DOI 10.46741/2686-9764-2020-14-4-542-551
UDC 343.24

Criminal Law Measures and Criminal Liability: Scientific Discussion and Searching for a Solution

YURII E. PUDOVOCHKIN
Russian State University of Justice, Moscow, Russian Federation
ORCID: https://orcid. org/0000000311009310, email: 11081975@list.ru

Abstract. The paper analyzes the content of scientific discourse on the relationship between criminal liability and criminal law measures and proves that the corresponding concepts are not subordinate and interchangeable. Criminal law measures are defined as legal means and normative structures established by law, which the state uses to respond to a crime. Criminal liability is defined as a real phenomenon, a special combination of criminal law measures implemented on the basis of a court sentence. The common feature of criminal liability and criminal law measures is that they can only be applied in case of commission of a crime. In this regard, measures imposed on persons who have committed a socially dangerous act before reaching the age of criminal liability or in a state of insanity should be excluded from the list of measures of a criminal legal nature. The difference between liability and criminal law measures is that liability requires official recognition of a person guilty of committing a crime, while criminal law measures can also be applied in the absence of a decision on guilt, when a person is exempt from criminal liability. Based on this, all criminal law measures are divided into two groups: a) measures applied outside the scope of liability, and b) measures that are part of liability. We give the nomenclature of each of them and identify promising opportunities for their expansion. In particular, the list of criminal law measures may be supplemented with community service, limited paid work, and administrative supervision.

Key words: criminal liability; measures of a criminal-legal nature; criminal punishment; conditional conviction; criminal record; administrative supervision; criminal-legal attitude.

12.00.08 – Criminal law and criminology; penal law.

For citation: Pudovochkin Yu.E. Criminal law measures and criminal liability: scientific discussion and searching for a solution. *Penitentiary Science*, 2020, vol. 14, no. 4 (52), pp. 542–551. DOI 10.46741/2686-9764-2020-14-4-542-551.

Recognizing criminal law measures as a legal means by which the state adjusts the legal status of an individual who has committed a crime within the framework of criminal law relations, we find it necessary to consider the most significant issue of the relationship between criminal law measures and criminal liability.

Modern criminal legislation in this part gives grounds for a variety of interpretations.

In Articles 2, 6 and 7 of the Criminal Code of the Russian Federation (RF CC), which contain the concept of "criminal law measures", it is used in a general semantic row with the notion of "punishment". However, since punishment is unthinkable without criminal liability, the relevant legislative formulations give grounds for lawyers to consider criminal measures as an integral part of criminal liability. For example, A.V. Naumov asserts that "criminal liability should be understood as all measures of criminal law impact applied to a person who has committed a crime... Criminal liability is divided into punishment and other measures of criminal law impact (for example, medical treatment measures) that are not defined as punishment" [32, p. 96]. In such arguments, criminal liability is a generic concept in relation to punishment and other criminal law measures.

At the same time, Articles 6 and 7 of RF CC state that criminal law measures are applied to an individual who has committed a crime, while Section 4 of RF CCstates that criminal law measures include compulsory medical measures that are prescribed, among other things, to persons whose state of insanity at the time of committing an act provided for by criminal law does not allow the act to be considered as a crime. These regulations allow legal professionals to talk about a different ratio of criminal liability and criminal law measures. In particular, V.V. Maltsev writes that "there are much more arguments in favor of the fact that the content of the term

'criminal law measures' includes the content of the term 'criminal liability' than vice versa" [25, p. 184–185]. N.A. Lopashenko shares this opinion and points out the following correlation between the terms under consideration: "criminal law measures include criminal liability and other criminal law measures" [23, p. 66].

As we can see, the issue under consideration is very controversial. The main problem that provokes debate among legal professionals is as follows: are criminal law measures a manifestation of criminal liability or an alternative to it,or is criminal liability a criminal law measure?

The problem is complicated by the discussion about criminal liability itself. For example, N.V. Shchedrin, discussing the new criminal law measures introduced in RF CC, writes that "the perception of the essence of the novel is complicated by a long-standing discussion about the concept of criminal liability and the forms of its implementation. It seems that the category of 'criminal liability' creates unnecessary conflicts in practice and generates endless disputes in theory". Then the author asks the question: "I would like to know what 'terrible losses' we are to expect if we remove this term from criminal law? Instead, we can use the general term 'criminal law impact', 'criminal law measures' or simply 'criminal law sanctions'... But the benefits of such a step are undeniable. One of them is that it will put an end to the fruitless discussions about the scope and forms of implementation of criminal liabilityand the moment of its occurrence and termination" [44, p. 46].

Such a lengthy quotation, although it exhausts the arguments of N.V. Shchedrin about the uselessness of the category of criminal liability, nevertheless does not contain, in fact, a single weighty argument against the use of the category "criminal liability", except for the need to end the discussion. And even that should not be taken into account, since it seems that in this case, the way out of the problem situation is not to end the discussion, but rather to deepen it, to bring the scientific controversy to a higher and methodologically important level.

As we know, the category of criminal liability was filled with modern meaning in the middle of the past century due to the need, on the one hand, to integrate all measures of influence on the criminal, and on the other hand – to separate some of these measures from criminal punishment and measures not related to the criminal law. Today, the need for instrumental support for this function not onlyremains relevant, but, on the contrary, has become even more acute.

Without conducting a full-fledged analysis of this category, especially since a significant amount of scientific literature is devoted to this topic, we only note that the value of the category of criminal liability for a proper understanding of criminal law measures directly depends on what meaning is put into the concept of criminal liability itself.

In our opinion, out of the large number of existing concepts, the most convincing one is that in which criminal liability is understood as a deterioration of the legal status of a person who has committed a crime, which consists in depriving or restricting some of their rights and freedoms, based on the law and expressed in a court sentence [26, p. 52; 40, p. 104]. This approach assumes that liability as a phenomenon can exist only within the framework of actual and developing protective social relations generated by crime [19, p. 26; 22, p. 33] and that liability is a "phenomenon of objective reality" [43, p. 100].

If we proceed from these positions, we will have to state an obvious fact: liability is something from the field of actual relations, it is always individual. Criminal law measures are initially on a completely different plane. As the means of legal regulation of relations arising in connection with a crime, they primarily relate to the sphere of normative structures. In other words, if liability is a certain element of implementation and dynamics of criminal law regulations, then criminal law measures are a static element, if it is permissible to say so, a model-normative element. They can become an element of reality only if they are actually applied to an individual who committed a crime, that is, when they are part of liability.

The proposed explanation of criminal liability, in our opinion, confirms the necessity and usefulness of this scientific and normative category for understanding and improving the mechanism of criminal law regulation, although it does not answer the question of the ratio of the scope of the terms "liability" and "criminal law measures".

It seems that the restriction of the legal status of a person who has committed a crime, expressed in criminal liability, occurs due to the application of certain criminal law measures to this person, and the implementation of these measures constitutes the content of criminal liability. Does this mean that in the discussion presented above, A.V. Naumov's argument that criminal law measures are part of liability should be recognized as the only correct one? We believe that the answer is negative.

As we know, criminal law allows for the application of criminal law measures beyond the implementation of criminal liability. We note that

we are only talking about measures that apply to persons who have committed a crime (which excludes from the scope of analysis the measures applied to insane persons and persons who have not reached the age of criminal liability, which, in our opinion, should be placed outside criminal law). In this case, their implementation occurs when they are exempted from liability. This institution has recently become very popular. Without going into its analysis, we point out that some experts recognize this exemption as a form of implementation of criminal liability [2, p. 13; 17, p. 101]. Therefore, based on the logic of recognizing all forms of implementation of liability as criminal law measures, the very exemption from criminal liability should be considered as one of such measures. I.E. Zvecharovskii [11, 35], V.K. Duyunov [7, p. 68], G.V. Nazarenko [31, p. 266] write about it in their works. However, in our opinion, the fallacy of this conclusion lies in the flawed original premise.

If, upon exemption from criminal liability the person who committed the crime is released from the official negative assessment of their behavior as criminal and the need to accept some of the legal restrictions expressed in the court sentence, if the person is not subjected toactual legal restrictions, then the exemption from liability cannot serve as a form of implementation of this liability. The absence of something, by definition, cannot be a form of implementation of this something [9, p. 25].

When an individual is exempted from criminal liability, the criminal law relationship is terminated (sometimes suspended) by the will of the state. Having a kind of subjective right to bring criminals to justice and punish them, the state (if there are conditions established by law), of its own free will and guided by its own considerations related to humanism, justice, expediency, etc., breaks the legal link with the person who committed the crime, refuses to exercise the right that belongs to it. As a general rule, no real punitive or other measures of influence are applied against an individual who committed a crime. Therefore, exemption from criminal liability itself is not classified as a criminal law measure.

However, there are significant exceptions to this rule (Articles 76.2, 90 of RF CC). It is very difficult to determine the legal nature of the measures that can be applied to a person who has committed a crime when this person isexempted from criminal liability. Today these include compulsory measures of educational influence and a court-imposed fine, and in the future, there will be other criminal law measures, if a legislative initiative of the Supreme Court of the Russian Federation on the introduction of the criminal offence and other criminal law measures is implemented. A significant number of the authors mentioned earlier recognize them as criminal law measures. However, this does not always take into account, for example, the fact that compulsory measures of educational influence can be applied to three categories of adolescents: minors who are not subject to criminal liability due to their young age or lag in mental development that is not associated with a mental disorder; minorsexempted from criminal liability; minors exempted from criminal punishment. Thus, we find it difficult to fully agree with the opinion of S.A. Borovikov, who suggests ignoring these differences and, in any case, classifying educational measures as criminal law measures [1, p. 16]. A.V. Brilliantov holds a different opinion and argues that when Article 90 of RF CC is applied, then measures of educational influence are not included in the content of criminal liability from which a person is exempted [2, p. 8]. It is difficult to share this point of view, since the legal nature of certain measures of influence cannot be completely determined only by the procedural order of their application. Other authors also write about the unified nature of the measures under consideration; and at the same time they see them as measures of administrative-legal impact [15, p. 113], or measures of public impact [35, p. 15–16] rather than measures of criminal-legal impact.

Presenting our own view of the problem, we shall focus on the following facts that we consider obvious:

1) measures applied in the absence of the grounds for bringing to criminal liability (medical treatment measures against the insane and educational measures against persons under the age of criminal liability) do not belong to the category of criminal law measures;

2) measures applied to persons who have committed a crime as part of the implementation of their criminal liability (medical measures in relation to partially sane individuals, confiscation of property) are part of criminal liability;

3) measures applied when exemptingfrom criminal liability the persons who have committed crimes (measures of educational influence, court-imposed fine) retain the property of criminal law measures without being part of criminal liability.

Thus, not all criminal law measures are part of liability; the relationship between them is not a relationship of subordination (part and whole). However, this does not provide arguments in favor of the viewpoint of V.V. Maltsev and N.A. Lopashenko in the theoretical discussion

presented above, since criminal liability is not necessarily an element of criminal law measures.

In this case, there is no reason to accuse experts of contradictions in the viewpoints presented, or even more so of their fallacy. We cannot ignore an important fact that many theoretical views were formed and presented under the criminal law that is significantly different in its content from the current version. In this regard, both points of view presented above, being on different sides in the theoretical dispute, in our opinion, objectively do not take into account the dramatic transformations of criminal legislation and are inaccurate only because of this.

Criminal law measures in the current Criminal Code of the Russian Federation do not form a homogeneous group. Some of these measures are applied outside the scope of liability, while others are applied within it. Moreover, it is important that these measures do not intersect (compulsory measures of educational influence can be applied in accordance with Article 90 of RF CCwhen an individual is exempted from liability and in accordance with Article 92 of RF CC upon release from criminal punishment, but it is the exception which requires special studies and, perhaps, elimination). Therefore, it is logically incorrect to build unambiguous and linear links between liability and these measures. The establishment of such a link should be accompanied by a differentiated analysis of criminal law measures.

Thus, all of the above allows us to conduct the first ranking of criminal law measures on the basis of their correlation with criminal liability. The first group consists of criminal law measures that are applied when a person who has committed a crime is exempted from criminal liability. These, according to the law, are compulsory measures of educational influence (Article 90 of RF CC) and a court-imposed fine (Article 104.4 of RF CC). In the future, it is possible to supplement this list with community service and limited paid work.

The second group consists of criminal law measures that are applied within the framework of criminal liability. Determining their list is a separate research task. Proceeding from the idea of recognizing criminal law measures as an element of criminal liability, experts have very different solutions as to what legal means of influencing the legal status of a person within the framework of liability are considered criminal law measures. Thus, it is possible to identify three key approaches within this area of scientific thought.

A broad interpretation of criminal law measures is proposed by I.E. Zvecharovskii. He understands them as measures provided for by criminal law, applied regardless of the legal nature of the behavior of an individual who committed a crime, but taking into account changes in the individual's criminal status. This interpretation allowed the author not only to refer to the measures under consideration as "humanistic alternatives" (all types of exemption from criminal liability, voluntary refusal to commit a crime, amnesty), but also to take into account the existence of those criminal law norms that assess the negative behavior of an individual after committing a crime (Part 4 of Article 50 of RF CC).

Theabove is close to the reasoning of S.I. Kurganov, whoargues that the grounds for applying other criminal law measures can includewrongful behavior of an individualafter they committed a crime and that such measures include, besides the forms of implementation of criminal liability, measures applied to convicts who do not fulfill the requirements of the court sentence (abolition of probation or extension of probation (Parts 2 and 3 of Article 74 of RF CC), revocation of parole (Item "a" of Part 7 of Article 79 of RF CC), abolition of compulsory measures of educational influence, which are used in the exemption from criminal liability (Part 4 of Article 90 of RF CC), cancellation of the suspension of punishment for pregnant women and women with small children (Part 2 of Article 82 of RF CC), substitution of the punishment for a more strict one in case of malicious evasion from serving the sentence (Part 5 of Article 46, Part 3 of Article 49, Part 4 of Article 50, Part 4 of Article 51 of RF CC)) [21, p. 59].

In this case, criminal law measures are declared to be all means of the state's response to absolutely any life circumstance recognized as a legal fact in criminal law. In our opinion, such a concept allows for an unjustifiably broad interpretation of the phenomenon under consideration and includes measures that are fundamentally different in terms of grounds, goals and legal nature in a single system of criminal law measures. Replacing the imposed sentence with a more severe one, abolition of suspended sentence, canceling the suspension of serving the sentence, canceling the exemption from criminal liability are not criminal law measuresas such (a substantive phenomenon, a legal means of resolving a conflict caused by the crime), but rather the legal consequences of violating the protective relations between the criminal and the state already regulated by criminal law. In other words, these means areaimed not at settling the criminal law relationship, but at ensuring the inviolability of the option of resolving the criminal law conflict ex-

pressed in a sentence or other procedural act. They are, therefore, of a secondary, enforcement nature. And because of this, it is impossible to equate their legal nature with the legal nature of criminal law measures that serve as a reaction to the crime committed rather than to post-criminal illegal behavior.

The second approach to understanding criminal law measures is formed by the views of a group of authors who introduce additional criteria for classifying measures as criminal law measures and give them a restrictive interpretation. Thus, S.V. Zemlyukov recognizes that criminal law measures are applied only to persons who have committed crimes, and are aimed at solving the problems of criminal law. At the same time, he believes that "other criminal law measures are measures of influence stipulated in the Criminal Code, applied by the bodies of inquiry, investigation or court to the person who committed a crime, instead of criminal liability or punishment, and aimed at saving measures of criminal repression, reformation of the person, and preventing them from committing new crimes" [12, p. 32]. S.V. Zemlyukov argues that such humanistic alternatives include measures used when an individual is exempted from criminal liability (Article 90 of RF CC), measures applied when an individual is released from criminal punishment (Article 92 of RF CC), conditional sentence (Article 73 of RF CC).

V.M. Stepashin also recognizes criminal law measures as a humanistic alternative to punishment [34, p. 398]. Similar reasoning is proposed by M.F. Gareev, who classifies all criminal law measures related to liability and having an impact on an individual guilty of a crime as follows: 1) punishment and 2) other non-punitive criminal law measures [3, p. 10]. S.Yu. Skobelin builds his concept on the same positions: he understands other criminal law measures as other forms of implementation of criminal liability, other than punishment, that can be applied to a person who has committed a crime. Such measures, in his opinion, are law-limiting; but they are not punitive, but educational and preventive in nature [38, p. 61].

Although there are some differences, the presented theories have the following common features: first, experts recognize punishment as a criminal law measure; second, other measures are understood only as a humanistic alternative to punishment.

Finally, the third approach to understanding criminal law measures is formed by specialists who, while recognizing the fact of committing a crime as the basis for applying the measures under consideration (and thereby excluding enforcement means from the range of measures), nevertheless consider other criminal law measures as not only an alternative to criminal punishment, but also as its complement. Such judgments are made by the authors who divide criminal law measures into those that complement punishment and those acting as an alternative to it [3, p. 17; 27, p. 46; 30, p. 7].

Analyzing the approaches to understanding criminal law measures presented in Russian science, we should acknowledge that each of them not only has the right to exist, but also has a certain cognitive potential by revealing and highlighting one or another aspect, property, or feature of these measures. It is hardly possible to speak unequivocally about the justice or injustice of any of them. It should only be a question of greater or lesser preferences for a concept that corresponds (or does not correspond) to an author's understanding of the essence of the criminal law mechanism. In fact, any particular theory of criminal law measures is the basic one that determines the understanding of criminal law in general, since it intersects ideas about the subject and method of criminal law, legal facts, subjects of criminal law relations, goals of criminal law regulation, etc. For this reason, any criticism of such a theory requires numerous preliminary reservations about the author's understanding of criminal law. It can be fruitful only if the opponents speak the same language, within the framework of a single scientific paradigm shared by the parties.

Taking this into account, as already noted, we do not undertake to analyze the concepts that recognize criminal law measures as those that are applied if there are no elements of a crime in the act. We also leave aside those criminal law measures that are applied when an individual is exempted from criminal liability. We will limit ourselves only to those measures that are provided for persons who can bear criminal liability, and are part of the latter.

But here a problem arises that should be discussed; otherwise, further scientific search will be difficult. We are talking about the content and forms of implementation of criminal liability. A full analysis of this issue in the framework of the present paper is hardly necessary, and therefore we will pay attention only to some aspects of the topic that are directly related to the understanding of criminal law measures.

We believe that science is not going to criticize a thesis that the content of criminal liability should include the conviction of an individual and the act they committed, this conviction is made on behalf of the state in the sentence issued by the court; criminal liability should also

include the measures of influence on this individualcontained in the court sentence under the criminal law, and a criminal record. Depending on what measures of influence are defined in the sentence and what is the procedure for their execution, we can talk about various forms of implementation of criminal liability. The form of implementation of criminal liability does not depend on the fact of conviction (it is universal and is present in all cases of criminal liability implementation). It is defined by the "middle part" of the content of liability, that is, the measures applied by the state, the order in which they are implemented, and the possibility of combining various measures.

Until recently, the law knew only one measure – punishment, different variations of the purpose of which determined the form of implementation of criminal liability. Today, among the measures implemented in the framework of liability, there are also criminal law measures that differ from punishment. The law explicitly names only three such legal means: measures of educational influence that are applied when an individual is exempted from criminal liability (Article 92 of RF CC), compulsory supervision and treatment by a psychiatrist on an outpatient basis (Part 2 of Article 99 of RF CC), confiscation of property (Article 104.1 of RF CC).

In the criminal law literature, this list is sometimes corrected, primarily in connection with the discussion of such criminal law institutions as probation and release from criminal punishment.

A number of specialists consider exemption from punishment as an independent criminal law measure [11, p. 35; 16, p. 287; 31, p. 266]; even more specialists view conditional sentence as a criminal law measure [18, p. 57; 20, p. 24; 29, p. 23–25; 33, p. 88; 39, p. 290]; a group of authors argue that criminal law measures include the restrictions and obligations assigned to probationers or those exempted from punishment and do not include a conditional sentence or exemption from punishment [6, p. 128; 8, p. 211; 14, p. 173].

It seems that, despite the external similarity, conditional sentence and exemption from punishment require separate analysis.

In the situation of exemption from criminal punishment, it is, first of all, criminal punishmentitself that acts as a criminal law measure imposed by the court sentence. The special order of execution of this punishment is a circumstance that determines the form of implementation of criminal liability, but does not act as an independent criminal law measure. Possible requirements for the conduct of persons exempted from liability, including their responsibilities to raise children or to undergo medical and social rehabilitation, also should be considered not as separate criminal law measures that are assigned for committing a crime, but as the statutory consequences of assessment of certain legal facts that affect the dynamics of the existing criminal legal relationship, that is, as a penal consequence.

Speaking about the conditional sentence, we do not intend to enter into a long-standing and ongoing dispute about the legal nature of this measure. Instead, in this part of the study, we will allow ourselves, without additional arguments, to support the opinion already expressed in science and relate it to the subject under consideration. The only significant reservation in this case will be the question whether criminal law measures include the actual suspended sentence or the measures that are applied by the court to conditionally convicted persons in order to reform them and prevent new crimes. It seems that a suspended sentence itself is a form of implementation of criminal liability, under which two criminal law measures are imposed: one (punishment) is mandatory and conditional, and the other (restrictions and requirements for behavior) is alternative, but real. In this regard, when discussing a suspended sentence in the context of the doctrine of criminal law measures, we find it advisable to consider the following: the special and independent measures do not include a suspended sentence in general, but include those measures that are imposed by a court sentence and the fulfillment of which is a condition that makes it possible not to execute a criminal sentence. Weagree with experts, who note that "the institution of conditional sentencing in the form in which it is enacted in the current Criminal Code is nothing more than a combination of the use of two independent tools of criminal law enforcement: punishment and probation. Hence, it is more correct to consider a suspended sentence not as one of the manifestations of punishment or probation separately, but as a form of implementation of criminal liability... Based on this approach to understanding the meaning of a suspended sentence, there inevitably arises a question concerning the status of probation. Quite obviously, it is an independent criminal law measure, which in its essence acts as a means of criminal liabilityalternative to punishment. Therefore, it deserves a separate place in the criminal law [28, p. 109].

The assessment of criminal records deserves special attention in the discussion of the relationship between criminal law measures and the content of criminal liability. It is con-

sidered quite ambiguouslyin modern science. The view of the criminal record and related legal restrictions as an integral part of criminal liability can be considered as common [10, p. 39–40; 24, p. 11]. At the same time, V.V. Maltsev writes: "A criminal record under the law cannot (and does not) serve as a means of depriving or restricting the rights and freedoms of persons who have served a sentence but have an outstanding or unquashed criminal record. Hence, without contradicting the criminal law, it cannot be considered "neither the burden of responsibility" or the continuation of punishment, nor criminal liability in the form of punishment. There are no restrictions on the exercise of human and civil rights and freedoms in connection with a criminal record, nor are there any restrictions in the Constitution or regulations of other branches of the law. Thus, the presence of a criminal record in general does not worsen the legal status of persons who have served their sentences" [25, p. 202; 26, p. 67]. It seems that this is not quite true. The list of legal restrictions imposed by law on persons with a criminal record is extremely wide. In this regard, there is a need to determine their nature, as well as the nature of the criminal record itself.

For example, Article 45 of the Criminal Code of the Republic of Belarus links a criminal record with the very fact of conviction and recognizes it as a consequence of conviction, which creates prerequisites for the application of punishment or other criminal law measures: "The conviction of a person for a crime they committed creates a legal state of criminal record, which consists in the possibility of applying punishment or other criminal liability measures to the convicted person in accordance with the court sentence and this Code". A.V. Brilliantov writes that a criminal record as a certain legal condition of an individual is not an integral part of criminal liability and not its prerequisite, but its consequence. The Constitutional Court of the Russian Federation in the decision dated March 19, 2003 No. 3-P "On the case regarding the examination of constitutionality of the provisions of the Criminal Code of the Russian Federation regulating the legal consequences of the criminal record of a person, repeated crime and recidivism, as well as Paragraphs 1 to 8 of the Resolution of the State Duma of May 26, 2000 'On the declaration of amnesty in connection with the 55th anniversary of the Victory in the Great Patriotic War of 1941–1945' in connection with a request of the Ostankino intermunicipal (district) court of Moscow and complaints of some citizens" identified a criminal record as "the legal condition of a persondetermined by the fact of conviction and imposition of a court sentence for the crime committed". S.G. Kelina pointed out that a criminal record is a criminal law measure [16, p. 287].

As we can see, the range of opinions is quite extensive. Assessing them, first of all, we point out the inadmissibility of recognizing a criminal record as an independent criminal law measure. The law does not recognize it as such, nor is it a criminal law measure in its essence, since it does not imply any materialized expression in the form of certain restrictions. It is hardly correct to define a criminal record as a consequence of conviction or criminal liability. A criminal record, as it follows from the provisions of Article 86 of RF CC, is generated not just by convicting an individual, but by imposing a criminal penalty on an individual. In this regard, the approach proposed by the Constitutional Court of the Russian Federation can be considered optimal.

Meanwhile, a criminal record, as we know, implies certain legal restrictions that are outside criminal law. In science, it was noted that restrictions of a general legal nature are not included in the content of a criminal record. It is difficult to agree with this, given that RF CC does not directly establish any legal restrictions related to a criminal record. They are all enshrined in the laws of different fields. Labor legislation, legislation on military service, electoral legislation, and constitutional legislation contain a number of very significant legal restrictions for persons with a criminal record. In addition, the presence of a criminal record is a prerequisite for applying to some persons such a measure of legal influence as administrative supervision, according to Federal Law 64-FZ of March 6, 2011 "On administrative supervision of persons released from prison" [13, p. 307].

It is pointless to say that all these measures do not restrict the legal status of convicted individuals;we also cannot deny the connection of these restrictions with the crime committed. Thus it will be fair not to exclude a criminal record from the content of liability and not to exclude the link between civil legal restrictions and a criminal record, but on the contrary, to include measures that restrict an individual's rights due to the presence of a criminal record in the analysis of criminal law measures, first of all, in order to find an answer to the fundamental question of whether any restrictions of rights associated with a criminal recordcan be recognized as restrictions of a criminal-legal nature. We believe that we cannot assume that all such legal restrictions are criminal law measures, but some of them may have such properties. Understanding that finding asolution to this com-

plex issue requires a separate study, we shall agree with a scientific point of view that administrative supervision fully meets the criteria of a criminal law measure, without additional arguments [36, p. 98–103].

Another important theoretical problem in the framework of the doctrine of criminal liability and criminal law measures is their correlation with the sanction of a criminal law norm. A sanction is defined as that part of the norm that contains a description of the types and amounts of punishments possible in the case of a crime described in the disposition of the present paper. Since the most ancient and classical form of liability is punishment provided for by the sanction, liability usually looks like the implementation of the sanction. A.A. Magovedov writes about it as follows: "Criminal liability is the implementation of a criminal law norm in the form of a protective criminal law relation"[24, p. 32–33]. But in a number of cases, the penalty imposed by the sanction becomes either excessive or insufficient. Taking into account some relatively common individual features of crimes, the legislator provides additional means of differentiating liability, allowing for the adjustment of the sanction by applying other measures of influence to perpetrators. At the same time, based on considerations of system-wide nature of the law and legal technique, these means are placed outside the sanction of the Special Part of RF CC. Experts have already drawn attention to the corresponding sign of other criminal law measures [16, p. 285; 37, p. 322]. Fully recognizing its existence, we emphasize that it provides grounds toadjust the idea of liability as the implementation of a sanction, or a sanctions as a description of punishments only. In any case, this fact makes it possible to clarify an extremely important feature of criminal law measures: they can act either as an alternative to criminal punishment, or as a supplement to it.

The incomplete analysis of the content and forms of implementation of criminal liability carried out through the prism of the subject of the present study allows us to get closer to understanding the essence and nomenclature of criminal law measures, their variety that is part of criminal liability. We believe that in this case it is possible to support the point of view of V.I. Gorobtsov, who includes punishment, compulsory measures of educational influence, compulsorymedical measures, and suspended sentence in criminal law measures [4, p. 36]; we also share the position of T.G. Ponyatovskaya on the possibility of including administrative supervision in such measures.

All these measures (similar to the types of punishments provided for in Article 45 of RF CC) can be divided into basic ones, which are imposed independently and cannot be combined with other measures, and additional ones, which are imposed only in conjunction with some basic criminal law measure. Criminal law measures alternative to punishment that are applied to minors, and conditional sentence are the main ones, while compulsory medical treatment, confiscation of property and administrative supervision are additional criminal law measures.

Let us draw the following conclusions:

1. Criminal law measures do not constitute a homogeneous group and, depending on their relation to criminal liability, can be classified into two groups: a) measures applied outside the scope of liability, and b) measures that are part of liability. The common integrative feature of these measures is their basis – the commission of a crime, their general distinguishing feature – the presence or absence of an official conviction of an individual in a court sentence.

2. Criminal law measures that are not related to the implementation of criminal liability are compulsory measures of educational influence and a court-imposed fine, and in the future – community work and partially paid work.

3. Criminal law measures implemented within the framework of criminal liability are divided into basic (criminal punishment, compulsory measures of educational influence, conditional sentence) and additional (compulsory medical treatment, confiscation of property, and in the future – administrative supervision).

REFERENCES

1. Borovikov S.A. *Prinuditel'nye mery vospitatel'nogo vozdeistviya kak al'ternativa nakazaniyu nesovershennoletnikh* [Compulsory measures of educational influence as an alternative to the punishment of minors]. Moscow: Yurlitinform, 2008. 192 p.

2. Brilliantov A.V. *Osvobozhdenie ot ugolovnoi otvetstvennosti: s uchetom obobshcheniya sudebnoi praktiki: nauchno-prakticheskoe posobie* [Exemption from criminal liability: taking into account the generalization of judicial practice: research and practice textbook]. Moscow: Prospekt, 2014. 111 p.

3. Gareev M.F. *Tseli inykh mer ugolovno-pravovogo kharaktera i sredstva ikh dostizheniya po rossiiskomu ugolovnomu pravu: dissertatsiya na soiskanie uchenoi stepeni kandidata yuridicheskikh nauk* [Goals of other criminal law measures and means of achieving them in Russian criminal law: Candidate of Sciences (Law) dissertation]. Kazan, 2005. 198 p.

4. Gorobtsov V.I. Development of the theory of criminal law enforcement in the new Criminal Code of the Russian Federation. In: *Aktual'nye problemy teorii ugolovnogo prava i pravoprimenitel'noi praktiki: mezhvuzovskii sbornik nauchnykh trudov* [Topical issues of the theory of criminal law and law enforcement practice: a collection of scientific papers]. Krasnoyarsk: KrVShMVDRF, 1997. Pp. 60–67. (In Russ.).

5. Grammatchikov M.V. *Sudimost': istoricheskii, ugolovno-pravovoi i ugolovno-ispolnitel'nyi aspekty: avtoreferat dissertatsii na soiskanie uchenoi stepeni kandidata yuridicheskikh nauk* [Criminal record: historical, criminal-legal and penal aspects: Candidate of Sciences (Law) dissertation abstract]. Krasnoyarsk, 2002. 23 p.
6. Grebenkin F.B. The concept, features and types of other measures of a criminal-legal nature. In: *Sistemnost' v ugolovnom prave: Materialy II Rossiiskogo Kongressa ugolovnogo prava* [Consistency in criminal law. Proceedings of the second Russian Congress on Criminal Law]. Moscow: Prospekt, 2007. Pp. 125–127. (In Russ.).
7. Duyunov V.K. *Ugolovno-pravovoe vozdeistvie: teoriya i praktika* [Criminal law impact: theory and practice]. Moscow: Nauchnaya kniga, 2003. 520 p.
8. Egorov V.S. *Voprosy pravovogo regulirovaniya mer ugolovno-pravovogo prinuzhdeniya* [Issues of legal regulation of criminal law enforcement measures]. Moscow: Izd-vo Moskovskogo psikhologo-sotsial'nogo in-ta; Voronezh: Izd-vo NPO "MODEK", 2006. 309 p.
9. Endol'tseva A.V. *Institut osvobozhdeniya ot ugolovnoi otvetstvennosti: teoreticheskie, zakonodatel'nye i pravoprimenitel'nye problemy: avtoreferat dissertatsii na soiskanie uchenoi stepeni doktora yuridicheskikh nauk* [Institute of exemption from criminal liability: theoretical, legislative and law enforcement problems: Doctor of Sciences (Law) dissertation abstract]. Moscow, 2005. 50 p.
10. Zagorodnikov N.I. On the limits of criminal liability. *Sovetskoe gosudarstvo i pravo* = *Soviet State and Law,* 1967, no. 7, pp. 39–46. (In Russ.).
11. Zvecharovskii I. Criminal law measures: concept, system, types. *Zakonnost'* = *Legality,* 1999, no. 3, pp. 36–39. (In Russ.).
12. Zemlyukov S.V. The concept and content of criminal law measures. In: *Gosudarstvo i pravo na rubezhe vekov: Kriminologiya, ugolovnoe pravo, sudebnoe pravo: materialy Vserossiiskoi konferentsii* [State and law at the turn of the century: Criminology, criminal law, judicial law: Proceedings of the all-Russian conference]. Moscow: In-t gosudarstva i prava RAN, 2001. Pp. 29–36. (In Russ.).
13. Kalinina T.M. Administrative supervision as another measure of criminal law. In: *Ugolovnoe pravo: strategiya razvitiya v XXI veke: materialy IX Mezhdunarodnoi nauchno-prakticheskoi konferentsii* [Criminal law: development strategy in the 21st century. Proceedings of the 9th research-to-practice conference]. Moscow: Prospekt, 2012. Pp. 300–307. (In Russ.).
14. Kaplin M.N. On criminal law measures. In: *Aktual'nye problemy differentsiatsii ugolovnoi otvetstvennosti i zakonodatel'noi tekhniki v ugolovnom prave i protsesse: sbornik nauchnykh statei.* Yaroslavl: Izd-vo Yarosl. un-ta, 2003. Pp. 169–176. (In Russ.).
15. Karelin D.V. *Prinuditel'nye mery vospitatel'nogo vozdeistviya kak al'ternativa ugolovnoi otvetstvennosti: dissertatsiya na soiskanie uchenoi stepeni kandidata yuridicheskikh nauk* [Compulsory measures of educational influence as an alternative to criminal liability: Candidate of Sciences (Law) dissertation]. Tomsk, 2001. 269 p.
16. Kelina S.G. "Other measures of a criminal law nature" as an institute of criminal law. In: *Ugolovnoe pravo: strategiya razvitiya v XXI veke: materialy 4-i Mezhdunarodnoi nauchno-prakticheskoi konferentsii* [Criminal law: development strategy in the 21st century. Proceedings of the 4th international research-to-practice conference]. Moscow: Velbi, 2007. Pp. 283–288.
17. Kelina S.G. Measures of responsibility provided for by the criminal law and the grounds for their application. *Sovetskoe gosudarstvo i pravo* = *Soviet State and Law,* 1982, no. 5, pp. 100–108. (In Russ.).
18. Kelina S.G. Punishment and other criminal law measures. *Gosudarstvo i pravo* = *State and Law*, 2007, no. 6, pp. 51–58. (In Russ.).
19. Kelina S.G. *Teoreticheskie voprosy osvobozhdeniya ot ugolovnoi otvetstvennosti* [Theoretical issues of exemption from criminal liability]. Moscow: Nauka, 1974. 231 p.
20. Kondalov A.N. *Uslovnoe osuzhdenie i mekhanizmy ego obespecheniya: dissertatsiya na soiskanie uchenoi stepeni kandidata yuridicheskikh nauk* [Suspended sentence and mechanisms of its provision: Candidate of Sciences (Law) dissertation]. Kazan, 2000. 180 p.
21. Kurganov S. Criminal law measures. *Ugolovnoe pravo* = *Criminal Law,* 2007, no. 2, pp. 59–63. (In Russ.).
22. Lesnichenko I.P. *Ponyatie i osnovanie ugolovnoi otvetstvennosti: lektsiya* [The notion and basis of criminal liability: a lecture]. Stavropol: Servisshkola, 2005. 59 p.
23. Lopashenko N.A. *Konfiskatsiya imushchestva* [Confiscation of property]. Moscow: Yurlitinform, 2012. 160 p.
24. Magomedov A.A. *Ugolovnaya otvetstvennost' i osvobozhdenie ot nee: evolyutsiya pravovykh vozzrenii i sovremennost': avtoreferat dissertatsii na soiskanie uchenoi stepeni doktora yuridicheskikh nauk* [Criminal liability and exemption from it: evolution of legal views and modernity: Doctor of Sciences (Law) dissertation abstract]. Moscow,1998. 57 p.
25. Mal'tsev V.V. *Vvedenie v ugolovnoe pravo* [Introduction to criminal law]. Volgograd: Volgogr. yurid. in-t MVD Rossii, 2000. 204 p.
26. Mal'tsev V.V. *Problemy osvobozhdeniya ot ugolovnoi otvetstvennosti i nakazaniya v ugolovnom prave* [Problems of exemption from criminal liability and punishment in criminal law]. Volgograd: VA MVD Rossii, 2004. 209 p.
27. Medvedev E. The concept and types of other criminal law measures applied for the commission of crimes. *Ugolovnoe pravo* = *Criminal Law,* 2009, no. 5, pp. 46–51. (In Russ.).
28. Medvedev E.V. The concept and essence of suspended sentence as a tool of criminal law impact. *Obshchestvo i pravo* = *Society and Law*, 2010, no. 2 (29), pp. 107–112. (In Russ.).
29. Muzenik A.K. Differentiation of criminal liability: forms and types. In: *Ugolovnoe pravo i sovremennost': mezhvuzovskii sbornik nauchnykh trudov* [Criminal law and modernity. Inter-university collection of scientific papers]. Krasnoyarsk: KrVSh MVD RF, 1998. Pp. 21–26. (In Russ.).
30. Nabiullin F.K. *Nekaratel'nye mery ugolovno-pravovogo kharaktera: priroda, sistema i sotsial'no-pravovoe naznachenie: avtoreferat dissertatsii na soiskanie uchenoi stepeni kandidata yuridicheskikh nauk* [Non-punitive criminal-legal measures: nature, system and socio-legal purpose: Candidate of Sciences (Law) dissertation abstract]. Kazan, 2008. 23 p.
31. Nazarenko G.V. Criminal law measures that are not a punishment. In: *Ugolovnoe pravo: strategiya razvitiya v XXI veke: materialy XVII Mezhdunarodnoi nauchno-prakticheskoi konferentsii* [Criminal law: development strategy in the 21st century: Proceedings of the 17th international research-to-practice conference]. Moscow: RG-Press, 2010. Pp. 22–26.
32. Naumov A.V. *Rossiiskoe ugolovnoe pravo. Obshchaya chast': kurs lektsii* [Russian criminal law. General part. A course of lectures]. Moscow: Bek, 1996. 550 p.
33. Nepomnyashchaya T.V. Punishment and measures of criminal law in the system of measures to counter crime. In: *Protivodeistvie prestupnosti: ugolovno-pravovye, kriminologicheskie i ugolovno-pravovye aspekty: materialy III Rossiiskogo Kongressa ugolovnogo prava* [Combating crime: criminal law, criminological and criminal law aspects. Proceedings of the 3rd Russian Congress on criminal law]. Moscow: Prospekt, 2008. Pp. 86–89.
34. Nepomnyashchaya T.V., Stepashin V.M. *Problemy naznacheniya nakazaniya: uchebnoe posobie* [Problems of sentencing: a textbook]. Omsk: Izd-vo Omskogo gos. un-ta, 2011. 590 p.
35. Paltser A.R. *Osvobozhdenie ot ugolovnoi otvetstvennosti po sovetskomu ugolovnomu pravu: avtoreferat dissertatsii na soiskanie uchenoi stepeni kandidata yuridicheskikh nauk* [Exemption from criminal liability under Soviet criminal law: Candidate of Sciences (Law) dissertation abstract]. Tartu, 1966. 18 p.

36. Ponyatovskaya T.G. Crime prevention: security measures, administrative supervision. *Kriminologicheskii zhurnal Baikal'skogo gosudarstvennogo universiteta ekonomiki i prava = Criminology Journal of Baikal National University of Economics and Law*, 2013, no. 3, pp. 98–103. (In Russ.).
37. Radaev A.G. About the notion of "measures of criminal law". In: *Ugolovnoe pravo: strategiya razvitiya v XXI veke: materialy Vos'moi Mezhdunarodnoi nauchno-prakticheskoi konferentsii* [Criminal law: development strategy in the 21st century: Proceedings of the 8th international research-to-practice conference]. Moscow: MGYuA, 2011. Pp. 318–322.
38. Skobelin S.Yu. The essence and content of criminal law measures, alternative to punishment. *Yuridicheskaya nauka i pravookhranitel'naya praktika = Legal Science and Law Enforcement Practice,* 2009, no. 4 (10), pp. 57–62. (In Russ.).
39. Skripchenko N.Yu. Legal regulation of other criminal law measures: realities and prospects for improvement. In: *Ugolovnoe pravo: strategiya razvitiya v XXI veke: materialy IX Mezhdunarodnoi nauchno-prakticheskoi konferentsii* [Criminal law: development strategy in the 21st century: Proceedings of the 9th international research-to-practice conference]. Moscow: Prospekt, 2012. Pp. 289–293.
40. Tarbagaev A.N. Responsibility in criminal law. *Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie = Proceedings of Higher Educational Institutions. Pravovedenie,* 1994, no. 3, pp. 102–106. (In Russ.).
41. Brilliantov A.V. (Ed.). *Ugolovnoe pravo Rossii. Chasti Obshchaya i Osobennaya: uchebnik* [Criminal law of Russia. The general and the special part: a textbook]. Moscow, 2008. 1180 p.
42. Aslanov R.M., Boitsov A.I., Matsnev N.I. (Eds.). *Ugolovnyi kodeks Respubliki Belarus'* [Criminal Code of the Republic of Belarus]. Saint Petersburg: Yuridicheskii tsentr Press, 2001. 474 p.
43. Filimonov V.D. *Ugolovnaya otvetstvennost' po rossiiskomu zakonodatel'stvu* [Criminal liability under Russian legislation]. Moscow: YurInfoR-MGU, 2008. 247 p.
44. Shchedrin N.V., Kamylina O.M. Russian criminal law in the context of doctrinal models of building criminal law sanctions. *Kriminologicheskii zhurnal Baikal'skogo gosudarstvennogo universiteta ekonomiki i prava = Criminology Journal of Baikal National University of Economics and Law*, 2008, no. 3, pp. 40–49. (In Russ.).

INFORMATION ABOUT THE AUTHOR

YURII E. PUDOVOCHKIN – Doctor of Sciences (Law), Professor, chief researcher, head of the criminal law direction at the Center for Justice Research of the Russian State University of Justice, Moscow, Russian Federation. ORCID: 0000-0003-1100-9310, e-mail: 11081975@list.ru