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Alternatives to Imprisonment in Russian Criminal Law

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Abstract

Introduction: the article is devoted to the consideration of a set of such alternatives to imprisonment as non-custodial punishments, exemption from criminal liability, exemption from criminal punishment, and other measures of a criminal-legal nature. *Purpose*: based on the study of criminal law norms, the practice of their application, and doctrinal positions, to identify shortcomings of the distribution of measures of influence on a person who has committed a crime by their types, to show intersectoral and intra-sectoral contradictions in their regulation, and the flaws of law enforcement. *Methods*: method of analysis, formal legal, comparative legal and statistical methods. *Results*: the analysis of criminal and related branches of legislation showed haphazard regulation and application of the above-mentioned institutions in terms of the presence and scope of punishment, inconsistency of the conditions and grounds for their use, lack of criteria for choosing between them, the uncertain legal nature of a court fine, suspended sentence; duplication of conditions of restriction of liberty and conditional sentence, imperfection of the types of exemption from criminal liability in connection with conscription and punishment in connection with military service, uncertainty of judicial discretion in deciding on exemption from liability and punishment; intersectoral contradictions in the regulation of deferral of punishment, deferral (installment) fines in the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation. *Conclusion:* it is necessary to bring institutions of exemption from criminal liability and punishment into the system, to link them logically with types of punishments not related to imprisonment, to formulate criteria, to select them depending on the characteristics of the crime and the offender, the grounds and conditions of application, to define the boundaries of judicial discretion.

Keywords: alternatives to imprisonment; release from punishment; release from responsibility; suspended sentence; postponement of the execution of punishment; judicial fine, change of the situation.

5.1.4. Criminal law sciences.

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Introduction

Trends in modern criminal policy demonstrate a decrease in the proportion of the use of deprivation of liberty, both in comparison with other types of punishments, and in general among measures to respond to the crimes committed. In Russia, as in many other countries, there is a steady trend towards a reduction in the use of actual imprisonment. The report of the director of the Federal Penitentiary Service A. Gostev to the President of the Russian Federation, V.V. Putin states a decrease in the number of convicts in places of deprivation of liberty, mainly due to the humanization of criminal policy [1]. The total number of detainees in pre-trial detention centers and those serving their sentences in correctional institutions in 2024–2025 decreased by 120 thousand people and amounted to 313 thousand. [2]. But this is not a direct consequence of the decrease in crime. The statistics is quite contradictory. According to the Russian Interior Ministry, in 2024 there was a decrease in crime by 1.8%, including juvenile delinquency by 3.4%. However, according to the Investigative Committee of Russia, since the beginning of 2025 the number of crimes committed by teenagers has gone by 18% and the number of serious and especially serious crimes – by 1.5 times. There has been an increase in corruption crimes; since the beginning of 2025, more than 36 thousand corruption-related criminal cases have been registered in Russia. At the same time, about 35,000 corruption crimes are registered annually [3]. The same situation applies to cybercrime and various forms of fraud, the latency of which does not allow us to provide any reliable numerical estimates.

Practical application of alternatives to imprisonment: statistics and selection criteria

The reduction in the use of imprisonment is associated with the choice of other types of punishment, as well as exemption from it and from criminal liability. The ratio of measures of influence on persons who have committed a crime is approximately as follows:

– in 2024, 497,423 people were convicted and sentenced to[1],

– actual imprisonment (including life imprisonment) – 147,065 (30%),

– non–custodial sentences – 231,627 (46%),

– suspended sentences and other measures – 118,731 (24%).

In addition, over 10,000 were released from punishment upon sentencing (4,103 from imprisonment, 6,260 from other types of punishment) and about 105,000 persons who had committed a crime were released from criminal liability on non-rehabilitating grounds, of which:

– in connection with active repentance, as well as the notes to the articles of the Special Part – 10,087;

– in connection with reconciliation with the victim – 81,571;

– in connection with the imposition of a court fine – 13,062;

– in connection with compensation for damage – 66;

– in connection with conscription.

So, reconciliation with the victim is the most common form of release from responsibility in practice. In fact, if we do not consider subjects, this is the result of mediation, although the Criminal and Criminal Procedural Codes do not use such a term. The relevant draft laws were rejected (draft federal laws “On amendments to the Criminal Procedural Code of the Russian Federation in connection with the implementation of the Concept for the Development of a Network of Mediation Services up to 2017 in order to implement restorative justice in relation to children, including those who have committed socially dangerous acts but have not reached the age of criminal liability in the Russian Federation”, “On the settlement of disputes involving an intermediary (mediation) in the Russian Federation” (2020)). However, processualists consider this form of justice to be quite appropriate for implementation into Russian legislation [4–8].

Thus, the use of various types of exemption from liability and criminal punishment is a more frequent measure of response to a committed crime, which made it possible to conclude that there is no such element of punishment as its inevitability. Scientists argue that such impunity diminishes a generally preventive effect of criminal law and believe that release from responsibility should be the exception, not the rule [9, p. 444].

[1] Here and further, statistics from the Judicial Department of the Supreme Court of the Russian Federation are provided. See: Report on the specifics of considering criminal cases, applying real types of punishment and grounds for terminating criminal cases for 12 months of 2024, Form No. 10-2; Report on the number of persons prosecuted and types of criminal punishment for 12 months of 2024, Form No. 10-3.

At the same time, researchers note significant advantages of punishments alternative to incarceration, which meet the principles of economy of repression, humanism, contribute to reducing the cost of fighting crime, reducing post-penitentiary recidivism, etc.

According to public opinion, not all acts declared criminally unlawful are related to the concept of crime. Experts include acts that have not caused real harm, norms with administrative prejudice, criminalized dangerous state of personality (Article 210.1 of the Criminal Code of the Russian Federation), etc. Hence, we can conclude about the presence of "pre-crimes" and "pre-punishments", the insignificant punitive potential of which is preventive in nature, with the aim of preventing recidivism. Not every offense declared criminal by the Criminal Code of the Russian Federation is such, that is why it can be interpreted as pseudo-crimes [12, pp. 163–164].

In the mass consciousness, criminal punishment is most often associated with imprisonment according to a well-known paradigm: a thief should be in jail. The correlation of crime and punishment is an important prerequisite for ensuring justice at the legislative stage. In this regard, K. Marx's statement is relevant, "The people see punishment, but they do not see crime, and precisely because they see punishment where there is no crime, they cease to see crime where there is punishment" [13, pp. 122–123]. There is a well-known dilemma between "small but tough" or "big but soft" when discussing draft criminal codes [14, pp. 7–8]. The adoption of the latest model leads to a tendency to expand the code, including through crimes of minor public danger. Nevertheless, as a rule, there is an alternative to imprisonment in the sanctions of such crimes.

The punitive potential of incarceration is not comparable to legal limitations of other punishments. A vivid example of pseudo-punishment is the restriction of freedom. This also applies to the deprivation of the right to hold a certain position or engage in a certain activity. Correctional and compulsory labor is a more lenient punishment than imprisonment. It is not for nothing that the latter are also used as an administrative punishment.

As a rule, a conditional sentence is assessed unpunished. The survey conducted among the population on the expediency of conditional sentencing for a corruption-related crime shows that almost half correlate it with impunity, another half mentions its possible use depending on the circumstances, and only 3.8% choose it as preferential.

For convicts who have committed corruption-related crimes and have substantial incomes (mostly acquired through criminal means), a fine is also perceived as an exemption from punishment. In general, it is rarely appointed as the main punishment (3.3% of the convicted for 6 months of 2025) (Report on the number of those brought to criminal liability and types of criminal punishment for 6 months of 2025, Form No. 10.1).

In total, non-custodial sentences and conditional sentences are imposed on 70% of the convicts.

At the same time, if there is a certain logic in the ranking of regimes of deprivation of liberty, then there are quite a lot of factors of haphazardness and duplication in the application of types of exemption from punishment and responsibility, as well as their relationship to punishments not related to deprivation of liberty.

Types of exemption from liability and punishment as institutions of criminal law

The legal nature of certain types of exemption from liability and punishment [15], as well as conditional sentences, other measures of a criminal-legal nature, and the ranking of types of punishment by severity in Article 44 of the Criminal Code of the Russian Federation causes scientific discussions. This is due to the dynamism of these institutions and the lack of clear legal grounds for their content and classification. So, Yu.E. Pudovochkin classifies types of release from punishment into several groups: by amnesty (non-judicial model), by expiration of the statute of limitations of criminal prosecution and the statute of limitations of a court conviction, by credit for the time served (imperative model), by procedural types of deferral related to the personality of a convicted person (clinical model), by "parental" deferral and deferral for drug addicts, diseases, compulsory measures of educational influence (social risk model), by parole and commutation of punishment to a more lenient one (criminal law risk model) [16]. The exclusion from these types of those related to the court's discretion in sentencing is attrib-

uted to the third and fourth types, which, according to 2020 data, accounted for about 10% of all types of release. Today, with the presence of "military" types of liberation, this proportion is much higher.

Speaking about the institution of exemption from criminal liability, M.A. Kaufman rightly raises the question of the principle of its construction. Analyzing the various norms enshrined in Chapter 11 of the Criminal Code of the Russian Federation, explanations of the Plenum of the Supreme Court of the Russian Federation, and doctrinal positions, the researcher states legal juggling of the terms "basis" and "conditions" of release, considering in this regard the reduction of public danger of the act and (or) the perpetrator, reconciliation with the victim, making amends for the harm caused, compensation for damages, etc. As a result, the researcher comes to the conclusion that expediency unites all types of release, that is, applying the minimum necessary and sufficient measures to the perpetrator to achieve criminal law goals. Other researchers find the unity of all types of exemption from liability in the manifestation of individualization of criminal liability [18, p. 392]. It seems that these universal principles also correspond to the types of exemption from punishment.

If we consider all the options for exemption from criminal liability, from criminal punishment, other measures of a criminal-legal nature, as well as punishments not related to imprisonment, we find many similarities in their characteristics, and the differences are often very insignificant in order to form a separate type.

Problems of criminal law regulation of alternatives to imprisonment

The General Part of the Criminal Code of the Russian Federation accumulates types of exemption from criminal liability, types of exemption from punishment, and other criminal law measures in separate chapters of the code, the content of which does not always correspond to the name, which violates the consistency of the code and distorts the legal nature of these measures. The regulation of certain types of punishments and their systems has the same disadvantages.

The so-called *special types of exemption from liability according to the notes to the articles of the Special Part of the Criminal Code of the Russian Federation* are not always associated with active repentance. Part 2 of Article 75 of the Criminal Code of the Russian Federation is criticized, since it is hardly possible to assess the warning of an HIV-infected person about the danger of infection (Article 122) or the release of a hostage at the request of the authorities (Article 206). There is also a contradiction between the provisions of General and Special Parts of the Criminal Code of the Russian Federation: according to Part 2 of Article 75 of the Criminal Code of the Russian Federation, the court peremptorily releases the perpetrator from liability, provided that there are conditions in his/her actions regulated by the notes. However, some of them use the phrase "a serviceman ... may be released" (articles 337 and 338), giving the court the right to choose.

The *punitive effect* of being released from responsibility is sometimes much more significant than some types of release from punishment. First of all, this concerns a court fine, which is repeatedly mentioned in the scientific literature [19, p. 258]. Illogical distribution of norms regulating the issues of exemption from liability and punishment under the chapters of the Criminal Code of the Russian Federation (18, p. 138) has not only not been corrected, but has also worsened. A judicial fine actually partially releases from punishment in terms of the amount of punishment; however, it is called by the legislator a type of exemption from criminal liability, but it is regulated in Chapter 15.2 of the Criminal Code of the Russian Federation "Judicial fine", structurally included in section VI "Other criminal law measure". Analyzing a legal nature of the judicial fine, researchers come to the conclusion that this measure is inappropriate for the institution of exemption from criminal liability. This exemption gives reason to call it an incomplete exemption, as well as a legal fiction in the list of measures of exemption from liability [15].

This type of exemption from punishment, such as a *change in the situation*, has been transferred from Chapter 11 of the Criminal Code of the Russian Federation "Exemption from liability" without any changes at the will of the legislator. The legal literature rightly points out the conflicts that arise in connection with the change in its status [21]. When choosing

this type of release, punishment is not always imposed, so it is not clear what a person is being released from, if, according to the Criminal Procedural Code of the Russian Federation, a person is released from punishment with a conviction without punishment. In fact, we are talking about release from serving a sentence. In addition, the law lacks criteria for assessing changes in the situation. Therefore, in practice, courts often use this ground unreasonably widely, associating it with mitigating circumstances, decriminalization, insignificance, active repentance or reconciliation with the victim, minor changes in the status of the perpetrator (dismissal from office), seizure of the instrument of the crime, etc. [22]. It seems that the "military" types of release could just be considered as a type of release due to a change in the situation with its extension to persons who have committed a wider range of crimes.

"Military" types of release are rather criticized by researchers. So, A.G. Kibal'nik, pointing to their understandable prohibition for persons who have committed sexual crimes against minors, terrorism-related, extremism-related and state crimes, crimes against the peace and security of mankind, denies the need to include smugglers in this list and considers it a gap not to include persons who have committed the most serious crimes against life and health, as well as special types of encroachments on the right to life, including those punishable by life imprisonment, and a number of other mercenary and violent crimes [23]. Time will tell how justified the application of exemption to persons who have committed the aforementioned crimes is. It is no coincidence that it is proposed to add a qualifying factor to the article on desertion in relation to those released in connection with conscription. According to the letter of the law, such a measure is also possible for those sentenced to life imprisonment, although there is an order that prohibits it. In addition, there is no prohibition of re-release on this basis. The peremptory wording of articles 78.1 and 80.2 of the Criminal Code of the Russian Federation "a person ... is released" is rather controversial, since it leaves no possibility for the court to refuse release [24].

Intersectoral contradictions relate to various issues. So, in the Criminal Code of the Russian Federation and the Penal Code of the Russian Federation, it is a question of the possibility of installment payment of a fine, and according to the Criminal Procedural Code of the Russian Federation, both installments of up to five years and deferral of a fine are possible.

A significant discrepancy is observed in the regulation of the institution of deferred punishment (postponement of the execution of a sentence) under the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation. The Criminal Code of the Russian Federation provides for two types of it – for pregnant women and women with children under the age of 14, as well as men who are the only parent for a minor under the age of 14, except for certain categories of convicts (Article 82 of the Criminal Code of the Russian Federation), as well as for drug addicts. There are five such types in the Criminal Procedural Code of the Russian Federation. The reason for postponing the execution of a sentence is grave consequences or the threat of their occurrence for the convicted person or his/her close relatives caused by a fire or other natural disaster, serious illness or death of the only able-bodied family member, or other exceptional circumstances; illness that prevents serving a sentence (according to Part 2 of Article 81 of the Criminal Code of the Russian Federation, this is the basis for exemption from punishment); and also the inability to pay a fine. The grounds for the application of deferral related to the material component of this right should be exhaustively listed in the Criminal Code of the Russian Federation.

It seems that the prohibition of the use of "parental" deferral should apply not only to those crimes listed in Article 82 of the Criminal Code of the Russian Federation, but also to a wider range of acts from the chapter "Crimes against the family and minors". For example, the involvement of a minor in the commission of a crime, antisocial acts, actions that pose a danger to the life of a minor, as well as failure to fulfill the duties of raising a minor, combined with ill-treatment, does not currently prevent the application of a deferral. At the same time, the law does not provide for a situation where a person has committed several crimes for which he has been sentenced to imprisonment for a term of less than five years for each. For example, a doctor has repeatedly illegally admitted

patients to a psychiatric hospital. Article 128 of the Criminal Code of the Russian Federation assumes, as an alternative to other punishments, imprisonment of up to seven years. For each episode, a sentence of up to five years can be imposed, but in total, the term of imprisonment can significantly exceed five years. At the same time, according to the law, the use of deferral is not excluded. This puts such a guilty person in a better position in relation to the one who has committed one crime.

Though a conditional sentence is a traditional response to crime, its legal nature is estimated by researchers in different ways: as a punishment [25, p. 207], its special type without actually serving [26, p. 10], a form of realization of criminal liability in its liberal form [27; 28], etc. Practice has also shown that conditional sentences are imposed for any crime of severity (for serious and especially serious crimes – 54.6%) (Report on the specifics of the consideration of criminal cases, the use of real types of punishment and the grounds for termination of criminal cases for 12 months in 2024, Form No. 10.1). The tendency to impose conditional sentences for these crimes is growing. In 2023, their share was less than half. Penitentiaries consider it necessary to legislatively limit the possibility of probation for particularly serious crimes [29]. It seems that for serious crimes, if there are a sufficient number of non-custodial punishments, the latter would be preferable to a suspended sentence.

The comparison of suspended sentences with restriction of liberty shows the advantages of the former. Prohibitions and duties are similar in both types. In the case of a conditional sentence, various duties are established at the discretion of the court. During the probation period, they may be fully or partially canceled or supplemented by the court. A change is also possible regarding the length of the probation period. The list of prohibitions and legal restrictions on the restriction of freedom is closed and is not subject to broad interpretation. With a conditional sentence, the consequences of violating prohibitions, shirking duties, and unlawful post-criminal behavior are more flexible and differentiated. Therefore, restriction of freedom as the main punishment in the presence of a conditional sentence seems unnecessary.

The *presence or absence of judicial discretion* in the application of certain types of exemption in the law defies logical explanation. Doctrinally, they are divided into imperative and discretionary.

Traditionally, when releasing from responsibility and punishment, imposing a conditional sentence, and replacing the type of punishment for evading it, the court has the opportunity to choose, since the wording “the court may ...”, “the person may be released” in criminal law allows the court to take into account all factors and to make a decision with regard to possible behavior of the defendant or the convict.

For example, the court is entitled to choose when releasing from criminal liability in connection with active repentance (Article 75 of the Criminal Code of the Russian Federation), reconciliation with the victim (Article 76 of the Criminal Code of the Russian Federation), and imposition of a fine (Article 76.2 of the Criminal Code of the Russian Federation).

The wording “a person ... is released” used in Article 76.1 of the Criminal Code of the Russian Federation (release from criminal liability in connection with compensation for damage) and Article 80.1 of the Criminal Code of the Russian Federation (release from criminal liability in connection with a change in the situation) deprives the court of such a choice. The same wording is used in Article 78.1 of the Criminal Code of the Russian Federation “Exemption from criminal liability in connection with conscription ...” and in Article 80.2 of the Criminal Code of the Russian Federation “Exemption from punishment in connection with military service ...”.

The imperativeness of the type of release is often a disregard for one of the important stages of the law enforcement process – judicial discretion. Judicial discretion presupposes both a comprehensive assessment of public danger of the crime committed and consideration of the characteristics of its subject. With the expansion of the grounds for exemption from liability and punishment, as well as the use of non-custodial punishments, which may not differ too much from some types of release in terms of punishment, the law enforcement officer, as a rule, must have a choice between these alternatives. The arguments provided by the legislator will always be narrower than when considering a specific criminal case. The

choice of impact presupposes a balance between compliance with the goals of punishment or release from it or from responsibility with the interests of the victims. Many types of release, in particular, involve consideration of compensation for damage and compensation for harm from a crime. The potential for compensation is assessed on a case-by-case basis. This means that a decision made by the court or a law enforcement agency will make it possible to fully take into account individual characteristics of the crime and the perpetrator in order to make a legitimate and fair decision.

There is an opinion that "the discretionary nature of certain types of release from criminal liability does not go well with the principle of equality of citizens before the law" [18, p. 168]. The publications express the position that in relation to a person serving imprisonment, arrest or forced labor, who has a serious illness, there should be the only possible court decision on release from punishment. I.E. Zvecharovskii stands for imperativeness in the application of articles 76.1 and 76.2 of the Criminal Code of the Russian Federation in cases of minor and moderate crimes committed for the first time, as well as reckless serious crimes with full compensation for damage [31].

However, the majority of researchers disagree with this solution of the issue [32, p. 270; 33, p. 20]. Sometimes exaggerating the importance of a criminal law principle, such as legality or humanism, can lead to serious consequences. Thus, the draft law on amending Part 2 of Article 81 of the Criminal Code of the Russian Federation, proposed by human rights activists, was rightly criticized by the scientific community and employees of the Ministry of Justice of the Russian Federation, who expressed concern that humanism towards a convicted person with a serious illness unrelated to a mental disorder, in the case of the court's obligation to release him/her from serving a sentence, may lead to possible commission of a repeat crime. One of the documents rightly states that "not every serious illness can, in all cases without exception, neutralize socially negative personality traits of a convicted person to a level that is absolutely safe for society" [34]. Therefore, to deprive the court of the possibility of refusing release means to put the legally protected rights and interests of others in potential danger. In addition, such a decision may be detrimental to the released person him/herself, since his/her household arrangements, treatment and other rights are not guaranteed by law, although appropriate assistance is provided for by the federal law No. 10-FZ of February 6, 2023 "On probation in the Russian Federation".

Negative characteristics at the place of serving the sentence, evasion of treatment in order to obtain release for health reasons, possible recidivism, the absence of correction, criminal attitudes, suicidal tendencies, etc. may be grounds for refusal to release even seriously ill convicts. It is no coincidence that such decisions occur in judicial practice [35; 36].

Nevertheless, according to the Plenum of the Supreme Court of the Russian Federation, in its Resolution No. 8 of April 21, 2009 "On the judicial practice of conditional early release from serving a sentence, replacement of the unserved part of the sentence with a milder type of punishment", serving an insignificant part of the imposed sentence, a lack of incentives, negative characteristics of a convict by the correctional institution administration, and a lack of permanent residence or social connections cannot considered an unconditional obstacle to release under Article 81 of the Criminal Code of the Russian Federation.

The scientific literature has rightly criticized a lack of formation of legally established criteria that judges should rely on when deciding whether to release such convicts [18, p. 105].

Researchers note a legislative gap related to release from punishment due to illness. In the situation where the disease manifests itself in the period after the crime has been committed, but before the conviction and its entry into force, the punishment has not yet been imposed, but the grounds for release already exist. So, the term "release from punishment" is not entirely legitimate. Probably, it should be about release from responsibility. In addition, according to Paragraph 1 of Part 1 of Article 398 of the Criminal Code of the Russian Federation, the convict's illness is the basis for the application of a suspended sentence, according to Article 81, it is is the basis for release from punishment.

Ways to overcome sectoral and intersectoral contradictions in regulating the choice of the

type of punishment or the type of release from it or from responsibility

It seems advisable to:

– legislatively define institutions of release from responsibility, release from punishment, determine a sub-institution of release from serving a sentence, and list goals, signs, grounds and conditions of each institution;

– adjust the ranking of types of punishment in Article 44 of the Criminal Code of the Russian Federation and eliminate their duplication (similarity) with types of release, focusing on the need for significant punitive superiority of the former;

– redistribute existing types of release from liability and punishment, and other criminal law measures according to updated legal institutions based on the logic of their application and targeting;

– establish limits of judicial discretion, giving preference to discretionary measures (in particular, by eliminating the imperative in Part 2 of articles 75, 76.1, 80.1, 80.2 of the Criminal Code of the Russian Federation);

– eliminate contradictions between the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation on the types of exemption, comprehensively describe material components in the Criminal Code of the Russian Federation, and provide for the mechanism of implementation in the Code of Criminal Procedure of the Russian Federation, uniformly regulate the installment and (or) deferral of a fine in the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation.

Thus, the widespread use of measures of influence on a person who has committed a crime, alternative to imprisonment, requires their ordering and ranking according to the scope and type of prohibitions and duties, eliminating duplication of types, bringing them into a system with a clear indication of the grounds, conditions of use and consequences of violations, justifying the contingent, setting limits of judicial discretion.

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