” or an “adaptive” one (for those releasing from places of deprivation of liberty). Here, the most realistic and reasonable solution though requiring certain political will, including admission of the mistakes that have been made, is the following: in view of low applicability, as stated above, and actual uselessness of judicial restraint in the version of 2010, return is necessary to judicial restraint served in correctional centers, with reorganized penal settlements used in the capacity of such centers.

As for electronic monitoring, the positive aspects of the related experience are quite suitable for application with all alternative measures of prolonged duration and first and foremost with respect to the convicts belonging to a so-called “risk group”.

Confiscation

One of the alternative measures recommended by the Tokyo Rules is “confiscation or an expropriation order” (paragraph (e), Clause 8.2). The grounds for and the scope of confiscation are not detailed by the Tokyo Rules. The comparative legal analysis and the historical analysis make it possible to identify at least three kinds of confiscation: the general, the extended and the special confiscation. The first kind, that is, the general confiscation involves deprivation

of the offender of the right to property or a portion of property as a punishment for the offence under criminal law. The origin of the confiscated property shall not necessarily be related to the offence. The general confiscation was provided for by the Soviet-period criminal law and was retained in the RF Criminal Code of 1996 as an additional punishment for grave and especially grave crimes. The court might impose it only in the cases provided for by the relevant articles of the Special Part of the Criminal Code. The RF Criminal Code of 1996 contained 67 articles of this kind.

Confiscation could not be applied to the property necessary for a convict or his dependents, as provided for by the Annex to the Correctional Code. Such property included, for example, the house or the apartment where the convict or his family resided on a permanent basis, transport vehicles specially designed for using by disabled persons, etc.

Execution of such confiscation was governed by the Correctional Code (Articles 62-67). According to Article 63 of the Correctional Code, subject to confiscation were not only money and consumer articles but also the share of a convict in common property, authorized capital of profit-making organizations, securities, other valuables, including those in accounts and deposits with financial and credit institutions and banks, and also the property transferred by the convict to trust.

The procedure for confiscation of the convict's property contributed to the authorized capital of profit-making organizations was to be determined by a special instruction of the Ministry of Finance subject to endorsement by the RF Ministry of Economy and the RF Ministry of Justice. However, no such instruction was adopted, owing to which the general confiscation was applied in Russia after 1996 mostly for general criminal offences, crimes of officials and mercenary crimes.

At the same time, it was applied fairly widely as an additional punishment. The number of court sentences imposing confiscation amounted to dozens of thousands each year. Some scholars and

practitioners proposed in this connection to expand the scope of general confiscation by way of imposing it as the primary punishment alternative to deprivation of liberty for economic and corruption-related offences³⁰. The others believed that such confiscation would be in contravention of international acts and would pose a threat to the class of major owners that had arisen in Russia.

As is known, those opposing to the general confiscation prevailed over its advocates. And, in our opinion, it was not a mere coincidence that abolition of the criminal punishment in the form of confiscation of property in December 2003 occurred two months after the arrest of a well-known Russian oligarch accused of tax offences.

However, the special confiscation remained, applied in accordance with the provisions of the Correctional Code (Article 81) under the court judgment with respect to the instruments and the means of crime and the articles obtained by way of crime.

Abolition of the general confiscation gave rise to an intensive discussion in the community. The opponents of the abolition referred among other things to a number of international acts ratified by Russia and providing for confiscation as a means of combating crime (the UN Convention against Transnational Organized crime of 2000, the UN Convention against Corruption of 2003, the European Criminal Law Convention on Corruption, etc.)³¹. As a result, Chapter 15¹ (Articles 104¹-104³) Confiscation of Property was introduced in 2006, establishing it however as “other measure of criminal law nature” rather than a punishment under criminal law. In fact, the general confiscation is now a kind of the special confiscation, since it is applicable to:

- money, valuables and other property obtained by way of a crime from the list given in Article 104¹ of the Criminal Code;
- money, valuables and other property to which the property referred to above was transformed;

– money, valuables and other property used for financing terrorism, an organized group, an illegal armed group, or a criminal community (criminal organization), or intended for the above said purposes;

– instruments, equipment or other means of commission of crime belonging to the accused person.

However, the scale of current application of confiscation as “other measure of criminal law nature” is incompatible with application thereof in the past by the courts in the capacity of an additional punishment. In 2003 (the year preceding abolition of the confiscation), it was imposed on approximately 40 thousand convicts. In 2008 it was imposed on 511 convicts (0.05%), in 2009 – on 587 (0.07%), in 2010 on 677 (0.08%), and in 2011 on 671 (0.08%). Indeed, a mountain has brought forth a mouse.

In this connection, two groups of proposals are on the table. Those of the first group may be reduced to returning the general confiscation as a punishment under criminal law, including as the primary punishment being an alternative to deprivation of liberty. These proposals are hardly practicable under the existing social and political conditions.

The essence of the second group of proposals consists in shifting from the special confiscation to the third kind of confiscation, that is, to extended confiscation with alteration of presumption and burden of proof. An important consideration in the discussion is the reference to international acts and the experience of some foreign countries. Thus, according to Clause 7, Article 12 of the UN Convention against Transnational Organized crime, ratified by the Russian Federation, “States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings”. A similar provision is contained in Clause 8, Article 31 of the UN Convention against

Corruption, adopted by the UN General Assembly on October 31, 2000 and ratified by the Russian Federation in March 2006.

Of foreign countries, Norway may be mentioned as an example. According to §34a of the Criminal Code of Norway, “extended seizure” may be effected if the offender proves to be guilty of a deed punishable under criminal law which may deliver him a considerable income and for which he may be sentenced to imprisonment. All property belonging to the offender may be seized in the event of the extended seizure “unless he proves that the property was obtained in a legitimate way”.

In today’s Russia, resolution of this issue is largely of political rather than criminal law nature. It is obvious, however, that confiscation under criminal law in its current form is not effective and may be even harmful (where similar procedural means under criminal law are available) because it creates only the appearance of combating crime and entails unreasonable waste of efforts and funds.

Conditional Sentencing

Conditional sentencing is an institute that has existed in the legal practice in Russia since long ago, including the Soviet period. “Suspended or deferred punishment” is provided for by paragraph (g), Clause 8.2 of the Tokyo Rules. The Russian legislator uses a somewhat different term “conditional sentencing” (Articles 73, 74 of the Criminal Code). However, the essence of this institute is determined not by the conditional nature of sentencing as the sentence of conviction enters into force in respect of the offender. Conditional (that is, subject to a certain condition) is release of the offender from actual serving the punishment imposed by the court. Thus, “conditional sentence” under the RF Criminal Code is, strictly speaking, a conditional release from serving the punishment in the form of deprivation of liberty or corrective labor at the stage of delivery of the sentence.

This fact is of fundamental importance for comparison of the conditional sentencing and the related legal requirements upon the convict with international acts. Thus, prohibiting compulsory labor in Article 8, the International Convention on Civil and Political Rights does not include in the term “forced or compulsory labor”, among other things, “any work or service ... normally required of a person who is under detention in consequence of a lawful order of a court, **or of a person during conditional release from such detention**” (*emphasis added* – V.U.).

The statistical data on convictions show that conditional sentences (namely, sentences to deprivation of liberty) have prevailed for several years among the alternative measures, accounting for over a half of the non-custodial measures (over 60% for minors).

The share of conditional sentences to deprivation of liberty is steadily exceeding the share of actual deprivation of liberty (for adults: 39.4% and 33.8%, respectively, in 2008; 38.2% and 32.8% in 2009; 36.2% and 32% in 2010; 35.6% and 29.5% in 2011; 29.5% and 28.8% in 2012). The difference between actual and conditional deprivation of liberty is still more obvious for minors (51.7% and 22.7%, respectively, in 2008; 51.4% and 21.2% in 2009; 51.2% and 19% in 2010; 49.5% and 17% in 2011; 42.9% and 17% in 2012).

Although the share of conditional sentences has been decreasing to a certain extent in the recent years (mostly in favor of compulsory community service and to a lesser extent to judicial restraint), it is unreasonably large in the court practice.

It is understandable that in the existing conditions the courts have to impose conditional sentences as they are not willing to deprive the convicts of liberty having at the same time no enforceable actual punishments among the available legal tools. However, conditional sentencing is not included into the list of punishments provided for by Article 44 and, as result, the criminal law policy pattern established by the law is significantly distorted. The problem lies also in the fact that the Russian public opinion,

traditionally considering on the basis of its historical experience actual deprivation of liberty as “the reference point” for the severity of criminal law punishments, often perceives conditional sentences as an act of forgiveness rather than a probation. Such perception is also typical of many convicts, first of all minors. Therefore, the cases where a minor has been sentenced to a conditional punishment two, three or even four times are not infrequent in court practice.

No doubt, further elaboration of other alternative sanctions, including their transformation towards larger repressiveness and strengthening of the legal mechanism of their execution, will create organizational and legal basis for reduction in the number of conditional sentences.

Of the persons recorded with correctional inspectorates, those sentenced to conditional punishments account for 75-80%. In 2012, their number was equal to 356,135. Repetitive crime among the convicts recorded with the inspectorates, including the convicts with conditional sentences, is equal to 2-3% according to the official statistical data, being much higher if determined under scientific research methods (12-14%). But in any event it is considerably lower than the repetitive crime figures obtained on the basis of the similar methods for the persons released from the places of deprivation of liberty (30-50%), which makes this alternative measure even more promising in itself.

In addition to the convicts with conditional sentences and the convicts sentenced to actual alternative punishments, the convicts to whom the court applied deferred sentences are also recorded with the correctional inspectorates. According to Articles 82 and 82¹ of the RF Criminal Code, those include:

- pregnant women and women having a child in the age below 14 years old;
- men having a child in the age below 14 years old and being such child's only parent;

- the convicts suffering from drug addiction, having committed for the first time offences related thereto and willing to pass on a voluntary basis the course of drug addiction treatment and medical and social rehabilitation.

Among those listed above, the convicts of the first group (women) prevail. In 2012, their number was about 8 thousand. The groups of single fathers with children below 14 years old and the persons suffering from drug addiction are much smaller (over 200 persons and about 100 persons, respectively).

As the above said deferred sentences are rather specific in terms of the grounds and the personalities of the convicts and are granted largely for humane reasons, they can hardly be considered as full-fledged alternative sanctions. Nevertheless, the conduct of convicts in the period of the deferred sentence is taken into consideration by the correctional inspectorates, and in the circumstances specified in the law (for example, refusal to bring up the child or refusal of drug addiction treatment) deferral of punishment may be cancelled by the court.

CONCLUSION

Summing up the results, it should be admitted that important steps towards developing a more balanced criminal law policy and making it more humane were made in the period from 2008 to 2012 and especially from the beginning of the millennium. A remarkable feature of this process is a gradual growth of the role of alternative sanctions and lowering of the share of actual deprivation of liberty, reflected in the judicial statistical data. All that takes place along with a considerable reduction in the number of the registered crimes and the number of convicts. All the above, taken in the aggregate, as well as the experience (though unsuccessful and inconsistent in some cases) accumulated by the legislator and the law application practitioners in introduction and application of alternatives, creates objective prerequisites for a new stage of alternative sanctions, especially in the context of preparing a new codification of criminal and correctional legislation, which is discussed increasingly often by public figures, scholars and practitioners.

However, any meaningful reserves for a qualitatively new stage of liberalization of criminal law policy towards extension of alternative sanctions seem to be exhausted under the existing system of punishments under criminal law in Russia. Only some individual minor (by 2-3%) “cosmetical” improvements are possible. Now, the discussion should be focused on modernization of the entire body of alternative sanctions in close relation with the renewal of the entire system of punishments. Not excluding any possible ways and prospects, let us determine those of them that will allow rendering fundamentally new qualities and innovative impulses for a wider application and development to the system of alternative measures. Some of such provisions have been already mentioned above.

A promising line of strengthening the alternative nature of the sanctions not involving deprivation of liberty is raising the general maximum level of their severity and repressiveness. At the first glance, it does not correspond with the above said trend towards liberalization, but it is this way that will make alternative sanctions more attractive to the courts in the cases where they now impose actual deprivation of liberty. Finally, the criminal law policy will become more liberal and humane.

Raising the severity of alternative sanctions must be accompanied in all cases with a more clear and effective mechanism of execution thereof, including by way of building a full-fledged “progressive system” of implementation of alternative measures.

Of specific legislative measures for extension and development of alternative sanctions, the following deserve special attention anyway:

- rejection of judicial restraint in its current form as a costly measure competing with conditional sentencing and having no impact on the statistics of deprivation of liberty; return to judicial restraint in the version of 1996; establishment of a network of correctional centers for serving this punishment on the basis of the existing and planned penal settlements;

- combining the punishments in the form of corrective labor into one punishment “corrective labor” having three kinds, namely, corrective labor at the principal job, corrective labor “in other places”, and unpaid corrective labor beyond the working or study hours (instead of the existing compulsory community service); a considerable increase in the duration of the third kind up to 800-1,000 hours (perhaps, at the early stage – for the aggregate of crimes or sentences), subject to replacement in the event of evasion on the basis of the ratio “one day of deprivation of liberty for one hour of non-served works”; the possibility of reducing the duration of the works in the course of serving the same in the event of conscientious labor and subject to serving at least a half of the term;

– abolition of compulsory works as being in contravention of Article 37 of the RF Constitution and the country's international obligations;

– combining the punishments in the form of deprivation of liberty for a specific period and deprivation of liberty for life into a single punishment – deprivation of liberty; exclusion of the punishment in the form of placement to a disciplinary military unit or arrest from the punishment system; or introduction of the punishment in the form of arrest, applicable only to military servicemen, within serving it in the detention room (“*gauptvakhta*”);

– removal of the confiscation of property from the Criminal Code (as an “other measure of criminal law nature”) and rendering to it (in a special law) the quality of a “property-related measure of criminological security” with respect to commission of certain crimes (related to terrorism, organized crime, or corruption-related); imposing the burden of proving the legality of origin of the property on the person convicted for a corruption-related crime if sufficient grounds exist to believe that the property was obtained illegally, including by way of corruption actions (that is, by way of “in rem” confiscation);

– raising the minimum amount of a fine up to 10 thousand rubles; restoration of the possibility of enforcement of a fine as the primary punishment; establishment of the possibility of replacing the fine in the event of malicious evasion thereof: first with an administrative arrest for up to 30 days and subsequently with compulsory community service in proportion to the country average wages and with deprivation of liberty in proportion to the amount of a fine remaining not paid without valid reasons; abolition of the possibility to pay a fine for a minor by his parents;

– returning the institute of admission to bail (“*peredacha na poruki*”) for crimes of minor and medium gravity (especially for minors) under petitions from trustworthy persons, with security in the form of a bail provided thereby.

Responding to practical needs for enhancement of effectiveness of executing alternative measures and in full compliance with the provisions of the relevant international acts (the Tokyo Rules of 1990, the European Rules of 1992, the European Probation Rules of 2010), a program should be developed and implemented of community support to alternative measures as an important line of civil society participation in criminal law policy, including by way of organization of discussions, holding informational events, wide involvement of general public (volunteers) in the work of correctional inspectorates.

Implementation of these and other provisions will make it possible at last to change the now existing image of the Russian correctional system, which is largely of a penitentiary (prison-like) nature.

Notes

- ¹ In more detail see: Vivien Stern, *Developing Alternatives to Prison in Central and Eastern Europe and Central Asia*, Constitutional and Legal Policy Institute, Budapest, 2002, p. 12.
- ² In 2011, a new kind of deferred punishment was introduced by the law for certain categories of drug addicts willing to pass a treatment course (Article 82¹ of the RF Criminal Code).
- ³ In 2011, Article 76¹ was added to the Criminal Code, dealing with such special ground for release from criminal liability for economic crimes as compensation by the offender of the full or multiple amount of the damage caused to the budget system of the Russian Federation.
- ⁴ Before then, the RSFSR Correctional Code adopted in 1970, as amended, was in force.
- ⁵ The predecessors to such offices were so-called special command offices ("*spetskomendatura*") that existed in the Soviet period, where the persons sentenced to conditional deprivation of liberty and those released on parole from correctional facilities served their punishment combined with mandatory labor. The today's analogues to such offices are "correctional hostels" for convicts in Bulgaria.
- ⁶ The tables do not contain the number of the persons released from criminal liability on the above said grounds.
- ⁷ In 2012, the legislator again provided for the possibility of imposition of corrective labor at the convict's principal job, and the share of the convicts sentenced to such punishment grew from 5.3% to 9.9%.
- ⁸ See: *Crime and Punishment*. 2012. No. 5. P. 8.
- ⁹ Not recorded with correctional inspectorates are such persons sentenced without deprivation of liberty as those sentenced to fine and military servicemen with conditional sentences and sentenced to the punishment in the form of judicial restraint.
- ¹⁰ See: *Concept of Development of the Correctional System of the Russian Federation for the Period Until 2020*. Ryazan. Law and Management Academy of the RF Federal Penitentiary Service. 2010.
- ¹¹ For example, Section 5 contains a forecast according to which the total number of the convicts sentenced to the punishments not involving isolation from the community will increase by 200 thousand, or almost 1.5 times, by 2020 compared with the number of those recorded with the correctional inspectorates now. At the same

time, the trend towards reduction in the total number of such convicts, reflected in Table 3, was obvious in 2010 (the year in which the Concept was approved).

- 12 Kulikov V. Criminal Liberty // *Rossiyskaya Gazeta*, December 30, 2009, et. al.
- 13 See in more detail: Utkin V.A., Reform of the System of Punishments under Criminal Law as a Condition of Alternative Sanctions Effectiveness // *Russian Criminological View*. 2011. No. 2. P. 252-254; Ground for and Ways of Modernization of the Punishment System // *Bulletin of the Tomsk State University* No. 349, August 2011. P. 128-129.
- 14 The RF Criminal Code (Article 91) provides for the possibility of payment of a fine for minors by their parents or legal representatives on their consent. This provision is subjected to criticism as being in contravention of the principle of personal fault-based liability and compulsory nature of punishment.
- 15 See: Alternatives to Imprisonment in the Russian Federation, Materials of International Conference. M. Penal Reform International. 2002.
- 16 About foreign experience of similar supervision see: System of Electronic Supervision over Persons Released on Parole: Assessment of Existing Programs. M. PRI. 2002, et. al.
- 17 Zarebinskaya E.L. Establishment of the System for Monitoring the Persons Being under Supervision of the RF Federal Penitentiary Service // Organizational, legal, psychological and pedagogical, social and economic substantiation to the Concept of Development of the Correctional System of the Russian Federation for the Period Until 2020: Current Status and Prospects. Ryazan. Academy of the RF Federal Penitentiary Service. 2011. P. 37-42.
- 18 Chereshneva L. Liberty with a Bracelet // *Crime and Punishment*. No. 6. 2012. P.2-3.
- 19 Rakhmaev E.S. Extending the Alternatives to Deprivation of Liberty // *Bulletin of the Correctional System*. 2010. No. 11. P. 36.
- 20 *Crime and Punishment*. 2012. No. 6. P. 2.
- 21 Kudryavtsev A. Judicial Restraint in Practice // *Crime and Punishment*. 2010. No. 10. P. 5.
- 22 Budim N.M. Judicial Restraint in Practice. *Bulletin of the Correctional System*. 2010. No. 12. P. 24.

- ²³ A draft law is being considered that provides for delegating these functions to correctional inspectorates.
- ²⁴ On administrative supervision over the persons released from the places of deprivation of liberty: Federal Law dated 06.04.2011 No. 64-FZ // *Rossiyskaya Gazeta* – No.75 of 08.04.2011.
- ²⁵ On Refusal To Accept for Consideration the Complaint from Geyer Sergey Yurievich About Violation of His Constitutional Rights by Federal Law On Administrative Supervision over the Persons Released from the Places of Deprivation of Liberty and by Federal Law On Making Amendments to Certain Legislative Acts of the Russian Federation in Connection with Adoption of Federal Law On Administrative Supervision over the Persons Released from the Places of Deprivation of Liberty [Electronic resource]: / Ruling of the RF Constitutional Court dated 16.02.2012 No. 301-0-0// Consultant Plus: law reference system. *Prof* version. M. 2012. Access from the local network of the Scientific Library of Tomsk State University.
- ²⁶ *Crime and Punishment* No.6. 2012. P. 3.
- ²⁷ Utkin V.A. Hidden Rocks of “Electronic Monitoring” // Legal Problems of Consolidating the Russian Statesmanship. Part 44. Tomsk. Tomsk University Publishing Office. 2010. P. 94-95.
- ²⁸ A New FSIN Team Will Check the Reymers’ Contracts // *Izvestia*, July 16, 2012; Titov S. The Budget Has Lost RUB 3.7 Billion in the “Bracelet Case” // *Komsomolskaya Pravda*, March 30, 2013.
- ²⁹ Utkin V.A. Convicts in Penal Settlements. M. Jurisprudence. 2011.
- ³⁰ See: Zubkov A.I. Sentencing Policy in Russia at the Turn of the Millennium. M. PRI. 2000. P. 38.
- ³¹ Property Confiscation Institute in the Legislations of the Member States of the Council of Europe and in the Russian Legislation. Materials of the international seminar. Barnaul. 2008. P. 16-18.