

ALTERNATIVES TO CUSTODY IN RUSSIA: TODAY AND TOMORROW

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It may seem strange but I'd like to begin by quoting Russian Tsar Peter the Great who more than two centuries ago said: "Prison is a damned place . . . Running a prison is a sad business". It's true even now.

A damned prison still exists and the human civilization has not invented anything more fitting at least for those who have committed the most serious offences such as murder, rape, and others.

I will not go into detail on Russian prisons and colonies, on what an impact on an individual and the whole society they have. I'd like to dwell on alternatives to custody since their implementation is one of the possible ways of reducing the use of imprisonment, of putting an end to the prison growth. And this is the key point of our discussion.

For decades the former Soviet Union was notorious for overusing the deprivation of liberty. And that was true since there was a strict disbalance between custodial and non-custodial measures as a disposition of the court. That was a characteristic of Soviet penal policy which was part of the internal one. At that time an execution of imprisonment served specific aims of building up national economy. At the same time the Criminal Code which was adopted in 1960 and is still in force in Russia, defined a wide range of non-custodial measures, such as correctional labour without deprivation of liberty, fine, confiscation, conditional sentence, suspended sentence and others. If we compare these measures with those listed in article 8.2 of UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), we'll find much in common. So, we can establish the fact that long before the adoption of the UN Rules my country promoted the use of non-custodial measures and greater community involvement in the management of criminal justice, at least on paper.

This situation has changed but not radically. It can be seen from the analysis of the statistics for the years 1989-1993. The figures of Table 1 show the dynamics of the number of convicts, its constant growth and at the same time a wider use of such non-custodial measures as suspended sentence and conditional sentence.

More vividly this tendency can be seen in Table 2 which shows a ratio of custodial and non-custodial measures. Alternatives made up about two thirds of all sentences passed by the courts. Besides that, figures reflect a certain decline of deprivation of liberty as well as of some alternatives, namely: correctional labour and fine.

In my opinion it can be explained by an economic factor, rather than by a criminological one. On the other hand, the reduction of custodial sentences is caused by the fact that keeping offenders in custody costs more and more for the state budget. Taking into account the dramatic state of our national economy one can understand what

Table 1. Sentencing in Russia. 1989-1993 (absolute figures).

	1989	1990	1991	1992	1993
Total no. of convicted offenders	436735	537455	593597	619670	786469
Sentenced to death penalty	100	223	147	159	157
Deprivation of liberty	162033	203359	207489	225926	292860
Suspended sentence	56560	72065	83270	95107	142532
Conditional sentence	35362	45098	59736	78896	124198
Correctional labour	103513	116979	120917	170917	143464
Fine	51961	62271	72292	62931	70906
Others	27316	37682	41599	40893	10827

Table 2. Sentencing in Russia. 1989-1994 (percentages of the total sentencing).

	1989	1990	1991	1992	1993	1994
Total number of convicted offenders	100.0	100.0	100.0	100.0	100.0	100.0
Sentenced to death penalty	0.02	0.04	0.02	0.02	0.01	*
Deprivation of liberty	37.1	37.8	36.0	36.5	37.0	36.0
Suspended sentence	13.0	13.4	14.0	15.3	18.0	16.3
Conditional sentence	8.1	8.4	10.1	11.9	25.7	16.1
Correctional labour	23.7	21.8	21.8	19.5	18.1	13.5
Fine	11.9	11.6	12.1	10.2	8.9	9.0
Others	6.2	7.0	7.0	6.6	1.3	*
All non-custodial measures	62.9	62.2	64.0	63.5	63.0	*

* Not available.

a burden for the state budget correctional colonies are nowadays when the number of unemployed convicts in institutions constitutes more than one hundred and seventy thousand. It is quite obvious that the price of keeping the offenders in custody becomes higher with every passing year despite all the efforts made by the correctional system to change the situation.

Quite deliberately I am not speaking about criminological, psychological or moral effects of custody which should be taken into account by the courts while making their decision. I realize perfectly well that these considerations are the last thing they are worried about.

As for the decrease of such an alternative as correctional labour it can also be explained by the state of our economy, namely, the drop in production and the increase of unemployment. The fact is that an offender sentenced to this measure is obliged to work in the community and a certain part of his salary (from 5 to 20 per cent) is being deducted to the state budget. He may work at the place of his previous employment or at the one determined by the authorized agency.

So, if he is lucky to have a job and if the offence is not serious then it is more likely that he will not be cut off from the community and will not experience the horrors of being in custody.

The conclusion is as follows: the objectives pursued by the authorities have nothing to do with crime deterrence or the prevention of recidivism, or with fitting the punishment to the individual and resocialising him. Unfortunately, in modern Russia which makes radical changes in all spheres of life, revises its penal policy on the principles of democracy, humanism and respect for the individual, there are no real economic conditions for such reforms. In other words, there is a great gap between what we desire and what we can actually do.

Moreover, there are two more factors which have a certain impact on the underuse of alternatives in Russia, the first of which being the organizational aspect of our correctional system which for decades has been adapted to the needs of the state penal policy tended to imprisonment.

More than two thousand inspectors of correctional labour which are responsible (unfortunately, quite formally) for carrying out most of the alternatives are under a double control: the correctional system and the militia. As a proverb says, "too many cooks spoil the broth". The staff of the inspections is very small and underpaid - usually a female, a civil servant, and an officer of the militia whose salary is six times less than that of an assistant in a commercial bank.

So, to reform the existing system means to invest money. But money alone will not solve the problem. There is another obstacle - public opinion. As research shows the public in Russia is not ready to accept the movement towards humanization, depenalization and decriminalization which are the basic aims of promoting the use of non-custodial measures. For a man next door an alternative means no punishment at all. It can be understood taking into account the growth of crime in Russia. During a 5-year period from 1989 to 1993 the number of registered offences increased by 65 per cent. In 1993 it constituted about 2.8 million offences among which 18.2 per cent are serious ones, that is, offences which according to international standards should be punished by the deprivation of liberty. If we compare this figure (18.2 per cent serious offences) with the promotion of deprivation of liberty mentioned above (around 36-37 per cent) we'll come to the conclusion that Russia uses custodial measures more than it is necessary for the protection of the society.

To achieve it we are to raise our national economy and to shapen public opinion. Speaking of public I mean law-makers, officials, correctional workers, judges, my colleagues - academic and lecturers. I am afraid that forming a new way of thinking,

a new mentality is even a harder job than making enterprises work more efficiently.

Law-makers, or the members of the Parliament, are the most difficult category to deal with. They are just the people who, adopting laws, actually create state penal policy. I can prove it by the following fact. At the end of this February a draft Criminal Code was discussed in the lower Chamber of the Parliament. My first reaction to the document was some kind of a shock, perhaps because I am too emotional. After a thorough examination I got disillusioned and realized that if the draft was approved by the Chamber the whole situation would grow even worse. I mean sentencing and the execution of punishment, especially alternatives.

I'll dwell only on some points of the Draft Code which worry my colleagues and me and which may cause some problems in the future. First, the aims of sentencing: to restore social justice, to correct offenders and to prevent crime. The questions are: what social justice is meant and towards whom should it be restored? What about retribution and "just desert"?

What does "to correct offenders" mean? To resocialize them? Lots of questions and no comment, no reply.

Then, the list of measures which can be imposed by a court from a fine to capital punishment. As for alternatives, they are not too diverse: fine, status penalties, confiscation and obligatory labour which replaces correctional labour.

As it is formulated in the Draft Code, "obligatory labour is unpaid work which is done in an offender's spare time for the sake of the community". The kind of work is chosen by municipal authorities. The duration of the penalty is from 60 to 240 hours, no more than 4 hours a day. A breach of the conditions may result in an arrest which is a new custodial measure introduced by the Draft.

Of course, the Criminal Code is not designed to regulate the execution of a punishment. It is the aim of the Penal Code which will be adopted later on the basis of the Criminal Code. But still the legislators should have a vision of the problems which may arise.

The application of such a measure as obligatory labour will cause the same, or even more complicated, organizational problem, because not only the correctional system and the militia but also local authorities will be involved. Again "too many cooks". More than before. It's unlikely that a new agency such as a probation service will be established. Again the question of money.

Another question arises. The Criminal Code should have a clear guidance for judges who chose between custodial and non-custodial measures. Such a guidance, besides an offender's background and other circumstances relevant to the imposition of this or that measure (but without any pre-trial report), is a system of offences, or their classification. According to it all the offences will be divided into four new categories: less serious offences, more serious ones, serious ones and especially serious ones. All offences against a person and the state are defined as serious and especially serious. They are punishable by custodial measures and that's why they are beyond our analysis.

As for two other categories - less serious and more serious offences - mainly against property (theft, robbery, burglary) there will be a choice between custodial and non-custodial measures.

We should take into account that in the total amount of crime in Russia such offences make up more than seventy per cent. If we presume that most of the offenders are sentenced to alternatives this will be a possibility for the broader use of non-custodial measures. But just imagine such an army of offenders in the community without any supervision, any control, any treatment. The inspections will be quite unable to carry out this work. And consider the danger to the society.

So, the situation will be the same: on paper we proclaim attractive principles but they are not supported by economy, by the reality and the morality of the society.

Naturally, such documents as the Criminal Code are not adopted for only one year. They are designed for a long period. I am sure that not at once, not now but some day we shall be proud of our well-organized penal system and a non-criminalized society. I am a pessimist of knowledge and an optimist of action. We'll have a good probation service like in the United States, we'll keep the majority of the offenders in the community as in the United Kingdom, we'll have very few, clean and cosy prisons as in Norway and other Scandinavian countries, we'll be as well-organized as our German colleagues. Russians are very persistent and patient.

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