



Problems of the effectiveness of suspended sentence in Russia

Olga Valerievna Filippova ^{1*}, Svetlana Mikhailovna Kurbatova ²,
Julia Vasilievna Andreeva ², Maria Eduardovna Shodonova ¹,
Tatyana Fedorovna Darzhaeva ¹

¹ East Siberian State University of Technology and Management, Ulan-Ude, RUSSIA

² Krasnoyarsk State Agrarian University, Krasnoyarsk, RUSSIA

*Corresponding author: Olga Valerievna Filippova

Abstract

Against the background of a global trend of expanding and enriching alternatives to imprisonment, Russia is pursuing a policy of introducing and increasing the use of non-custodial measures. Among such measures, a special place is taken by suspended sentence, which is not a type of punishment in Russia, but a form of criminal responsibility. According to statistics, about 30% of convicts are sentenced to suspended sentence. According to the records of the criminal enforcement inspections, 275 thousand probationers pass through the system every year. At the same time, every third probationer commits a crime again. This means that the goals of applying suspended sentence – correction of convicted persons and prevention of crimes – are not achieved. The commission of a new crime by a person who has already been subjected to criminal law measures for a previous crime indicates the ineffectiveness of these measures and makes it necessary to identify the causes of this situation.

The purpose of this study is to determine the reasons for the low effectiveness of suspended sentence. To this end, based on an analysis of criminal record statistics in Russia for the period from 2013 to 2018 and a generalization of the results of selective sociological studies conducted by both the authors and other scholars in the same period, an assessment is made of the effectiveness of the current criminal law and the practice of appointing and implementing suspended sentence. Conclusions are made about the shortcomings in the field of legislative consolidation and application of suspended sentence.

Keywords: recidivism, suspended sentence, probation, crime, punishment system

Filippova OV, Kurbatova SM, Andreeva JV, Shodonova ME, Darzhaeva TF (2020) Problems of the effectiveness of suspended sentence in Russia. Eurasia J Biosci 14: 6991-6996.

© 2020 Filippova et al.

This is an open-access article distributed under the terms of the Creative Commons Attribution License.

INTRODUCTION

The criminal policy of many countries is aimed at finding and expanding the use of alternative measures to deprivation of liberty [Yukhnenko et al. 2019, p. 25]. Despite the importance and necessity, the punishment in the form of imprisonment is excessively severe for persons who have committed minor crimes and leads to the destruction of socially useful relationships. It often turns out to be not only unable to correct convicts, but, on the contrary, even increases the criminalization of the individual due to the negative impact of the prison subculture [Fazel, Wolf. 2015, p. 2].

As an alternative to imprisonment, the criminal justice system of many countries provides probation, that is, a form of suspended sentence, in which instead of imprisonment the convicted person is placed under the supervision of special bodies with the mandatory fulfillment of certain requirements [Mukherjee, Tiwari 2019]. Today, the probation service is the most

important institution in the field of criminal justice and crime prevention in England, Germany, Denmark, Latvia, Finland, France, Switzerland, Sweden, Estonia, etc. Probation plays a dominant role in the functioning of the U.S. criminal justice system – approximately four million convicts in the U.S. are currently on suspended sentence [Doherty. 2016].

The social significance of probation lies in the fact that, first, its use is more humane and more appropriate than incarceration for those guilty of crimes of small or medium gravity [Phelps. 2013, p. 54]. Second, probation provides budget savings, since supervision within the framework of probation requires much lower costs than the maintenance of prisoners [Phelps. 2017]. Third, probation performs social rehabilitation functions [Gabraev, Novikov. 20157] and is designed to prevent

Received: April 2019

Accepted: April 2020

Printed: December 2020

further criminalization of the individual while ensuring the prevention of delinquent behavior of prisoners and motivation for positive changes in the personality. Probation as an alternative form of responsibility gives the offender a chance to correct without applying real punishment to them.

Research confirms that those sentenced to probation are much less likely to reoffend than those released from prison. For example, reoffend among convicts who are under the electronic supervision of suspended sentence service in the U.S. ranges from 3 to 16% in the period of electronic supervision [Drozdov. 2018, p. 134].

In the Russian criminal justice system, a measure of influence similar to probation, called "conditional conviction," is widespread. In 2018, it was assigned to 30.6% of convicts [Judicial Department at the Supreme Court of the Russian Federation. 2018]. Today, about 275 thousand probationers are registered with the penitentiary inspectorates.

Suspended sentence is provided for in Chapter 10 "Imposition of Punishment" of the Criminal Code of the Russian Federation, Article 73: "If by imposing corrective labor, restriction in military service, service in a disciplinary military unit, or deprivation of liberty for a term of up to eight years, a court of law concludes that it is possible to rehabilitate the convicted person without their actually serving punishment, then the court shall decree that the imposed penalty be conditional".

The essence of suspended sentence is not to carry out the punishment imposed, with the condition that the convicted person will prove by their behavior that they have corrected themselves within the term established by the court. The court passes a guilty verdict with a specific sentence and decides to consider the sentence imposed, setting a probationary period and imposing certain duties on the convicted person.

Suspended sentence under Russian law is not a punishment but a specific form of criminal responsibility (milder than punishment), in which the execution or non-execution of the sentence depends on the further behavior of the convicted person. Suspended sentence includes all elements of the implementation of criminal responsibility: a person is recognized guilty of committing crimes censure of their actions and assigned specific penalties and a criminal record during the probationary period.

The widespread use of suspended sentence in Russia has resulted from the humanization of criminal law and law enforcement policy. However, there has been a high rate of recidivism among probationers in recent years. Research shows that about a third of probationers (30.9%) do not justify the trust placed in them and re-commit crimes [Drozdov. 2018, p. 134]. This indicates the low effectiveness of suspended sentence when the goal of correcting the convicted person and preventing crimes is not achieved. Given the prevalence of suspended sentence, its social purpose,

and the identification of the reasons for the low effectiveness of this measure, considering modern law enforcement practice is of great practical and theoretical importance. This analysis will help to determine the place of suspended sentence in the system of criminal liability measures in the modern period and identify the shortcomings of legislative regulation and execution of suspended sentence, on the basis of which it will be possible to develop recommendations for improving the implementation of this institution.

It should be noted that most research on the effectiveness of criminal liability measures in Russian legal science is devoted to punishment; the effectiveness of suspended sentence has not been sufficiently studied. When evaluating the effectiveness of suspended sentence, it should be considered that the legal regulation of suspended sentence is carried out within various branches of law – criminal, criminal procedure, and criminal enforcement. The first establishes the grounds and procedure for applying suspended sentence, the second – the specifics of applying the provisions of Article 73 of the Criminal Code and imposing legal restrictions on a probationer, the third – the procedure for executing suspended sentence. Suspended sentence as a form of implementation of criminal responsibility includes, in addition to legislative provisions, the process of appointment and execution. Therefore, the analysis of the effectiveness of suspended sentence must be based on a comprehensive evaluation of the effectiveness of criminal law on suspended sentence and the effectiveness of its appointment and execution.

METHODS

In the course of the study, we studied the basic statistical information on the criminal record of the Judicial Department under the Supreme Court of the Russian Federation [Judicial Department at the Supreme Court of the Russian Federation. 2018] and the statistics of the Federal Penitentiary Service of the Russian Federation on the activities of criminal executive inspections from 2013 to 2018.

As the basis, we took data on the number and composition of those convicted of crimes on a court's conviction, as well as probationers and those sentenced to types of punishment. We determined the proportion of probationers by category and type of crimes committed by them, as well as the proportion of probationers with unexpunged and outstanding convictions. We compared data on the number of probationers registered in the criminal enforcement inspectorate and the number of criminal enforcement inspections themselves operating in Russia.

The study summarizes the data of selected sociological studies conducted in 2015-2018: the studies of I.S. Drozdov on indicators of criminological relapse

Table 1. The share of probationers in the total number of convicts in the Russian Federation in the period from 2013 to 2018

Number of convicted persons	2013	2014	2015	2016	2017	2018
Total convicted	735,340	719,297	734,581	741,329	697,054	658,291
of which						
- to actual imprisonment	209,728	209,447	211,425 (28.8)	206,372 (27.8)	200,225 (28.7)	190,325 (28.9)
- to community service	73,172 (10.0)	69,898 (9.8)	74,093 (11.6)	141,165 (19.5)	128,165 (18.6)	114,802 (17.6)
- to a fine	116,176 (15.9)	111,839 (15.7)	86,758 (13.5)	100,055 (13.8)	90,289 (13.1)	85,353 (13.1)
- to penal labor	75,778 (10.4)	75,120 (10.5)	60,821 (9.5)	51,733 (7.1)	54,784 (7.9)	54,747 (8.4)
- to restriction of freedom	32,042 (4.4)	26,983 (3.8)	20,840 (3.2)	25,371 (3.5)	25,099 (3.6)	23,009 (3.5)
- suspended sentence	947,081 (30.3)	930,758 (30.4)	736,596 (25.3)	743,345 (26.8)	699,071 (27.2)	660,309 (27.7)

Table 2. Category of crimes for which suspended sentence was imposed in 2018

Category of crime	Number of convicted persons (%)
Minor crimes	58,949 (32.4)
Medium gravity	58,285 (32.0)
Grave	63,753 (35.0)
Major	1,108 (0.6)

Table 3. Types of crimes for which suspended sentence was applied in 2018

Type of crime	Number of convicted persons (%)
crime against property	84,122 (46.1)
crimes related to narcotics, psychotropic substances, and their analogs	5,579 (18.1)
crimes against life and health	18,844 (11.0)
crimes against road safety and the operation of vehicles	9,807 (5.4)

among probationers and of D.Yu. Fisenko on the practice of applying suspended sentence by courts. The survey was also conducted among 124 employees of the Russian penal system on the reasons for the reoffending by probationers during 2019.

Information on probation in foreign countries was searched, including on the level of recidivism on a trial period.

RESULTS

Courts applied suspended sentence on average to 27.8% of convicted prisoners between 2013 and 2018 (**Table 1**).

According to the category of the severity of crimes for which suspended sentence was applied in 2018, convicted persons were distributed as follows: 58,949 people (32.4%) were convicted of minor crimes, 58,285 (32.0%) – of medium gravity, 63,753 (35.0%) – grave, 1,108 – major (**Table 2**).

By type of crime, suspended sentence in 2018 was most often applied by courts in relation to persons who committed crimes against property (46.1%), crimes related to narcotics, psychotropic substances, and their analogs (18.1%), crimes against life and health (11%),

Table 4. The number of probationers with unexpunged and outstanding convictions

Number of convicted persons	2013	2014	2015	2016	2017	2018
probationers	223,143	218,373	186,138	199,045	189,935	182,095
of which:						
- persons with unexpunged and outstanding criminal records, persons (%)	69,173 (30.1)	65,825 (30.1)	53,506 (28.7)	60,428 (30.4)	62,028 (32.6)	65,110 (35.7)

Table 5. The number of convicted persons who have an unexpunged and outstanding criminal record and have committed a crime again in the Russian Federation

Indicator	2013	2014	2015	2016	2017	2018
Total number of convicted persons	735,340	719,297	734,581	741,329	697,054	658,291
Of them, persons with previous convictions, who had an unexpunged and outstanding criminal record	250,344	241,765	239,794	228,778	231,732	239,339
Of them, persons who did not serve suspended sentence (%)	49,469 (19.8)	47,610 (19.7)	39,261 (16.4)	32,733 (14.3)	35,477 (15.3)	35,449 (14.8)
Of them, persons who did not serve sentence of imprisonment, including suspended sentence (%)	8,930 (3.6)	6,065 (2.5)	5,675 (2.4)	5,284 (2.3)	5,869 (2.5)	6,232 (2.6)

Table 6. The number of inspections of the penitentiary and registered convicts

Indicator	2013	2014	2015	2016	2017	2018
Number of suspended sentence departments	2,460	2,488	2,488	2,480	1,429	1,428
Number of convicted persons who passed the registration in the reporting period	947,656	926,431	853,531	871,786	989,228	1,034,029
- including probation	327,073	314,799	217,628	261,359	280,391	274,019
Removed from the register due to a new crime conviction, total persons	16,049	13,981	11,549	10,652	15,692	19,002

crimes against road safety and the operation of vehicles (5.4%) (**Table 3**).

According to 2018 data, 35.7% of probationers had an unexpunged and outstanding conviction for a previously committed crime (**Table 4**).

Of the total number of convicted, previously convicted, with an unexpunged and outstanding conviction, for which courts considered criminal cases in 2018, 14.8% did not serve a conditional sentence and only 2.6% were imprisonment (**Table 5**).

It was found that since 2015, the number of persons registered in criminal enforcement inspections has

increased by 18.6%. At the same time, the number of criminal enforcement inspections has almost halved. Such organizational decisions hurt the effectiveness of control over probationers. According to statistics from the Federal Service for the Execution of Punishments of Russia, the growth rate of convicts deregistered by criminal executive inspections in connection with a conviction for a new crime amounted to 40% in 2018 as compared to 2015 (Table 6).

DISCUSSION

Suspended sentences in Russia are applied to 27.8% of convicted persons. The share of suspended sentences is almost equal to the share of actual incarceration. Although suspended sentence is not a punishment, and its essence is that the sentence imposed is not actually executed, provided that the convicted person proves their correction within the time limit set by the court. In the system of measures imposed by the court, real punishments, other than imprisonment, are much less common than suspended sentences. In 2018, 17.6% of convicts were assigned community service, 8.6% were assigned penal labor, 13.1% were fined, and 3.5% were restricted in freedom (Table 1). This practice, in which courts choose not punishment, but suspended sentence, points to the discrepancy between statutory penalties, subject to the actual use, as well as the nature and severity of a significant number of offenses reported.

The widespread use of suspended sentence is due to the fact that a large gap has formed due to the significant difference between the punitive content of deprivation of liberty and the restriction of freedom in the Russian system of punishments between the punishment of deprivation of liberty and the next most severe to be applied. In the absence of a so-called "transitional" sentence between imprisonment and measures not related to the isolation of the convicted person from society [Utkin. 2015], courts are forced to impose suspended sentence, which, in their opinion, is often more appropriate than the punishment.

However, the excessive application by courts of Article 73 of the Criminal Code of the Russian Federation has negative consequences. In everyday consciousness, any criminal act should always entail punishment as an atonement for guilt, especially for the commission of grave and major crimes. Therefore, suspended sentences are perceived by the population as a manifestation of the weakness of the justice system and a lack of respect for the interests of society and victims. Many convicts perceive suspended sentence as a release from responsibility, which is often associated with impunity and contributes to the re-commission of the crime. According to the results of a sample study of the practice of passing suspended sentence, conducted by I.S. Drozdov, 30.9% of probationers after registration

committed a crime. Moreover, most of them committed a relapse within a year from the moment of registration (34.3%) [Drozdov, 2018, p. 136].

The frequent use of suspended sentence by courts is also associated with problems in the execution of alternative types of punishment. In particular, it is very difficult to perform penal labor, because it is impossible to determine the place of serving the sentence due to the lack of jobs in enterprises and organizations, especially in remote areas. Execution of the fine is made more difficult due to the difficult financial situation of persons who commit crimes (according to statistics, 65% of them do not have a permanent source of income). Two penalties provided for by the Criminal Code of the Russian Federation (arrest, forced labor) are not imposed due to the fact that the conditions for their execution are not created. Therefore, despite the existence of a wide list of alternative punishments in the law, courts are forced to resort to such a measure as suspended sentence. Thus, the low effectiveness of suspended sentence is primarily due to the imperfection of the system of penalties, which is not adequate to the scale and state of modern crime and does not allow for the imposition of many of the measures provided for by law.

The results of consideration of criminal cases by courts indicate that courts often apply suspended sentence for committing grave crimes, as well as to persons who have an unexpunged and outstanding criminal record for a previously committed crime. According to official data, 35% of those on suspended sentence in 2018 had committed grave crimes and 35.7% had an unexpunged and outstanding criminal record at the time of sentencing. Also, suspended sentences were imposed for major crimes (1,108 convicted persons) (Tables 2 and 4). Such frequent use of suspended sentences in relation to persons who have committed dangerous crimes, as well as those who have shown a persistent criminal orientation, that is, has previously committed crimes, is hardly appropriate since it does not contribute to achieving the goals of criminal law impact. The leniency of the measure prescribed by the court, in the opinion of the majority of employees of the penitentiary system interviewed (84.7%), is one of the main reasons for the repeated crime.

The criminal law does not expressly prohibit the imposition of conditional conviction on persons who have committed grave or major crimes. According to Part 1 of Article 73 of the Criminal Code of the Russian Federation, suspended sentence cannot be assigned: for committing sexual offenses in relation to minors and terrorist crimes; for those on probation for a premeditated crime, committing a grave or major crime during the probationary period; for persons committing grave crimes and major crimes during the unserved part of the sentence imposed for committing a premeditated crime, upon conditional release; those with a dangerous

or especially dangerous relapse. Therefore, courts have the right to impose suspended sentence for the commission of grave and major crimes. The law also does not prohibit the use of suspended sentence for reoffenders.

The literature suggests that it is necessary to establish regulatory prohibitions on the use of suspended sentences for persons who have committed grave and major crimes, as well as those previously convicted [Utkin. 2015, p. 164]. However, in our view, limiting the possibility of assigning this measure to any category of crimes or persons will not fully ensure the individualization of criminal responsibility and the achievement of the goals of criminal law impact. At the same time, the application of suspended sentence to the perpetrators of grave crimes, as well as those at relapse, should be an exception when the circumstances under which the crime occurred, characteristics of the person, and role of the perpetrator in the crime give grounds to consider it inappropriate real punishment.

The low effectiveness of suspended sentence is associated with shortcomings in the organization and implementation of control over the observance of public order by probationers and the performance of their duties assigned by the court. Practice shows that employees do not pay enough attention to the study of the personal qualities of convicts when registering, do not provide systematic control over the behavior of probationers, and are not familiar with the situation in the places of residence and work of convicts.

Penitentiary inspectorates that exercise the function of monitoring probationers also carry out sentences that are not related to isolating the convicted person from society, as well as a preventive measure in the form of house arrest. That is, the burden on the inspectors of the penitentiary inspection is very significant. However, in recent years, the number of criminal executive inspections, on the contrary, has decreased with the increase in the number of convicts passing through the records of criminal executive inspections. This organizational decision hurt the quality of the control of

suspended sentence. Due to the heavy workload, employees of the penitentiary inspectorate carry out control over the performance of suspended sentences only formally during the probationary period. Often, the only form of monitoring the behavior of probationers is their periodic registration with the criminal enforcement inspectorate. As a result of the lack of control, convicts commit crimes, including grave ones. 42% of the employees surveyed called the insufficient number of employees of the penitentiary system among the circumstances contributing to the relapse on the part of the convicts.

CONCLUSION

The reasons for the low effectiveness of suspended sentence are related to:

- the imperfection of the system of punishments provided for by law, which leads to excessive use of suspended sentences;

- the widespread use of suspended sentences in relation to persons who have committed grave and major crimes, as well as those who have an unexpunged and outstanding criminal record;

- the reduction of the number of criminal enforcement inspections and, consequently, the increase of the burden on an inspector of the penal system, which in such circumstances cannot effectively monitor the behavior of probationers.

In conclusion, it is worth pointing out that the analysis of the effectiveness of suspended sentence in the article reflects certain shortcomings of the current criminal justice system in Russia and provides a perspective for more detailed, including comparative criminological research.

ACKNOWLEDGMENTS

The research was funded by the grant "Young Scientists" of the Federal State Budgetary Educational Institution "East Siberian State University of Technology and Management".

REFERENCES

- Doherty F (2016) Obey All Laws and Be Good: Suspended sentence and the Meaning of Recidivism. *Georgetown Law Journal*. 104(2):64.
- Drozdov IS (2018) Osnovnye pokazateli kriminologicheskogo retsidiva pri osuzhdenii bez lisheniya svobody [The main indicators of criminological relapse upon conviction without imprisonment]. *Ugolovnaya yustitsiya*. 2:132-138.
- Fazel S, Wolf A (2015) A systematic review of criminal recidivism rates worldwide: Current difficulties and recommendations for best practice. *PLoS ONE*. 10(6):1-8.
- Fisenko DY (2018) Sovremennye tendentsii primeneniya uslovnogo osuzhdeniya [Current trends in the use of conditional conviction]. *Vestnik Omskogo universiteta. Seriya "Pravo"*. 4(57):159-165.
- Gabraev AS, Novikov AV (2015) Perspektivy realizatsii instituta probatsii v sovremennoi penitentsiarnoi politiki Rossiiskoi Federatsii [Prospects for the implementation of the suspended sentence institution in the modern

- prison policy of the Russian Federation]. *Sovremennye problemy nauki i obrazovaniya*. 2(2). Available from: <https://www.science-education.ru/ru/article/view?id=23244>
- Judicial Department at the Supreme Court of the Russian Federation (2018) *Summary statistics on the state of criminal record in Russia*; Available from: <http://www.cdep.ru/index.php?id=79>
- Mukherjee R, Tiwari BK (2019) Suspended sentence an arm in Rehabilitation of Criminal. *International Journal of Research in Social Sciences*. 9(3):472-480.
- Phelps MS (2013) The Paradox of Probation: Community Supervision in the Age of Mass Incarceration. *Law Policy*. 35(1-2):51–80.
- Phelps MS (2017) Mass probation: Toward a more robust theory of state variation in punishment. *Punishment & Society-International Journal of Penology*. 19(1):53-73.
- Utkin VA (2015) Ugolovnye nakazaniya v Rossii: penalizatsiya i sudebnaya praktika [Criminal punishments in Russia: penalization and judicial practice]. *Vestnik Kuzbasskogo instituta*. 4(25):117-121.
- Yukhnenko D, Wolf A, Blackwood N, Fazel S (2019) Recidivism rates in individuals receiving community sentences: A systematic review. *PLoS ONE*. 14(9):e0222495.

www.ejobios.org