



REVISTA INCLUSIONES

HOMENAJE A JAQUELINE VASSALLO

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial

Julio / Septiembre

2020

ISSN 0719-4706

CUERPO DIRECTIVO

Directores

Dr. Juan Guillermo Mansilla Sepúlveda

Universidad Católica de Temuco, Chile

Dr. Francisco Ganga Contreras

Universidad de Tarapacá, Chile

Editor

Drdo. Juan Guillermo Estay Sepúlveda

Editorial Cuadernos de Sofía, Chile

Editor Científico

Dr. Luiz Alberto David Araujo

Pontificia Universidade Católica de Sao Paulo, Brasil

Editor Europa del Este

Dr. Aleksandar Ivanov Katrandzhiev

Universidad Suroeste "Neofit Rilski", Bulgaria

Cuerpo Asistente

Traductora: Inglés

Lic. Pauline Corthorn Escudero

Editorial Cuadernos de Sofía, Chile

Portada

Lic. Graciela Pantigoso de Los Santos

Editorial Cuadernos de Sofía, Chile

COMITÉ EDITORIAL

Dr. Jaime Bassa Mercado

Universidad de Valparaíso, Chile

Dra. Heloísa Bellotto

Universidad de Sao Paulo, Brasil

Dra. Nidia Burgos

Universidad Nacional del Sur, Argentina

Mg. María Eugenia Campos

Universidad Nacional Autónoma de México, México

Dr. Francisco José Francisco Carrera

Universidad de Valladolid, España

Dr. Pablo Guadarrama González

Universidad Central de Las Villas, Cuba

Mg. Amelia Herrera Lavanchy

Universidad de La Serena, Chile

Dr. Claudio Llanos Reyes

Pontificia Universidad Católica de Valparaíso, Chile

Dr. Werner Mackenbach

Universidad de Potsdam, Alemania

Universidad de Costa Rica, Costa Rica

Mg. Rocío del Pilar Martínez Marín

Universidad de Santander, Colombia

Ph. D. Natalia Milanese

Universidad de Houston, Estados Unidos

Ph. D. Maritza Montero

Universidad Central de Venezuela, Venezuela

Dra. Eleonora Pencheva

Universidad Suroeste Neofit Rilski, Bulgaria

Dra. Rosa María Regueiro Ferreira

Universidad de La Coruña, España

Dr. Andrés Saavedra Barahona

Universidad San Clemente de Ojrid de Sofía, Bulgaria

Dr. Efraín Sánchez Cabra

Academia Colombiana de Historia, Colombia

Dra. Mirka Seitz

Universidad del Salvador, Argentina

Ph. D. Stefan Todorov Kapralov

South West University, Bulgaria

COMITÉ CIENTÍFICO INTERNACIONAL

Comité Científico Internacional de Honor

Dr. Adolfo A. Abadía

Universidad ICESI, Colombia

Dr. Carlos Antonio Aguirre Rojas

Universidad Nacional Autónoma de México, México

Dr. Martino Contu

Universidad de Sassari, Italia

Dr. Luiz Alberto David Araujo

Pontificia Universidad Católica de Sao Paulo, Brasil

Dra. Patricia Brogna

Universidad Nacional Autónoma de México, México

REVISTA INCLUSIONES

REVISTA DE HUMANIDADES
Y CIENCIAS SOCIALES

Dr. Horacio Capel Sáez

Universidad de Barcelona, España

Dr. Javier Carreón Guillén

Universidad Nacional Autónoma de México, México

Dr. Lancelot Cowie

Universidad West Indies, Trinidad y Tobago

Dra. Isabel Cruz Ovalle de Amenabar

Universidad de Los Andes, Chile

Dr. Rodolfo Cruz Vadillo

*Universidad Popular Autónoma del Estado de Puebla,
México*

Dr. Adolfo Omar Cueto

Universidad Nacional de Cuyo, Argentina

Dr. Miguel Ángel de Marco

Universidad de Buenos Aires, Argentina

Dra. Emma de Ramón Acevedo

Universidad de Chile, Chile

Dr. Gerardo Echeita Sarrionandía

Universidad Autónoma de Madrid, España

Dr. Antonio Hermosa Andújar

Universidad de Sevilla, España

Dra. Patricia Galeana

Universidad Nacional Autónoma de México, México

Dra. Manuela Garau

Centro Studi Sea, Italia

Dr. Carlo Ginzburg Ginzburg

*Scuola Normale Superiore de Pisa, Italia
Universidad de California Los Ángeles, Estados Unidos*

Dr. Francisco Luis Girardo Gutiérrez

Instituto Tecnológico Metropolitano, Colombia

José Manuel González Freire

Universidad de Colima, México

Dra. Antonia Heredia Herrera

Universidad Internacional de Andalucía, España

Dr. Eduardo Gomes Onofre

Universidade Estadual da Paraíba, Brasil

CUADERNOS DE SOFÍA EDITORIAL

+ Dr. Miguel León-Portilla

Universidad Nacional Autónoma de México, México

Dr. Miguel Ángel Mateo Saura

*Instituto de Estudios Albacetenses "Don Juan Manuel",
España*

Dr. Carlos Tulio da Silva Medeiros

Diálogos em MERCOSUR, Brasil

+ Dr. Álvaro Márquez-Fernández

Universidad del Zulia, Venezuela

Dr. Oscar Ortega Arango

Universidad Autónoma de Yucatán, México

Dr. Antonio-Carlos Pereira Menaut

Universidad Santiago de Compostela, España

Dr. José Sergio Puig Espinosa

Dilemas Contemporáneos, México

Dra. Francesca Randazzo

*Universidad Nacional Autónoma de Honduras,
Honduras*

Dra. Yolando Ricardo

Universidad de La Habana, Cuba

Dr. Manuel Alves da Rocha

Universidade Católica de Angola Angola

Mg. Arnaldo Rodríguez Espinoza

Universidad Estatal a Distancia, Costa Rica

Dr. Miguel Rojas Mix

*Coordinador la Cumbre de Rectores Universidades
Estatales América Latina y el Caribe*

Dr. Luis Alberto Romero

CONICET / Universidad de Buenos Aires, Argentina

Dra. Maura de la Caridad Salabarría Roig

Dilemas Contemporáneos, México

Dr. Adalberto Santana Hernández

Universidad Nacional Autónoma de México, México

Dr. Juan Antonio Seda

Universidad de Buenos Aires, Argentina

Dr. Saulo Cesar Paulino e Silva

Universidad de Sao Paulo, Brasil

Dr. Miguel Ángel Verdugo Alonso
Universidad de Salamanca, España

Dr. Josep Vives Rego
Universidad de Barcelona, España

Dr. Eugenio Raúl Zaffaroni
Universidad de Buenos Aires, Argentina

Dra. Blanca Estela Zardel Jacobo
Universidad Nacional Autónoma de México, México

Comité Científico Internacional

Dra. Elian Araujo
Universidad de Mackenzie, Brasil

Mg. Romyana Atanasova Popova
Universidad Suroeste Neofit Rilski, Bulgaria

Dra. Ana Bénard da Costa
Instituto Universitario de Lisboa, Portugal
Centro de Estudios Africanos, Portugal

Dra. Noemí Brenta
Universidad de Buenos Aires, Argentina

Ph. D. Juan R. Coca
Universidad de Valladolid, España

Dr. Antonio Colomer Vialdel
Universidad Politécnica de Valencia, España

Dr. Christian Daniel Cwik
Universidad de Colonia, Alemania

Dr. Eric de Léséulec
INS HEA, Francia

Dr. Andrés Di Masso Tarditti
Universidad de Barcelona, España

Ph. D. Mauricio Dimant
Universidad Hebrea de Jerusalem, Israel

Dr. Jorge Enrique Elías Caro
Universidad de Magdalena, Colombia

Ph. D. Valentin Kitanov
Universidad Suroeste Neofit Rilski, Bulgaria

Mg. Luis Oporto Ordóñez
Universidad Mayor San Andrés, Bolivia

Dr. Gino Ríos Patio
Universidad de San Martín de Porres, Perú

Dra. María Laura Salinas
Universidad Nacional del Nordeste, Argentina

Dra. Jaqueline Vassallo
Universidad Nacional de Córdoba, Argentina

Dra. Maja Zawierzeniec
Universidad Wszechnica Polska, Polonia

Editorial Cuadernos de Sofía
Santiago – Chile
Representante Legal
Juan Guillermo Estay Sepúlveda Editorial

Indización, Repositorios y Bases de Datos Académicas

Revista Inclusiones, se encuentra indizada en:





REX



UNIVERSITY OF SASKATCHEWAN



Universidad de Concepción



BIBLIOTECA UNIVERSIDAD DE CONCEPCIÓN

DEFERRED SENTENCE FOR DRUG ADDICTS

Ph. D. David Vagitovich Gamidov

St. Petersburg University of the Federal Penitentiary Service, Russia

ORCID ID: 0000-0003-4362-0253

dianavaz@mail.ru

Fecha de Recepción: 17 de enero 2020 – **Fecha Revisión:** 05 de marzo de 2020
Fecha de Aceptación: 01 de junio de 2020 – **Fecha de Publicación:** 01 de julio de 2020

Abstract

The study aims at justifying theoretical conclusions and developing recommendations to improve means of deferred sentencing in drug abuse cases based on the analysis of the Russian and foreign legislation with due regard to different legal systems. *The novelty of the study* is to justify the deferral of punishment for convicted persons suffering from drug addiction (Article 82.1 of the Criminal Code of the Russian Federation) as legal encouragement of positive post-criminal behavior that creates legal prerequisites for releasing a person who has completed a treatment course and medical-social rehabilitation from punishment. *Main conclusions* The comparative-legal study of two most widespread legal systems has demonstrated that there are different approaches to the grounds and conditions for deferred sentencing in drug abuse cases and the use of specific technical-legal constructions describing this phenomenon in criminal law. Furthermore, states have not reached common ground on the stages of law enforcement that comprise the above-mentioned measures. In particular, there can be deferral for the conduct of preliminary investigation in relation to a detained person (the UK), detention substituted for travel restrictions (the USA), imposition of punishment (the UK, Denmark, France), sentence enforcement (Denmark, Spain, the USA, France), outright release from criminal liability/punishment (Spain, the USA), as well as partial (Spain) and no release at all (the UK). Thus, some countries utilize this category in several cases and law enforcement agencies receive more opportunities to counteract the narcotization of the population and rehabilitate drug addicts.

Keywords

Public danger – Relief from punishment – Deprivation of liberty

Para Citar este Artículo:

Gamidov, David Vagitovich. Deferred sentence for drug addicts. Revista Inclusiones Vol: 7 num Especial (2020): 204-215.

Licencia Creative Commons Attribution Non-Comercial 3.0 Unported
(CC BY-NC 3.0)

Licencia Internacional



Introduction

The misuse of narcotic drugs has an upward trend in Russia, which conditions a steady decline in its population, including a decrease in the number of the young working population. These are clear signs of a threat to national security¹. According to the Russian State Antidrug Policy Strategy until 2020, this circumstance necessitated the consolidation of state authorities and local self-governments to reduce the spread of drugs and their misuse as a result of their illicit trafficking, as well as to improve the system of prevention, treatment and rehabilitation for drug addicts.

To implement this antidrug policy, in 2011 the Criminal Code of the Russian Federation was supplemented by Article 82 that regulates the deferral of punishment for drug addicts and contributes to the rehabilitation of the convicted. As a result, such criminals cease posing public danger and can be released from punishment. These actions are justified by the State Antidrug Policy and the general need to protect public health. Although Article 82¹ of the Criminal Code of the Russian Federation determines the conditions and grounds for applying the indicated incentive measure, it raises several theoretical, legal and applied issues. Thus, we need to conduct a consistent and systematic study of deferred sentences for drug addicts and draw a scientific conclusion on the prospects of their implementation. This article aims at resolving this issue and is concerned with deferred sentencing of drug addicts in foreign law.

Methods

The research methods were as follows: comparative-legal, systemic-structural, logical and document analysis. In the course of the study, we also used modern scientific achievements in the field of criminal and penal law relating to the research topic.

Results

Deferred sentencing for drug addicts is a rather significant institute of criminal law. At first glance, it seems to contradict the principle of justice and the inevitability of punishment but its application complies with all the guidelines of the Criminal Code of the Russian Federation. Deferred sentences do not interfere with law enforcers fulfilling their tasks in conformity with criminal law but rather help them. These legal measures remove social and psychophysical obstacles, reduce the public danger of criminals and rehabilitate them. In the modern world, we cannot ignore the legislative achievements of foreign colleagues, which would contradict not only the so-called social and state order but also development and progress as a whole. Currently, various countries exchange students and teachers, services and technologies, knowledge and experience, and the sphere of legislative regulation is no exception. Accordingly, we need to address the experience of our foreign colleagues to conduct a comprehensive study of deferring sentencing for drug addicts. Thus, we consider two traditional legal families: the Romano-Germanic and Anglo-Saxon.

The Kingdom of Spain strictly regulates issues of combating drug trafficking and drug addiction. However, it utilizes different technical and legal constructions than the Criminal Code of the Russian Federation. In particular, it focuses on the suspension of imprisonment.

¹ Ob utverzhenii Strategii gosudarstvennoi antinarkoticheskoi politiki Rossiiskoi Federatsii do 2020 goda: ukaz Prezidenta Ros. The Russian Federation Code 24. Article 3015. June 9, 2010.

According to Clause 5, Part 2, Article 80 of Law No. 10/1995 of November 23 "On the Criminal Code of the Kingdom of Spain", "the court might decide to suspend imprisonment for no more than five years in respect of persons who committed a crime because of their drug addiction provided that at the time of this decision the latter began to receive treatment in a state or certified private medical center"². We should note that the term "suspend" does not differ from "defer". S.I. Ozhegov's Dictionary of the Russian Language defines both concepts in the following manner: "to temporarily prevent from continuing or being in force or effect"³. Moreover, this definition is easier to be perceived and understood by law enforcers. The only difference is their prescriptive period. The Russian criminal procedure law does not provide a certain period for such suspension (statutes of limitation – Part 3, Article 78 of the Criminal Code of the Russian Federation; preliminary investigation – Chapter 28 of the Criminal Procedure Code of the Russian Federation, etc.), while deferral is associated with a specific period. Thus, the first concept is broader but these discrepancies are not significant and these terms can be considered as identical.

The above-mentioned provisions are mostly based on the voluntary nature of a criminal. If they need to escape responsibility, they should seek medical assistance on their own at the time of the court hearing. In general, it seems logical if compared with the provisions of Article 82¹ of the Criminal Code of the Russian Federation that assume almost the same preconditions but neglect the person's real intention to recover and rehabilitate. In Spain, such criminals should prove their desire by their independent actions. Therefore, the fact of voluntariness does not need to be legislatively regulated. However, the drawback of these requirements is those who do not have sufficient legal knowledge and are unaware of such an opportunity, as well as criminals who cannot do this for some reason (for example, they are already in custody). In this regard, we believe that the Russian legislation governs this aspect more logically and humanely.

A clear advantage is the unrestricted application of this rule to determine specific types of illegal behavior. The actual limit is acts that are punished with imprisonment for more than five years. At the same time, the legislator also considers the need to observe the principle of justice. As a result, the convicted person who received a deferred sentence is not relieved of their civil duties, such as apologizing to the victim (if any), making amends for the harm caused by their crime, etc.

In general, this rule applies not only to persons recognized as drug addicts. It is more versatile but those provisions that directly relate to the above-mentioned category of criminals are much more lenient than those applied to other types of criminals. This refers to the gravity of acts and the prescribed term of imprisonment. These provisions can be applied to drug addicts regardless of their recidivism, which is generally considered by the Spanish criminal law.

In other cases, we consider it permissible not to dwell on the specific application and reversal of the judicial decision to suspend some sentences since they are practically identical to those used in the Russian criminal law and criminal codes of the states we have already considered. Nevertheless, the state policy aimed at countering this antisocial

² Zakon No. 10/1995 ob ugovolnom kodekse Ispanii (s izmeneniyami i dopolneniyami po sostoyaniyu na 28.10.2015). November 23, 1995. Retrieved from: http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html

³ S. I. Ozhegov, Slovar russkogo yazyka. About 57,000 words. The 20th stereotyped edition (Moscow: Rus. Yaz., 1988), 484.

phenomenon is not limited to this. For instance, Article 20 of the Law "On the Criminal Code of the Kingdom of Spain" provides the causes of exclusion from criminal accountability and states the following: "whoever, at the time of committing a felony or misdemeanor, is in a state of absolute intoxication due to consumption of alcoholic beverages, toxic and narcotic drugs, psychotropic substances or others that cause similar effects, as long as such state has not been sought for the purpose of committing it, or when he would or should have foreseen that it would be committed, or when under the influence of a withdrawal syndrome, due to his dependence of such substances, that prevents him from comprehending the unlawfulness of the act, or acting in keeping with such comprehension"⁴. Thus, the Spanish legislator took into account the requirements of the World Health Organization, including those reflected in the 10th revision of the International Statistical Classification of Diseases and Related Health Problems, according to which dependence syndrome refers to mental and behavioral disorders associated with the use of psychoactive substances (a strong desire to take the psychoactive drugs, the lack of self-control, use despite harmful effects, a much higher priority for a given individual than other behaviors, increased tolerance to substances)⁵.

At the same time, the consequences of this relief are the security measures (an analogue of compulsory medical measures) provided for in Article 102 of the Criminal Code of the Russian Federation and consisting in placing a person recognized as a drug addict in a state-certified private medical center. The only restriction is that the time spent in such institutions should not exceed the term of punishment for the offense committed. In this case, we deal with an extreme form of drug addiction that deprives people of the ability to comprehend and control their actions. While it might not have serious consequences, the legislator still highlighted the cause-and-effect relationship between this disorder and unlawful behavior. As a result, strong addiction to narcotic substances that led to the commission of some crime was included in the circumstances mitigating punishment. Of course, this relationship should be taken into account when sentencing. In some cases, it is even permissible to consider it as a mitigating circumstance. However, we recommend to take this relationship beyond the framework of this non-exhaustive list and leave it to the judge's discretion.

Here are the main conclusions on the legislative regulation of deferred sentences in relation to drug addicts:

1) The key category of this study ("deferred sentencing") is not used in the Spanish criminal law but it provides for "suspension of execution of sentences". This legal norm is general and can be applied not only to persons recognized as drug addicts. However, the latter can receive more preferential conditions;

2) The feature of voluntariness is determined "by deed, not by word", i.e. the guilty person needs to independently contact a specialized medical institution and undergo a course of treatment for drug addiction. In this case, the court can decide to suspend a sentence;

⁴ Zakon No. 10/1995 ob ugovnom kodekse Ispanii (s izmeneniyami i dopolneniyami po sostoyaniyu na 28.10.2015). November 23, 1995. Retrieved from: http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html

⁵ Klassy mkb-10 / F00-F99 / Psikhicheskie rasstroistva i rasstroistva povedeniya, svyazannye s upotrebleniem psikhooaktivnykh veshchestv (F10-F19). Retrieved from: <http://mkb-10.com>

3) The commission of a crime for the first time does not matter for these provisions;

4) The basis for relief from punishment might be drug addiction, if a person in a state of absolute intoxication due to the consumption of narcotic drugs unintentionally committed a criminal offense or did not foresee (could not foresee) the possibility of its commission, or when under the influence of a withdrawal syndrome, due to their dependence of such substances, that prevents them from comprehending the unlawfulness of the act, or acting in keeping with such comprehension;

5) The circumstances mitigating guilt also indicate this disorder that caused socially dangerous behavior.

The Kingdom of Denmark

Its criminal code provides for two types of deferred sentences for persons recognized as drug addicts. In the first instance, it is Article 56 indicating that "where the court finds it unnecessary that a penalty should be executed, the terms of the sentence shall provide that the question of the fixing of the punishment be suspended and, after a probationary period, remitted"⁶. It represents a kind of relief from criminal responsibility and might seem excessively humane. However, this possibility lets courts decide on restrictions in more favorable circumstances. At the trial level, it is difficult to determine the type or amount of punishment since courts make a preliminary decision and cannot know what measures will be enough to rehabilitate the convict (in this case, they need results of objective medical examination). After such a criminal received the corresponding treatment and the level of their public danger reduced, the judge acts in real-time conditions based on the existing rather than presumed facts. However, it is up to the legislator to choose a suitable preventive measure. Thereby there is the second type of deferred sentences. "If regarded as being more expedient, the court may fix the penalty and decide that the serving of it be suspended and, after a probationary period, remitted"⁷. Indeed, the terms "provide" and "fix" are different but the fundamental difference between these two types of measures is the possibility of a stronger preventive impact on the guilty person. This classification should eliminate any uncertainty when the offender does not know what kind of punishment to expect, which has a negative effect on their desire to recover and rehabilitate. If the accused is aware of imprisonment for a period of three or four years, they will be more motivated to replace it with probation, which will help them complete the course of treatment.

⁶ Uголовnyi kodeks Danii (Svodnyi zakon №. 1028 ot 22 avgusta 2013 goda, s izmeneniyami, vvedennymi Zakonom №. 1620 ot 26 dekabrya 2013 g., Zakonom №. 168 ot 26 fevralya 2014 g., § 3 Zakona №. 403 ot 28 aprelya 2014 g., § 2 zakona №. 516 ot 26 maya 2014 g., § 1 Zakona №. 733 ot 25 iyunya 2014 g., § 1 Zakona № 739 ot 25 iyunya 2014 g.) [The Danish Penal Code (Consolidated law No. 1028 of August 22, 2013 as amended by Law No. 1620 of December 26, 2013, Law No. 168 of February 26, 2014, § 3 of Law No. 403 of April 28, 2014, § 2 of Law No. 516 of May 26, 2014, § 1 of Law No. 733 of June 25, 2014, § 1 of Law No. 739 of June 25, 2014)]. Retrieved from: <https://www.retsinformation.dk/Forms/R0710.aspx?id=164192>

⁷ Uголовnyi kodeks Danii (Svodnyi zakon №. 1028 ot 22 avgusta 2013 goda, s izmeneniyami, vvedennymi Zakonom №. 1620 ot 26 dekabrya 2013 g., Zakonom №. 168 ot 26 fevralya 2014 g., § 3 Zakona №. 403 ot 28 aprelya 2014 g., § 2 zakona №. 516 ot 26 maya 2014 g., § 1 Zakona №. 733 ot 25 iyunya 2014 g., § 1 Zakona № 739 ot 25 iyunya 2014 g.) [The Danish Penal Code (Consolidated law No. 1028 of August 22, 2013 as amended by Law No. 1620 of December 26, 2013, Law No. 168 of February 26, 2014, § 3 of Law No. 403 of April 28, 2014, § 2 of Law No. 516 of May 26, 2014, § 1 of Law No. 733 of June 25, 2014, § 1 of Law No. 739 of June 25, 2014)]. Retrieved from: <https://www.retsinformation.dk/Forms/R0710.aspx?id=164192>

Among medical measures for drug addicts, the legislator also specifies their obligation to abstain from the misuse of drugs (Article 57 of the Danish Penal Code). We believe that this clarification is unnecessary since the actions are contrary to the goals of treatment and probation conditions. Thus, such an act should be regarded as a willful breach of the court decision, entailing its reversal and sentencing. However, it is inadvisable to completely refuse treatment even in such cases. It is necessary to change its character from voluntary to compulsory and combine it with the execution of punishment.

We should emphasize a large scope of application for the above-mentioned provisions. There are no restrictions on the categories or types of crimes, imposed or presumed penalties, the availability of a criminal record or even the expression of free will by the guilty person. These facts expand the judicial margin of appreciation but make these provisions extremely corruptogenic.

These provisions also comprise the following distinctive feature: "If the use of imprisonment is considered necessary, but the information concerning the offender's personal circumstances calls for the use of a suspended sentence, the court may decide that part of the deserved punishment, not exceeding six months, be served immediately while the rest of the sentence be suspended"⁸. These stipulations ensure the principle of justice in case of crimes posing a danger to society. However, they are not acceptable for persons recognized as drug addicts since their dependence oppose the objectives of punishment.

The grounds for canceling the measures under consideration include the commission of another crime prior to the adoption of a court decision on suspension. Although these circumstances are not an unconditional basis for sentencing the accused, the court might assign additional obligations (for example, performing unpaid public works). Even in case of a new encroachment after the appointment of a deferred sentence, the previous judicial decision can be applied to a new criminal episode.

Thus, the Danish Penal Code quite humanely regulates the liability of persons recognized as drug addicts. This approach is justified by Clause 6, Article 82 of the Danish Penal Code that considers an existing state of dependence as a circumstance in mitigation. Except for this, the Danish Penal Code is no different from the regulatory acts of the other foreign countries we have analyzed. Here are the main provisions relating to the issues under study:

1) There are two types of deferred sentences for drug addicts: the first suspends the process of determining and imposing punishment, the second defers its execution;

2) As a result, such a criminal should carry out certain obligations that are not limited to a treatment course;

⁸ Ugolovnyi kodeks Danii (Svodnyi zakon №. 1028 ot 22 avgusta 2013 goda, s izmeneniyami, vvedennymi Zakonom №. 1620 ot 26 dekabrya 2013 g., Zakonom №. 168 ot 26 fevralya 2014 g., § 3 Zakona №. 403 ot 28 aprelya 2014 g., § 2 zakona №. 516 ot 26 maya 2014 g., § 1 Zakona №. 733 ot 25 iyunya 2014 g., § 1 Zakona № 739 ot 25 iyunya 2014 g.) [The Danish Penal Code (Consolidated law No. 1028 of August 22, 2013 as amended by Law No. 1620 of December 26, 2013, Law No. 168 of February 26, 2014, § 3 of Law No. 403 of April 28, 2014, § 2 of Law No. 516 of May 26, 2014, § 1 of Law No. 733 of June 25, 2014, § 1 of Law No. 739 of June 25, 2014)]. Retrieved from: <https://www.retsinformation.dk/Forms/R0710.aspx?id=164192>

3) The possible application of these provisions is not reduced to the categories of socially dangerous acts or criminal records, the main decisive factor is the discretion of judges;

4) The Danish law does not provide unconditional grounds for reversing a deferred sentence upon a new criminal episode.

The French Republic

Its criminal law provides six types of suspension. The first type is ordinary deferment (Articles 132-60 of the French Penal Code) if "the reintegration of the guilty party is in the process of being achieved, that the damage caused is in the process of being repaired, and where the public disturbance generated by the offence will cease"⁹. Under these circumstances, if the offender is socially rehabilitated, they can be released from punishment. The second type is practically the same but implies probation, under which the offender's prescriptions are "to follow the rules of medical supervision, treatment or care, if necessary, in hospital confinement". In this case, the legislator interprets any impact as a measure of assistance helping the convict to rehabilitate in society. This measure involves public and private institutions, as well as financial assistance. The third type includes financial prescriptions, i.e. the legislator imposes fines in the amount regulated by law and sets a time limit for their payment.

Thus, these three types form a group concerned with deferred sentencing. The second group, also consisting of three components, is very similar but suspends the next stage of proceedings, i.e. the execution of punishment. Instead of financial prescriptions, this group of measures provides public works that cannot be appointed without the consent of the convicted person or their presence at the hearing in contrast to probation. Accordingly, the need to undergo treatment for drug addiction is not excluded (Article 132-55 of the French Penal Code). In our opinion, these measures do not fully correspond to the phenomenon under study since the above-mentioned categories exemplify the combined application of a deferment and legal restrictions identical to criminal punishment. The only advantage for the convicted person is the possibility to escape imprisonment since they do not perceive an opportunity to overcome addiction as an incentive. The legislator managed to combine this kind of social isolation with the phenomenon under study. In particular, Article 132-27 of the French Penal Code states as follows: "where compelling medical, family, professional or social reasons are established, the court may decide that a custodial sentence of a year or less imposed for a misdemeanor is served in instalments over a period not exceeding three years. None of those instalments may be shorter than two days"¹⁰. It is noteworthy that these provisions are more consistent with the essence of the deferment than those provided for in Article 82¹ of the Criminal Code of the Russian Federation since the latter implies the temporary suspension of punishment rather than a complete release from it. Therefore, these measures even worsen the situation of the convicted person since the real term of their deprivation only extends. In this case, the principle of justice or humanism is not violated as the term of imprisonment does not increase but is divided into parts and evenly distributed over certain periods to rehabilitate a drug addict, which creates conditions for the most effective achievement of the objectives of punishment.

⁹ Uголовnyi kodeks Frantsii (s izmeneniyami i dopolneniyami po sostoyaniyu na 12.09.2018). Retrieved from: <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>

¹⁰ Uголовnyi kodeks Frantsii...

At the same time, the legislator provided an alternative to this measure, whose specifics is the inclusion of a treatment course into the general term of imprisonment referred to as "semi-detention" (Article 132-26 of the French Penal Code). Accordingly, the guilty person must stay in the institution on those days when medical assistance was interrupted for any reason. These measures are analyzed in the context of criminals recognized as drug addicts due to the study problem. At the same time, they are general, i.e. they can be assigned to other categories of criminals with various prescriptions (obtain an academic degree, care for a family member, etc.). The only factor determining their application and variety is the gravity of a particular socially dangerous act.

Here are the main provisions relating to the phenomenon under consideration in the French criminal law:

1) The legislator provided a record number of deferment types for criminals, including those recognized as drug addicts, three of which defer sentences and the three other suspend the execution of punishment;

2) Each of these measures is incentive since they provide the opportunity to escape punishment;

3) The French Penal Code contains two other provisions similar to deferment that do not imply further release or mitigation of criminal liability. Their essence is to provide the convicted person with time to undergo treatment for drug addiction. Depending on a particular judicial decision, it might or might not be included in the term of imprisonment.

Here we stop dwelling on the Romano-German system since other representatives of this group utilize achievements of the countries considered within the framework of this study and cannot offer Russian legislators anything new. The technical and legal constructions, features and findings we obtained will be systematized and summarized in the conclusion to this paragraph and will also be reflected in proposals to improve law enforcement and develop criminal legal science. Therefore, it is methodologically permissible to switch to **the Anglo-Saxon legal system** that addresses the problem of drug addiction and the need to resolve it, including through incentive methods.

Being one of the well-known representatives of the Anglo-Saxon legal system, **the UK** still has exceptional precedents related to deferred sentencing for persons recognized as drug addicts even taking into account the existing legislative requirements on certain issues of criminal proceedings. To maintain consistency, we should first dwell on aspects more familiar to Russian law enforcers, namely regulatory prescriptions.

According to Powers of Criminal Courts (Sentencing) Act 2000, "The Crown Court or a magistrates' court may defer passing sentence on an offender for the purpose of enabling the court, or any other court to which it falls to deal with him, to have regard in dealing with him to (a) his conduct after conviction (including, where appropriate, the making by him of reparation for his offence); or (b) any change in his circumstances"¹¹. At the same time, the principle of voluntariness is fully implemented since these provisions can be applied only with the consent of the guilty person. The list of prerequisites also includes:

¹¹ Zakon "O polnomochiyakh sudov po ugovnym delam (vyneseniyu prigovorov)" 2000 goda (s izmeneniyami i dopolneniyami po sostoyaniyu na 2020. Retrieved from: <http://www.legislation.gov.uk/ukpga/2000/6/contents>

- Imposing an obligation to comply with special prescriptions determined by the court with due regard to their appropriateness;
- The present decision should comply with the principle of justice and contribute to the achievement of its goals; therefore, the possibility of its adoption is based on the nature of a criminal offense and the identity of the guilty person;
- The appointment of a probationary period cannot exceed six months.

In general, we can conclude that the essence of deferred sentencing is not violated in the UK legislation. Furthermore, we should emphasize the unconditional encouraging nature of the indicated prescriptions, whose scope is limited only by the discretion of judges. Although a deal the offender and the state authority reach an agreement to suspend criminal liability, no immediate obligations are imposed on the former to mitigate or release from punishment. In other words, a real incentive to comply with all the prescriptions for the guilty person is the deferment itself since there are no other conditions for the parties to such an agreement. Criminals can only hope that the judge will take into account their law-abiding behavior and reduced social danger as circumstances indicating correction. Thus, it does not refer to justice or humanity since these circumstances acquire an individual character and significantly expand the powers of the relevant law enforcement agencies. That makes the provision under review double-natured. On the one hand, it allows the comprehensive consideration of all circumstances of the case and personality traits of the guilty person and, taking this into account, assign the most acceptable and proportionate punishment. On the other hand, this increases the level of corruption due to many prospects of abuse, especially given that the period for which such extension can be applied has no lower limits and is generally insignificant.

At the same time, it is not the only way to combat the drug addiction of the population. Thus, Article 11 states the possibility of appointing medical examination to persons who committed a crime implying imprisonment to determine the necessary means and methods to combat their antisocial behavior. The maximum time to suspend proceedings cannot exceed three weeks. In case of drug addiction that has a serious negative effect on the physical and mental state of a person, the judge suspends detention and replaces it with a restriction of travel order and an obligatory treatment course.

Next, we would like to highlight the specific structure of this regulatory act that puts the provisions under consideration to the fore, unlike other articles. This decision is controversial but criminal law actually begins with incentive measures and then reveals aspects directly related to sentencing. It is noteworthy that the Powers of Criminal Courts (Sentencing) Act 2000 encompasses the whole UK in terms of its effect and is mandatory for compliance throughout its territory. However, the Anglo-Saxon legal system is specific due to its innovative decisions. While the parliament is still discussing the issue of legalizing marijuana, the police of certain state entities implement innovative programs to combat drug addiction. For instance, it is called "Avon and Somerset's Drug Education Program" in the city of Bristol and provides that "persons arrested on drug possession were offered to attend a three-hour seminar to study the harmful effects of drugs instead of receiving a criminal record. If they successfully complete the course, all the charges would be withdrawn"¹². The combination of crimes or recidivism excludes the application of this scheme. Durham County

¹² Max Daly, "Some Police in the UK Have Stopped Arresting Drug Users". Retrieved from: https://www.vice.com/en_us/article/vdq7b9/drug-decriminalisation-in-uk-narcomania-heroin-crack

has implemented a more serious "Checkpoint" program that involves a four-month "contract". It includes "the need to attend courses on the harm of narcotic drugs, restorative justice and community service"¹³.

These ideas received many positive reviews from the population but were not approved by the government. However, such actions are not promising measures since they do not follow the current practice of countering drug trafficking and narcotization of the population, but rather contradict the state legal system that assumes strict compliance with the law requirements. At the same time, we consider it appropriate to highlight the main features of measures related to deferred sentencing for drug addicts:

1) The relevant measure is general and should provide courts with additional time to determine a type of punishment;

2) A prerequisite is the convict's consent with deferment and the assignment of certain obligations;

3) In addition to the aspect of voluntariness, its scope is limited by the principle of justice, i.e. the discretion of a particular court;

4) It is not a ground for releasing from punishment;

5) The practice of counteracting drug trafficking has precedents when a criminal receives a deferred sentence (at the stage of preliminary investigation) for possession of these substances, and the proceedings terminate if such a person performs certain duties.

The USA

The US Code provides for the possibility of suspending the execution of sentences due to the appointment of probation. Before considering these provisions, we should pay attention to other measures that allow perpetrators to temporarily reduce the amount of legal restrictions imposed on them. According to §3142, "a person charged with an offense can be released on a condition that they fulfill certain requirements"¹⁴. When deciding on detention, law enforcement agencies should consider the nature and circumstances of the crime committed, the evidence available, the criminal's identity, a threat to other people and society, as well as established facts related to the use of drugs and drug addiction. Accordingly, such a person might be vested with the following obligations: to refrain from the use of drugs and undergo medical treatment for drug addiction (in stationary conditions, if needed). Therefore, we can conclude that these provisions have unconditional similarities to deferred sentences but differ in the measure of coercion they suspend. They are also encouraging because the accused will be released from preventive measures related to detention at least for the duration of the preliminary investigation.

At the same time, the legislator stipulated the need to fight against the drug addiction of criminals at the later stages of criminal proceedings. According to §3561, the court has the right to prescribe probation that replaces imprisonment with the authorized terms of probation. This judicial decision is conditioned by the gravity of the socially dangerous act committed (Class A and Class B felonies are excluded), the combination of encroachments

¹³ Max Daly, "Some Police in the UK Have Stopped Arresting Drug Users..."

¹⁴ Razdel 18 Svoda zakonov SShA. Retrieved from: <https://www.law.cornell.edu/uscode/text/18/3142>

and their types that directly exclude the possibility of probation. Moreover, the terms of probation vary depending on the type of criminal offenses: a felony – from one to five years, misdemeanor – up to five years, a crime – no more than a year.

Accordingly, persons recognized as drug addicts shall carry out the same obligations as were provided for by the previous provision. A convicted person needs to pass a drug test within 15 days after the pronouncement of sentence, and this procedure will be repeated with the frequency established by the court, but at least twice during the entire probation period. Such control is an effective preventive measure to combat drug addiction. If the criminal on probation receives a positive result or refuses to take the test, their probation will be revoked in the manner prescribed by law, and the convicted person will be sentenced to imprisonment.

We have decided not to dwell on the remaining measures related to deferred sentencing for drug addicts since they mostly duplicate the experience of other foreign countries. Thus, the specifics of the US criminal law is as follows:

1) A suspended sentence serves as an analogue to deferred sentencing and can be replaced with a less restrictive preventive measure. In this case, the accused must fulfill certain obligations, i.e. refuse to use drugs and undergo drug rehabilitation;

2) At the trial level, there is also a type of deferred sentencing, namely the imposition of probation;

3) The main obligation of an accused person is to pass drug tests. If the accused refuses to pass it or receives a positive result, their probation will be replaced with imprisonment.

Conclusion

Regardless of the state, its technical and legal constructions, goals, conditions and even stages of legal proceedings, the essence of the legal phenomenon under study is the same in all foreign systems and consists in the temporary suspension of the state influence on a drug addict who committed a crime drug addict and its replacement with alternative medical measures.

References

Ob utverzhdenii Strategii gosudarstvennoi antinarkoticheskoi politiki Rossiiskoi Federatsii do 2020 goda: ukaz Prezidenta Ros. Federatsii. The Russian Federation Code 24. Article 3015. June 9, 2010.

Ozhegov, S.I. Slovar russkogo yazyka: About 57,000 words. The 20th stereotyped edition. Moscow: Rus. Yaz. 1988.

Klasy mkb-10 / F00-F99 / Psikhicheskie rasstroistva i rasstroistva povedeniya, svyazannye s upotrebleniem psikhooaktivnykh veshchestv (F10-F19). Retrieved from: <http://mkb-10.com>

Ugolovnyi kodeks Danii (Svodnyi zakon №. 1028 ot 22 avgusta 2013 goda, s izmeneniyami, vvedennymi Zakonom №. 1620 ot 26 dekabrya 2013 g., Zakonom №. 168 ot 26 fevralya 2014 g., § 3 Zakona №. 403 ot 28 aprelya 2014 g., § 2 zakona №. 516 ot 26 maya 2014 g.,

§ 1 Zakona №. 733 ot 25 iyunya 2014 g., § 1 Zakona № 739 ot 25 iyunya 2014 g.) Retrieved from: <https://www.retsinformation.dk/Forms/R0710.aspx?id=164192>

Ugolovnyi kodeks Frantsii (s izmeneniyami i dopolneniyami po sostoyaniyu na 12.09.2018). Retrieved from: <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>

Zakon "O polnomochiyakh sudov po ugolovnym delam (vyneseniyu prigovorov)" 2000 goda (s izmeneniyami i dopolneniyami po sostoyaniyu na 2020). Retrieved from: <http://www.legislation.gov.uk/ukpga/2000/6/contents>

Max Daly. "Some Police in the UK Have Stopped Arresting Drug Users". Retrieved from: https://www.vice.com/en_us/article/vdq7b9/drug-decriminalisation-in-uk-narcomania-heroin-crack

Razdel 18 Svoda zakonov SShA. Retrieved from: <https://www.law.cornell.edu/uscode/text/18/3142>

Zakon No. 10/1995 ob ugolovnom kodekse Ispanii (s izmeneniyami i dopolneniyami po sostoyaniyu na 28.10.2015). November 23, 1995. Retrieved from: http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html

CUADERNOS DE SOFÍA EDITORIAL

Las opiniones, análisis y conclusiones del autor son de su responsabilidad y no necesariamente reflejan el pensamiento de **Revista Inclusiones**.

La reproducción parcial y/o total de este artículo Pueel ahecrse sin autorizacipon de **Revista Inclusiones, nombrando la fuente**.