



Conditional Nature of the Application of the Substitution of the Unserved Part of Punishment with a Milder Penalty as a Way to Improve This Criminal Law Institution

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Abstract

Introduction: the article discusses the way to improve the application of norms of the institution of the substitution of the unserved part of punishment with a milder penalty (hereinafter – punishment substitution) by establishing conditions under which this type of exemption from punishment can be canceled by the court with the actual serving of the unserved part of the punishment. *Purpose:* based on the analysis of scientific literature, doctrinal positions, legislative provisions, and examples of judicial practice, to substantiate the prospects and expediency of introducing a conditional nature of the application of a sentence substitution. *Methods:* historical, comparative legal, method of interpretation of legal norms, theoretical methods of formal and dialectical logic. *Results:* a retrospective review of domestic criminal legislation showed that the substitution of punishment was initially considered as a form of conditional early release from serving a sentence, which is why it was characterized by a similar conditional nature. Over time, the institution of punishment substitution has become more independent and at the same time acquired an unconditional nature of application. Within the framework of the current legal regulation, convicts who, after the application of Article 80 of the Criminal Code of the Russian Federation, maliciously evade serving a substitute sentence, find themselves in an unjustifiably preferential position. There are also significant risks associated with the post-criminal behavior of a person whose situation has improved as a result of the punishment replacement. Moreover, this substitution of punishment implies that the convicted person will continue to behave lawfully. However, there are no legal mechanisms that guarantee the law-abiding behavior of a convicted person after the application of a sentence substitution. These circumstances determine prospects for the introduction of a conditional nature of the application of punishment substitution. *Conclusion:* as a result of the conducted research, in order to improve and optimize the institution of punishment substitution, the introduction of the conditional nature of its application is justified, as well as the addition and amendment of Article 80 of the Criminal Code of the Russian Federation is proposed.

Key words: release from punishment; substitution of punishment; conditional nature; conditions of application; encouragement; stimulation; justice.

5.1.4. Criminal law sciences

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Introduction

One of the key tasks of the criminal law doctrine is the resolution of current problems, consideration and analysis of the prospects for the development of both criminal law as a whole and its individual institutions. At the same time, the vector of the direction of scientific thought largely determines the relevance of a particular legal phenomenon, which in turn is determined by various factors: socio-economic, political conditions of society and the existence of the state; aspects of strategic goal-setting in the field of regulatory regulation; the activity of the legislator to adjust the content of the criminal law, its implementation in practice.

Thus, one of the directions of the current criminal policy is to reduce a number of convicts held in penitentiary institutions, as well as to humanize criminal legislation and the practice of its application in the field of sentencing and executing of punishments. This development path determines the relevance of research in the field of types of release from punishment, in particular, the intersectoral institution of punishment substitution as an important incentive measure for convicts. The substitution of punishment not only ensures individualization of its execution, but also embodies a progressive punishment execution system based on the principles of consistency and gradual reduction of the level of criminal repression. This has triggered scientists' interest in the replacement of punishment and related issues.

In accordance with Article 80 of the Criminal Code of the Russian Federation, the substitution of punishment has an unconditional character, according to which the question of its cancellation is not raised even in case of subsequent disobedient behavior of the convicted person. So, it can be assumed that the legislator has chosen an exclusively retrospective approach. At the same time, the vast majority of scientific papers does not analyze the conditional nature of the application of the punishment substitution, but only states it. However, there are still both supporters and opponents of the legalized position among researchers.

So, O.V. Konkina substantiates an unconditional character of the replacement of punishment by stating that, first, conditional nature is characteristic of conditional early release, which implies more benefits for convicts, and,

second, the Criminal Code of the Russian Federation provides for the possibility of replacing the punishment with a more severe one in case of convicts' malicious evasion from serving the sentence [1, pp. 69–70]. A.A. Urusov, on the contrary, notes the need for the conditional nature of the application of the considered type of exemption from punishment, arguing his position with the possible unjustifiably preferential position of persons who maliciously evade serving a substitute sentence after the application of Article 80 of the Criminal Code of the Russian Federation to them [2, p. 128].

Soviet science also did not have a unified position on the issue under consideration. A.L. Tsvetynovich proposed to make punishment substitution conditional [3, pp. 162–163]. Yu.M. Tkachevskii, on the contrary, mentioned: "since if a convicted person maliciously evades the execution of a sentence imposed as a substitute, then it is possible to replace it with another, more severe punishment in accordance with the procedure established by law" [4, p. 38].

It follows from the above that the appeal to the topic of the nature of the application of punishment substitution is not limited only to the twenty-first century, but is also characteristic of the twentieth one. In this regard, as part of the ongoing research, it will be appropriate to refer to a brief historical review of the criminal legislation of Soviet Russia.

The core

Transformation of the nature of the application of punishment substitution in the Soviet period

Having considered the institution of punishment substitution in retrospect of the Soviet criminal legislation, we can state its gradual transformation, which also affected the change in the nature of its application. The foundations of legal relationship between the institutions of parole and replacement of punishment were laid by the Soviet legislator.

According to the 1922 Criminal Code of the RSFSR, the substitution of punishment was considered as a form of parole and had a similar conditional character [5]. The same model of regulation was characteristic of the 1924 Basic principles of the criminal legislation of the USSR and the republics of the Soviet Union and the 1926 Criminal Code of the RSFSR. Soviet theorists substantiated the existence of two

forms of parole by the need for a combination of general and special prevention: “if a convicted person has committed a repeated or serious crime, then in this case crime prevention is most likely to be replaced by a milder type of punishment” [5, p. 6].

With the adoption of the Fundamentals of the criminal legislation of the USSR and the republics of the Soviet Union in 1958, the independence degree of punishment substitution as an institution increased: although it was still regulated in the same article as parole, the substitution of punishment ceased to be considered as its form, acquired an unconditional nature of application [4, p. 38] and was reflected in the article title. At the same time, both this document and the 1960 Criminal Code of the RSFSR contained a provision stipulating that “by applying conditional early release from punishment or replacing the unserved part of the punishment with a milder punishment, the court may impose on the personnel, with its consent, the duty to control the parolee for a period of the unserved part of the sentence imposed by the court or the person to whom the unserved part of the punishment has been replaced by a milder punishment, and conduct educational work with him/her”. In our opinion, this stage can be characterized as a transitional one, when the conditionality of applying punishment substitution was no longer provided for, however, a certain quasi-control, resembling probation and imposed on the labor collective, was also possible. So, there are common features with a suspended sentence.

The 1991 Fundamentals of the criminal legislation of the USSR and the republics of the Soviet Union fixed parole and replacement of punishment also in one article; however, the court could not assign certain functions to the personnel. However, this document was not put into effect.

Undoubtedly, the Soviet experience is of interest today; the conditional nature of the application of punishment substitution occupies a certain place in the development history of the domestic criminal legislation. Turning to the present time, we note that, in our opinion, it is advisable to consider the possibility of returning a conditional nature of its application. Besides, we will substantiate the proposed ideas by considering the significance of the condi-

tional nature for the institution under study from various sides.

Conditional nature of the application of the replacement of the unserved part of the punishment with a milder type of punishment as a way to eliminate the unjustifiably preferential position of persons who maliciously evade serving a substitute punishment

The issues of malicious evasion from serving a sentence are often discussed in the criminal law doctrine [6; 7]. However, much less attention is paid to the problem of malicious evasion from serving a substitute sentence by a person against whom Article 80 of the Criminal Code of the Russian Federation is applied.

In accordance with Part 3 of Article 80 of the Criminal Code of the Russian Federation, as well as Subparagraph 2 of Paragraph 4 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of April 21, 2009 (as amended of October 28, 2021) “On judicial practice of conditional early release from serving a sentence, replacement of the unserved part of the punishment with a milder type of punishment”, when determining the term of the substitute punishment the court must take into account that: 1) it may not exceed the maximum term of punishment provided for by the General Part of the Criminal Code of the Russian Federation for this type of punishment (with the exception of forced labor); 2) its upper limit should be established with regard to provisions of Part 1 of Article 71 of the Criminal Code of the Russian Federation. Consequently, determination of the term of the substitute punishment does not constitute a mechanical recalculation, as, for example, it is established to replace a milder punishment with a more severe one, according to Part 3 of Article 49, Part 4 of Article 50, Part 5 of Article 53, and Part 6 of Article 53.1 of the Criminal Code of the Russian Federation. Thus, depending on whether punishment substitution worsens or improves the legal situation of the convicted person, different methods of determining the final term of punishment are used, and the legislative approach to the application of Article 80 of the Criminal Code of the Russian Federation assumes a sufficient degree of judicial discretion. Nevertheless, today, taking into account the existing restrictions prescribed in the criminal law and the explanations of the Plenum, the rule of equality of the term

of the substitute punishment to the term of the unserved part of the substituted punishment is well-established in practice [8, p. 21].

In this regard, a problem arises when a convicted person, against whom punishment substitution is applied, maliciously evades serving a milder punishment. In this case the term of the sentence will be determined according to Part 3 of Article 49, Part 4 of Article 50, Part 5 of Article 53, Part 6 of Article 53.1 of the Criminal Code of the Russian Federation. Thus, one day of imprisonment or one day of forced labor corresponds to two days of restriction of freedom; three days of correctional labor or restrictions on military service; eight hours of compulsory labor.

We will simulate the situation based on the existing legal regulation and the established judicial practice. Mr. S. was sentenced to four-year imprisonment for committing a serious crime. According to Part 2 of Article 80 of the Criminal Code of the Russian Federation, in order to replace the punishment with its milder form (with the exception of forced labor), convicted S. must serve at least half of the sentence in the form of imprisonment, which is two years. After serving two years of imprisonment, the replacement of the unserved part of the punishment with a milder type of punishment in the form of correctional labor for a period of two years was applied in relation to S. Without starting to serve a substitute sentence, convicted S. maliciously evaded serving it. The court, on the recommendation of the criminal executive inspection, according to the rules of Part 4 of Article 50 of the Criminal Code of the Russian Federation, replaced two years of correctional labor with eight months of imprisonment, which was three times less than the two years not served initially. Thus, solely by recalculating the terms of punishment, the convicted person turned out to be in an unjustifiably preferential position, which could hardly be called fair.

We believe that the conditional nature of the application of punishment substitution will help solve this problem. This regulation model implies that in case of convict's malicious evasion from serving a substitute sentence (for example, in the form of correctional labor) the court, on the recommendation of the body executing the punishment, may decide to cancel the specified substitution of punishment and im-

pose the execution of the remaining unserved part of the initial punishment.

It should be noted that in Part 6 of Article 53.1 of the Criminal Code of the Russian Federation, the legislator provided for the replacement of forced labor with a more severe punishment in case of evasion, as well as the recognition of a convicted person to forced labor as a malicious violator of the order and conditions of serving forced labor. In this regard, we consider it expedient to provide similar grounds for the abolition of the replacement of punishment in the form of imprisonment with a more lenient punishment in the form of forced labor.

If the person has served part of the replacement sentence, then this must be taken into account. For example, convicted S. served one year of correctional labor, and after that he maliciously evaded serving the rest of the sentence. In accordance with our proposed scheme, one year of correctional labor served by a convicted person must be transferred to imprisonment at the rate of one day of imprisonment for three days of correctional labor. Thus, the term of sentence of the person who has served one year of correctional labor is recalculated for four months of imprisonment. In case punishment substitution is canceled, the term of the sentence should be calculated as follows: four months should be deducted from two years of imprisonment, which were replaced by two years of correctional labor. As a result, after the cancellation of punishment substitution, convicted S. will have to serve one year and eight months of imprisonment.

However, the conditional nature of the application of punishment substitution is not limited to the possibility of its cancellation in case of malicious evasion from serving the substitute punishment. Another aspect of its manifestation is the action of a conditional nature when a person, against whom Article 80 of the Criminal Code of the Russian Federation is applied, committed a new crime. In this case, when imposing a sentence on the totality of sentences, the court must proceed from the unserved part of the sentence imposed by the court's verdict, taking into account the part of the substitute punishment served in the order shown above.

The convicted person to whom deprivation of liberty has been replaced by forced labor may later claim to replace the unserved part of

forced labor with an even milder punishment. This is evidenced by Subparagraph 2 of Paragraph 4.1 of the Plenum Resolution. In this regard, there arises a natural question: how the conditional nature of the application of punishment substitution will act if Article 80 of the Criminal Code of the Russian Federation has been applied to a person more than once. We believe that in this case, when a person commits a new crime, the "initial" penalty should be considered not that imposed by the court verdict, but as defined in the decree on the application of the first punishment substitution. A similar approach should be applied in the situation when the convicted person has maliciously evaded serving a substitute sentence imposed on him as a result of repeated punishment substitution.

In our opinion, the proposed version of regulation is more consistent with the principle of fairness. It prevents convicts who, after the application of Article 80 of the Criminal Code of the Russian Federation against them, maliciously evade serving a substitute sentence, from artificially reducing the sentence. Thus, such persons do not find themselves in an unjustifiably preferential position due to the difference in the rules for recalculating punishment terms, depending on the type of punishment substitution that improves or worsens conditions for the convicted person.

Conditional nature of the replacement of the unserved part of the punishment with a milder type of punishment application as an incentive measure

The scientific literature is characterized by a variety of approaches to determining the content of punishment substitution. Despite the pluralism of positions, most authors agree that punishment substitution involves not only encouragement, but also stimulation. Thus, S.L. Babayan writes that punishment substitution "is a complex, intersectoral, and incentive institution that implements the function of exemption from serving a sentence by replacing this punishment with a milder type of punishment and stimulating law-abiding behavior" [9, p. 224]. According to R.R. Khalilov, the essence of punishment substitution consists in both encouraging and stimulating a convict who has embarked on the path of correction [10, p. 24]. D.N. Matveev comes to the conclusion that

punishment substitution is used to stimulate correction, consolidate its results and prevent convicts from committing new crimes [11, p. 7].

Since in science, incentives are differentiated into negative and positive [12; 13], we note that within the framework of the analyzed punishment substitution, we are talking about the latter type. According to O.V. Levin, "stimulation in law" is a process aimed at encouraging a person to be active by creating an interest in achieving an encouraged result, including a criterion of legal approval of active lawful behavior, as a result of which the subject acquires any positive consequences" [14, p. 8].

In the context of incentive institutions, it seems reasonable to consider incentives in both narrow and broad senses of the word. In the first variant, stimulation is manifested solely in the fact of possible encouragement and does not extend beyond this fact. In other words, stimulation is fully covered by encouragement and becomes its attribute. A person, realizing a favorable prospect, is motivated until he reaches a positive result. In the second variant, stimulation is long-term and goes beyond encouragement limits. The achieved benefit does not mean the end of the stimulus, but on the contrary, it is a new impulse, encouraging law-abiding behavior of the convicted person.

Regarding punishment substitution, it seems more correct to proceed from the broad meaning of the term. This is explained by the fact that this replacement is focused on the maximum effectiveness of punishment, that is, on achieving its goals in the shortest possible time allowed by criminal law through minimal costs. Therefore, the interest of the state mechanism in the implementation of the considered type of release from punishment is mainly determined by speedy correction of convicted persons. By applying this measure to people serving a sentence, the state not only positively assesses their behavior, but also gives them confidence, recognizing their positive tendency to correction and hoping that they will develop it. Here we come to the conclusion that the effectiveness of the applied punishment substitution should be assessed through the prism of the convicted person's post-criminal behavior. We believe that its reasonability can be established after the fact, when the convicted person be-

haves lawfully, after changing his situation in a favorable direction.

The significance of the institution under consideration also consists in optimization, establishing a correspondence between the personality of the convicted person and the level of criminal repression applied to him. If the convicted person does not feel discomfort from the penalty, then it is devalued. However, there is also a reverse side to the coin: if a convict experiences excessive discomfort than necessary, based on the existing set of circumstances, then he/she is not just not corrected, but is subjected to even greater deformation.

The disposition of Article 80 of the Criminal Code of the Russian Federation stipulates that when resolving the issue of the application of punishment substitution, the court must take into account the convicted person's behavior during the entire period of serving the sentence. Therefore, it can be assumed that punishment substitution contains two principles, such as retrospective (encouragement) and prospective (stimulation), has a dual character, since it is based on the facts of the past, but is directed to the future. However, there are no legal mechanisms that guarantee the law-abiding behavior of a convicted person after the application of a sentence substitution. As a result, the failure to meet expectations of the state does not affect the position of such a person in any way.

We are also convinced that the introduction of the conditional nature of the application of punishment substitution does not infringe on the rights of convicts in any way. If a person has actually embarked on the path of correction, then the conditional nature does not burden him/her in any way. Otherwise, the question arises, whether the punishment substitution applied to such a person is justified.

We back the stance of V.V. Stepanov, who considers possible cancellation of parole as an incentive element, which, in his opinion, boosts effectiveness of this institution, and also concludes that the main tasks of the probation period correspond to criminal punishment goals [15, p. 23]. Given the legal proximity of the institutions of parole and punishment substitution, it seems quite acceptable to draw an analogy. The conditional nature of punishment substitution corresponds to the stimulus that it contains, and, as a result, provides even greater efficien-

cy. The convict's interest in further law-abiding behavior is strengthened. This contributes to achieving correction and prevention goals, and also reduces the degree of risks associated with possible subsequent deviant behavior of the convicted person.

Conditional nature of the application of the replacement of the unserved part of the punishment with a milder type of punishment as a risk reduction factor

We share M.M. Babaev's opinion that "any verdict, ruling or definition of any court at all times is a decision made in conditions of relative limited information about circumstances of the crime committed, the identity of the guilty person, as well as the true content of legal norms to be applied" [16, p. 169]. Indeed, the decision made by the court always involves the assessment of a specific set of facts. Evaluation, in turn, is inextricably linked with its subject and to a certain extent is an expression of its internal qualities, attitudes, and principles. The subjective nature of assessment in judicial activity is confirmed not only by reasoning, but also by the text of the law: the judge evaluates "evidence according to his/her inner conviction based on the totality of evidence available in the criminal case, guided by the law and conscience" (Article 17 of the Criminal Procedural Code of the Russian Federation).

Assessment is also of fundamental importance when considering a petition or submission for punishment commutation. The court needs to assess a correction degree of the convicted person, data on his/her personality, his/her attitude to work and study while serving his/her sentence, available incentives, penalties, their nature, presence or absence of social ties. This task is complicated by a sufficient level of abstraction of the material basis for punishment substitution in criminal legislation, as well as a lack of specific and universal criteria for assessing behavior of the convicted person.

Any estimation as a subjective activity inevitably involves risks of incorrect evaluation. Studying the general theory of risk, A.A. Aryamov comes to the conclusion that it is understood as "consciously strong-willed behavior of a person aimed at achieving a legitimate result in the situation with ambiguous development prospects, suggesting the likely occurrence of adverse consequences that caused the pre-

dicted harm” [17, p. 25]. According to foreign researchers, the model of the risk management doctrine in legal activity is important because it is closely related to the courts’ decision-making [18, p. 428].

However, the unavailability of risk as a given does not exclude the possibility of reducing its degree. In this context, forecasting, which is one of the forms of scientific foresight, is crucial. The problem of risk forecasting both in the process of criminal justice administration in general and in the practice of executing exemption from punishment in particular is of particular interest in foreign jurisprudence [19; 20]. Also, typical situations are sufficiently studied, for example, when the person causing harm acts in a state of risk, which manifests itself when committing reckless crimes [21], acting in conditions of extreme necessity [22], etc.

With regard to punishment substitution as an encouraging and stimulating institution, focused on the future and aimed at achieving punishment goals, the forecast helps consider prospects for its effective application. We proceed from the position that if a convicted person behaves unlawfully during the period of serving a substitute sentence, which, for example, may be expressed in malicious evasion from serving a sentence, punishment substitution applied to him/her can hardly be called justified.

Let us note that in Russian science, attempts have also been made to develop and implement a “prognostic” approach to resolving the issue of release from punishment, which allows determining the probability of a person committing a new crime [23]. At the same time, based on the analysis of an array of statistical data, a conclusion is made about a significant number of convicts who have repeatedly committed a crime after being released from punishment, which makes “think about existing approaches to the prospects of applying the institution of release from punishment in judicial practice” [24, p. 331]. Despite this, it is impossible to state that the “prognostic” approach is widely used in practice: courts rarely have documents forecasting convict’s future behavior, and if such a document exists, then not all instances perceive it the same way.

For example, the Rybinsk City Court of the Yaroslavl Oblast, refusing to satisfy convicted

N.’s request for punishment substitution, in support of its conclusions indicated that N. had only one incentive in 2021, had no incentives in 2022, and was employed for a short period of time. The court also referred to the results of a psychological examination, according to which the convict was characterized by an average deviation probability. The appellate instance reacted critically to this circumstance and, referring to Paragraph 6 of the Plenum Resolution, fixing the absence of the courts’ right to refuse parole or punishment substitution on grounds not contained in the law, and stated the following: “however, contrary to these requirements, the court referred to the results of a psychological examination, without substantiating how the presence of an average deviation probability detected in the convicted person affects the resolution of his petition” [25]. As a result, this served as one of the arguments for the cancellation of the decision of the court of first instance and the referral of the case for a new hearing.

In law enforcement practice, there are also opposite examples when the refusal to satisfy the petition for punishment substitution on the basis of psychological examination results was assessed by a higher court as correct and justified. It is noteworthy that such precedents were in the same Yaroslavl Oblast. Thus, the court of first instance refused to satisfy the petition for punishment substitution, since convicted L. had had a small number of incentives in places of deprivation of liberty for a long time; the positive dynamics of behavior had been observed for a short period; the convict had committed two violations of the order of serving his sentences, one of which at the pre-trial detention center and the other had been removed ahead of schedule; during the period of serving his sentence, L. had not taken the initiative either to find employment or to study in professional educational institutions; and the results of psychological examination had indicated the average deviation probability [26].

The analysis of these judicial acts shows the absence of an unambiguous attitude to the “prognostic” approach even within the framework of the judicial practice of one subject. In this regard, it can be stated that the forecast as a risk reduction factor when deciding on punishment substitution in current condi-

tions is not well-established, and therefore the question of overcoming such a risk remains open.

It seems to us that the conditional nature of the application is the best option to reduce risks of possible unjustified punishment substitution. There are the following advantages of legalizing such an approach: first, in case of deviant behavior, expressed in malicious evasion from serving a substitute sentence, the convicted person turns out in the “initial” situation. In our understanding, this prevents damage to the interests of not only the state promoting lawful behavior of the convicted person, but also the society and victims of the crime committed; second, the possibility of canceling punishment substitution acts as a stimulus, suppressing the desire for disobedient behavior, which in turn is a manifestation of corrective action.

Conclusion

So, the analysis of the Soviet criminal legislation in terms of punishment substitution demonstrates that initially it was considered as a form of parole, and therefore had a similar conditional character. Then the development path of this institution was focused on independence, which, in particular, led to the unconditional nature of its application. In the course of our research, we tried to substantiate the expediency of establishing the conditional nature of the application of punishment substitution within the framework of modern criminal legislation. In our opinion, this would make it possible to improve this institution. The interest in the conditional nature of applying punishment substitution is determined by the following:

1. The conditional nature of applying punishment substitution is an effective way to eliminate the unjustifiably preferential position of persons who maliciously evade serving a substitute punishment. By example, it was demonstrated that the current regulation allows convicts who, after the application of Article 80 of the Criminal Code of the Russian Federation against them, maliciously evade serving a substitute sentence, to find themselves in an unjustifiably preferential position due to the difference in the rules for recalculating the terms of punishment, depending on the type of sentence replacement that improves or worsens conditions for the convict. This situation not only creates prerequisites for abuse, but

also does not correspond to the principle of justice.

2. The conditional nature of the application of the punishment commutation can and should be considered as a stimulus and a guarantee of further law-abiding behavior of the convicted person. This circumstance is of particular importance, since this institution has not only an incentive, but also a stimulating component. Moreover, stimulation in this case should be interpreted as an ongoing process that goes beyond the limits of encouragement, when the good achieved does not mean the end of the stimulus, but on the contrary, represents a new impulse, directing the convicted person to further lawful behavior. In our opinion, the applied punishment substitution is justified, when the convicted person, after changing his situation in a favorable direction, still behaves lawfully, and this in turn correlates with the effectiveness of this type of release from punishment. The conditional nature reinforces the convict's interest in further positive behavior, which, therefore, contributes to achieving correction and prevention goals of punishment.

3. The conditional nature of applying punishment substitution acts as a factor in reducing risks of subsequent deviant behavior of the convicted person. Any court decision is associated with risks of negative consequences, since it involves assessment activities. In the context of the application of sentence substitution, this is especially relevant, since the material basis legalized in Article 80 of the Criminal Code of the Russian Federation is not specific, and neither the criminal law nor the Plenum Resolution contains criteria for assessing the correction degree of the convicted person. Moreover, to date, the “prognostic” approach designed to reduce the degree of this risk has not found its widespread use. Therefore, we believe that the conditional nature of the application is the best option to reduce risks of possible unjustified punishment substitution, since in case of deviant behavior of the convicted person, he/she can be brought to the “original” position, thereby preventing damage to the interests of both the state, society, and victims of the crime committed.

Based on the above, it seems appropriate to supplement Article 80 of the Criminal Code with the following provisions:

“5. If during the serving of a substitute sentence:

a) the convicted person evades serving forced labor, or is recognized as a malicious violator of the order and conditions of serving forced labor, or maliciously evades serving another punishment, the court, on the recommendation of the body executing the punishment, may decide to cancel the replacement of the unserved part of the punishment with a milder type of the penalty and the execution of the remaining unserved part of the sentence by the court verdict;

b) the convicted person commits a crime, the court cancels the replacement of the unserved part of the punishment with a milder type of the penalty and appoints punishment according to

the rules provided for in Article 70 of this Code.

6. In case of cancellation of the replacement of the unserved part of the punishment with a milder type of the penalty, the term of punishment substitution served by the convicted person is calculated according to the rules provided for in Article 71 of this Code.

7. If the unserved part of the punishment in the form of deprivation of liberty is replaced by forced labor, then in the future the unserved part of the punishment in the form of forced labor may be replaced by an even milder type of the penalty. In relation to these persons, the court, canceling the replacement of forced labor with a milder type of punishment, proceeds from the remaining unserved part of forced labor, and not imprisonment”.

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