McAuley, Mary. "Post-Soviet Russia: Sentencing, Custody and its Consequences." *Children in Custody: Anglo-Russian Perspectives*. London: Bloomsbury Academic, 2010. 124–151. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781849661027.ch-005>>.

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CHAPTER 5

Post-Soviet Russia: Sentencing, Custody and its Consequences

In principle they constitute our problem – a problem for our society. They are people who are with us for a while and then they return to society. Unfortunately this is not always understood or recognized. I wish people would grasp this: that we are talking about people who have only dropped out of society for a while and will return there.

Deputy governor of colony

Before looking at sentencing, we need briefly to consider pre-trial detention, an issue that concerned the UN committee, and one that is no less important than custodial sentencing. Figure 2 in the Introduction shows the figures for those held in the SIZOs at the beginning of each year. In the 1990s this rarely fell below 15,000. In 2002 an amendment to the Code of Criminal Procedure required a judge's approval for police detention for more than 48 hours, and amendments to Article 108 of the Code of Criminal Procedure (July 2002 and December 2003) limited the use of detention on remand to cases of serious and particularly serious crimes, and only in exceptional cases when a youngster is suspected of a crime of less than serious gravity. Numbers are less than they were, as we see from Figure 2 (around 8,000), but then so are numbers detained by the police. Furthermore, Ministry of Justice data for 2003 and 2004 suggests little change in policy by investigators and judges. It is still more convenient to have the suspects in detention while the investigation continues, even though the majority of them will not be sentenced to custody. They will, however, in effect have served a sentence: the average length of time in remand in 2005 was 7 months (Альтернативный доклад 2005).

There is little public support for such a policy. The representative survey of adult opinion on youth crime in the three cities (St Petersburg, Saratov, Ulyanovsk) in the spring of 2004 included a series of different questions aimed at mapping opinions on the existing system and, in particular, the use of custody, both on remand and as a sentence. The question: *It is well*

known that the SIZO for juveniles often are overcrowded. In your view, which of the following would be the best measure to take in order to reduce overcrowding? produced the following response:

- 1 Make no use at all of detention while awaiting the court hearing:
10%
- 2 Only keep a juvenile in detention while awaiting trial if he represents
a threat to society: 63%
- 3 Build additional SIZO for juveniles: 18%

Conditions in the SIZOs are, by and large, worse than those in the colonies. In many cases children are kept crowded in a cell for most of the day where, as can be imagined, bullying is the norm.

I stood in the entrance: I didn't want to go into that dark, damp room 2.5 by 3.5 metres in size, and smelling of cigarette smoke and damp. But the door clanged shut – it sounded like a cannon shot. I turned to stone, it was so frightening, it felt as though these were the last few seconds of my life. Six kids were looking at me with hungry eyes. I had the feeling that they would tear me to pieces, each of them was thinking about which part of me he would tear off ... (Sasha Vasilkov, Shakhovskaya VK)

But they may find themselves with adults.

I spent a whole year in the in the SIZO, I saw a lot, lots of things happened. At the start I was together with women, then they made a cell for us kids. The staff did not like us, the kids, there were times when they beat us. Those who work in the SIZO were really nasty, treated us worse than stray dogs. (Veronika, Novooskolskaya VK)

The worst that I saw and experienced was when I was locked up in the tuberculosis section of SIZO no. 1. I spent eight months there. I saw how people suffered. They don't cure them, they die a long, excruciating death, and no one deals with them. Everyone says 'Why pity them, they're prisoners!' But they are people too. And although I was the only kid there, I understood that. (Mikhail Popov, Permskaya VK)

A census of 1999 found that half of the 14–15-year-olds and two-thirds of the 16–17-year-olds in the SIZOs had had no visits (neither from a relative nor a lawyer) during the previous three months (Михлин 2000).

Sentencing

Eventually the child reaches the court, with or without a defence lawyer. What are the guidelines for a judge to follow, and which are the options open to him or her when sentencing an under-18-year-old?

A Criminal Code can encourage (or oblige) a judge not to convict an offender if certain circumstances are present; to take particular circumstances into account when sentencing; to apply non-punitive sanctions. In all these respects the new Criminal Code and Code of Criminal Procedure, and amendments introduced in 2002 and 2003, provided the judges with greater flexibility. According to Part 3, Article 20 of the Criminal Code, if, as a consequence of his or her psychological or mental development, the child cannot fully recognize the actual character and socially dangerous nature of his actions, s/he is not to be held criminally responsible. This should take a substantial number of children out of the criminal justice system, but it does not appear to be working. A study by the Ministry of Internal Affairs Research Institute in 1997 put the percentage of children *in the colonies* with mental disorders at 30 per cent, the most recent FSIN data suggests 25 per cent, and any director of a colony today will quote a figure of a third for those with serious psychological problems (Забрянский 1999; Воронова 2005; Альтернативный доклад 2005; FSIN website: <www.fsin.ru>).

When sentencing, the judge is required to take into account the young person's living conditions, psychological health and any influence from adults. Further, in accordance with Part 2, Article 87, compulsory measures of an educational kind in lieu of a punishment may be used for youngsters who have committed a crime. This does not have the strength of the 1920s' ruling that punishment should only be used if educational measures would not work but, according to some lawyers, the wording suggests that educational measures should take first place. The judge can require a first-time offender of a minor crime or one of a serious but not very serious nature to undergo compulsory educational or correctional training (in the form of a warning, parental supervision, repayment of damage or restrictions on leisure activities) (Part 1, Article 90). For a first offence of

a serious crime, a judge can choose to send the young offender to a secure special school or technical school rather than giving him or her a criminal conviction.

Procedures laid down by Codes are vitally important but so are judges' attitudes in interpreting them. Sadly, there is little evidence that judges have been anxious to make use of these provisions. As we saw from Figure 7, numbers convicted are no less than they were in the early 1990s, when the crime rate was higher. Of course, there are judges who welcome the new possibilities.

There's something called mediation. It's not accidental that earlier we could not even mention it, but now I can close the case if the victim has been recompensed and says – don't punish the lad, he's sorry for what he did, and I don't want to see him locked up – so why not act accordingly? Before we could not do that, now we can reconcile the two sides. (Judge)

In some regions (for example, Arkhangelsk) where neither special schools nor treatment centres exist, it is perhaps not surprising to find that judges use compulsory educational measures in less than 2 per cent of the cases (Жилкина 2005). This draws our attention to a more serious, underlying problem: the absence of services (social, probation or even police) that should come into play when judges give a youngster a suspended sentence. He will be registered with the police but, essentially, that is all. This makes the heavy use by the judges of the suspended sentence both absurd and counterproductive. In effect they are simply delaying a custodial sentence because the youngster will, in all probability, commit a further crime, and that will guarantee a custodial sentence.

It seems to me that the sentencing system ought to be expanded, so that sentences could be more effective, so that we could use criminal legislation in the struggle with these offences. It's really not right that there are only two alternatives in our list of sentences – either lock up or give a suspended sentence. (Defence lawyer)

With some justification judges may feel that they are between a rock and a hard place.

You see, whatever the decision we take – if we give a custodial sentence, prison does not correct anyone, it doesn't resolve the problem of re-educating and correcting the individual, in today's words. During the period of a suspended sentence, he commits a new crime – the court should have foreseen this, you are responsible. Give him a suspended sentence, it doesn't have any effect. He stands in front of me, wiping away the tears from his face 'I really do understand now' and outside the door his little friends are waiting, a whole crowd of them, all anxious. Out he goes – that's it, they let him off, all right it's suspended, but then again comes another new crime. I am strongly convinced that a juvenile should be given a sentence that includes detention. Then he'll know what detention means, it's not a visit to a sanatorium... (Judge)

What does a suspended sentence mean? It means that police inspectors should visit the family, regularly, keep an eye on the child and on his behaviour. I ask, why did you commit a further offence when you had already got a sentence? Did anyone from the police, from all these various inspectorates, visit you – no, no one ever came. They write up fake reports, fake reports. It's such a heartless attitude. (Judge)

Some judges do not agree that that they do not care about the future fate of the youngsters whom they convict, while at the same time they object to their being required to exercise a preventive role. In general they define their task as one of 'awarding a sentence proportionate to the crime, taking everything into account – what was done, and the individual, and all circumstances surrounding the act' (Judge), and this often means custody. The suggestion that 'many criminal investigators, procurators and judges consider youth to be the most criminal section of society, the devil incarnate, and believe that, for the good of society, children who fall into the net of the criminal justice system are best sent to prison' (Алтернативный доклад 2005: 108) may be a little but not greatly exaggerated.

More than anything else I remember the moment when my sentence was passed. It was my birthday and the judge gave a spiteful smile and said 'Well then, best wishes for your birthday! And here's my present for you – three years in custody! I think you'll be pleased.' And, smiling,

she left. That was one year and two months ago, but I can't forget that day. (Roman Sh, Mozhaiskaya VK)

And it is disquieting to hear the following (from an interview with a judge who specializes in youth cases):

Interviewer: And as part of your practical training did you visit a colony, a SIZO?

Respondent: In Germany we visited several.

Interviewer: But in St Petersburg?

Respondent: No, no.

Judges continue to convict the great majority of youngsters brought before them and to sentence a quarter to custody (see Figure 8). The 1996 Code had increased the length of the minimum sentence to six months (with a

Figure 8: Sentences imposed upon 14–17-year-olds, Russia, 1997–2005

Source: Data from MVD statistical handbooks, 2002, 2004; statistics of the Supreme Court RF, 2004, 2006.

maximum of 10 years, compared with 20 years for adults) to be served by first-time offenders in a colony with a general regime as contrasted with one with a strict regime for recidivists. In 2001 the distinction was abolished. In 2001 an amnesty for short-term offenders and a new ruling allowing earlier release cut the colony population nearly in half – from 19,000 to 10,000, and the 2002–3 amendments to the Code of Criminal Procedure and the Criminal Code raised the reformers' hopes. The amendments allow the judge to take changed circumstances into account and be more flexible when sentencing for first offences. The minimum sentence has been reduced to two months, and the maximum for under-16s set at six years. The judge is obliged to give reasons for believing that an offender could not be 'corrected' without depriving him or her of their freedom (Article 88). For a whole series of crimes, alternatives to a custodial sentence are now listed: correctional work (not only at the individual's place of work), fines and 'compulsory service' or, in English terms, 'community service'. Applications for parole have been made easier.

Yet nothing changed in sentencing policy until, in 2004, the judges cautiously began to impose fines, and compulsory (community) service was introduced. However, as we see, they applied these sanctions in lieu of suspended sentences, while continuing to sentence a quarter or more of the children to custody.

Custody and the colonies

Let's refresh our memory. During the 1990s the numbers of juvenile offenders in the colonies at any point in time hovered around 20,000; the numbers plunged suddenly in 2002 to less than 11,000 as a consequence of the amnesty and early release rulings; by 2006 they were back up to 15,000; at the beginning of 2008 they had dropped sharply to around 10,000 (FSIN website). To explain the 2008 figure, we would need data (which we do not have) on whether more had been released on parole, or fewer sentenced. Certainly the age cohort is now smaller than it was in 2003, which may be playing a part. The figure for January 2009 will almost certainly show a further fall because of a new policy of transferring 18+ offenders to adult colonies.

Thirty-five regions have no colonies, and many of them are in faraway places. While most of the boys at least remain in their own region (albeit hundreds of miles from home), 80 per cent of the girls travel hundreds if not thousands of miles to one of the three colonies for girls. Following sentencing,

they may stay in the SIZO for up to a further two months, waiting for a transfer to a colony. They may spend days or even weeks travelling under appalling conditions, and sometimes together with adult prisoners.

To be honest, I was scared of the thought of the journey. They took us under guard, with dogs, to the Stolypin railway cars. They were coarse and cruel, shouted at us, insulted us, pushed us around, and even kicked us, those damn guards. But we were lucky, the boys really got it. They beat them, much more and worse, humiliated them every which way, it was awful to watch. The boys cried and begged for help, but nobody can help them, there's no one to turn to. They took them into an adjoining car and beat them, we heard the sounds, and then saw their bloody faces. It's awful to remember. (Veronika)

I left Ekaterinburg at 4 in the morning. There were six of us kids and a 19-year old girl. The prison van took us to the station, to the Stolypin railway car. The convoy gave orders: out quickly, no looking to the right or left, run across the rails. We dragged our suitcases and got into the railway car ... after a day and a half we got to Ulyanovsk. After being searched we spent two days in a horrible cell, filthy, cold, damp and dark. Then on to Ryazan which took less than 24 hours, there they sent us up to a cell – it was awful. There were 40–50 people in it, 10 were kids, the rest were women, some really hardened criminals, others were like men. Thank goodness we were only there for three days, and then they sent us to the colony ... (Girl, Ryazanskaya VK)

By comparison conditions in the colonies may be substantially better. Changes introduced in the Code on the Implementation of Sentences (1997) regarding the treatment of young people stipulated significant improvements, and there are progressive governors who have tried to implement them. There are increased entitlements to both short- and long-stay visits by relatives, to the receiving of parcels, to telephone calls and to holidays. For the three months preceding release children can be housed by the colony in a hostel on the perimeter. Children have a right to legal aid, and rules governing the use of punishment (which should not include withholding parcels) make punishment a measure of last resort. Unfortunately, the realization of these rules is far from guaranteed. A census/survey conducted in 1999 found that

only 30 per cent of those in a colony situated outside their own region receive even a short visit from a relative, compared with 63 per cent of those who remain in their own region. Even this figure is hardly encouraging. Some children ask repeatedly, ‘Does my mother know where I am?’, others are from children’s homes or have been abandoned by their parents. Only 18 per cent of all made use of the telephone – not every colony has an accessible phone for the kids, it’s expensive (most have no money in their account), or there’s no one to ring. Nearly 30 per cent receive no parcels (Михлин 2001). And, as for going home on holiday, most colonies acknowledge this as simply infeasible. Legal aid is usually simply not available – only if student lawyers manage to get permission to visit to hold a legal clinic. And, remember, many of the colonies are in inaccessible places.

In 2001 the Ministry of Justice abolished the distinction between general and strict regime colonies (for recidivists or particularly dangerous youth). This made it possible to retain more young people in their own region; restrictions on receiving parcels were lifted and release procedures simplified. In 2006 new rules on the regime in the *vospitatelnye* colonies introduced further improvements, but sentences remain very long. In 1999 the average length of sentence for those in the colonies was just over four years; over 60 per cent of the inmates were serving sentences of three years and above. At the beginning of 2005 the situation was worse: two-thirds were serving sentences of three years and above, with the average around four and a half years (Михлин 2001; *Penal Systems in Russia*; RF Report 2005).

Towards the end of 2007 FSIN issued instructions on transferring more 18–20-year-olds to adult colonies. This can be a sensitive issue for the young person, anxiously awaiting an appearance in court for a decision on parole (early release for good behaviour). An adult colony maybe nearer home, it may be much further away. In the Introduction we referred to the riot that ensued with loss of life in one colony. Two further colonies, one of them the Kolpino colony for boys outside St Petersburg, witnessed serious unrest in 2008. In this case some among the prison staff were blackmailing boys – either the boys paid them monthly amounts in cash, or they would receive bad references and be shipped out with them; some who refused were beaten. Others were not given time to appeal a court decision on transfer. The Kolpino case received sufficiently wide publicity to warrant a visit from a commission from Moscow, which found that fourteen of the older inmates had been hurriedly dispatched to a hospital for infectious diseases.

A subsequent visit by a group of respected St Petersburg human rights representatives brought results: the governor was removed, and a new one appointed.¹

The key factors that influence the chances of a child ending up in detention are, we remind the reader: the legislation defining what is a 'crime' and its seriousness; the age of criminal responsibility; the use of a criminal justice system as contrasted with social-welfare measures to deal with deviant behaviour; and the variety and type of sanctions employed. The more extensive the legislation, the lower the age of criminal responsibility, the greater the use

Boy and prison officer, Russia

of a criminal justice system rather than welfare agencies, and the fewer the alternative sanctions to detention – all increase the chances of a youngster ending up behind bars. The high Russian figures at the beginning of the 1990s stemmed, in part, from the coding of certain actions such as relatively minor theft as serious or very serious offences. But the main reason for high custody figures was the extensive use of a criminal justice system, designed for adults, and the severity and limited choice of sanctions. As regards the age of criminal responsibility (14 for serious, 16 for less serious crimes), Russia is no different from several of its European neighbours. Yet in other respects, the treatment of children differed little from that towards adults.

Boys practising in colony yard, Russia

Alternatives to custody

Codes may have made mention of alternatives to custody (for adults as for children), but the rulings that specified their implementation have been slow in coming. The government has shown great reluctance to produce the legislation, to provide any financing to support the introduction of alternative sanctions (which require programmes and proper supervision to be effective). Originally slated to appear no later than 2001, in January 2002 the date for 'compulsory service' was set back to 'no later than 2004'; that for 'restrictions on freedom' to no later than 2005, and that for 'arrest' (short-term detention) for no later than 2006. In haste, on 30 December 2004, legislation on 'compulsory service', defined in the Criminal Code as 'unpaid socially useful work carried out by the convict in his or her free time', was adopted. It can be used when sentencing such crimes as hooliganism, theft, fraud, damage, etc., but no provision is made for it to be different if the offender is a young person. The type of work is to be decided by the local authorities with the agreement of the Inspectorate of the Prison Service.² It can be awarded for between 60 and 240 hours, with a maximum of four hours a day on weekends, and usually two hours on work or school days; it can be no more than 12 hours a week.

The new measures would seem to be primarily directed towards the adult population (see *Альтернативные санкции* 2003). How extensively they will be used for young offenders remains to be seen. Again, the judges' response to the opportunities offered them in the legislation will be crucial. It would be unwise to be too optimistic. By the beginning of 2006 the Prison Service (FSIN) reported:

An analysis of the first results of applying and implementing this type of sanction allows us to draw the conclusion that community work is not yet being used as much as it should. For example, last year 17,300 convicts received such sentences. This constituted 1.5% of the total number of people passing through the Inspectorate's books (more than 1.1 million persons). On 1 January 2006 7,500 convicts were recorded by the Inspectorate as serving such a sentence, *of which one in ten was a juvenile*. [emphasis added – MM]

In other words, we are talking of 750 youngsters on a community service order at the beginning of the year, compare with 14,700 serving time in the colonies. Moreover, the courts in ten regions account for almost all

the community work sentences, some regions not using it at all. There is no agreement at local level, further complicated, FSIN suggests, by the legislation and other factors:

In its turn on the basis of Part 1 of Article 49 of the Criminal Code of the Russian Federation community work is carried out in places specified by the local self-government departments in agreement with the Inspectorate. Furthermore, at the present time the only enterprises that are used are those of the housing and communal services sector, which are being auctioned off this year. Because of this it has become quite problematic to identify work for the convicts. (ФСИН: <www.fsin.ru>)

None of this bodes well for the introduction of the other alternative sanctions: arrest and electronic monitoring. No money has been forthcoming for short-term 'arrest houses', and a large European Commission project on tagging and bracelets has, it seems, run into difficulties.

While the changing pattern of crime – a rise in violent crime, a fall in theft and hooliganism – may bear some responsibility for the continuation of a harsh sentencing policy, it cannot be considered a significant factor. Most are sentenced for theft, and the length of sentence has not decreased (see Figure 9).

Figure 9: Length of custodial sentences for 14–17-year-olds, Russia, 1997–2004

Source: Data from Макеудов 2006: 18; Supreme Court statistics 2004 (data for 2003 is lacking).

The effects of custody

In the Introduction we cited views of the children themselves and of those who work with them. Here we expand a little on this, first by completing one of those statements.

Although the colony, I tell the kids, is called educational, we don't re-educate you here. Honestly, we can't educate or re-educate anyone here.... What are we? What is our institution called? A correctional-labour establishment. The system is one of implementing orders, and we are implementing a court decision. The court decided everything, where the sentence should be served, for how many years. The court weighed it up, and isolated the person from society. Because society has worked out these kinds of arrangements: A person should be isolated from society. The penal system implements court decisions, and does the convict become re-educated while here or not? Well, that's another question... (Director of school and technical school in a colony)

... while they are in the correctional institution the youngsters, in principle, are all like pioneers. Because they educate them there under a quite harsh regime. But the institutions do not set themselves any far-reaching aims. They simply set themselves the aim of making sure the youngsters stay there ... they move around in ranks, greet everyone, follow basic rules on how to live. But in the long term the system does not work. Psychologists do not work with them. Basically it's blokes with truncheons. And it brings no real results, only a kind of appearance of real work. (Criminal investigator)

For us, in the colony, listening in, spying and tale-telling is most important. So he runs to me to complain about someone and sits there spilling the beans. And I look at him and think – whom are we re-educating? (Governor of colony)

I do not think that prison corrects people; on the contrary it makes us angry, after all, you know, it's so hard to remain, locked up, in prison. The surroundings get on your nerves, in the prison camp it's like being in a cage, only it's a huge cage. They keep you there like animals in a cage, and when people have recognized their errors, they still have years and years to serve, some as much as 9–10 years. When someone is

Boys marching and singing in colony yard, Russia

released, all that anger that has swelled up inside him, spills out in the form of new crimes, for which he receives another sentence, and again he's back in the zoo. The people who hand out these sentences to us sit at home drinking coffee and eating cakes ... they don't know, they have not lived here, they haven't seen how we live, for them it's just words, savage sentences. On that note I end, in the hope that people will take notice and draw some conclusions. (Sergei, Kazanskaya VK)

Not all who work in the law and order agencies would agree with Abramkin:

Our children and young people leave our penitentiary institutions as moral and physical cripples. With broken ribs, damaged kidneys, tuberculosis, with tattoos and scars all over their bodies. With sexual perversions and damaged psyches. ... A human personality is destroyed here. Beings emerge, incapable of living at liberty. (Дети в тюрьме 2001, 1: 22)

Boys in colony classroom, Russia

Indeed, it would be odd if they, its practitioners, did hold such views. But it is striking how little enthusiasm they can muster for the colonies. From one of the regions, the sociologists report:

As a whole, the respondents emphasized not the pluses but the minuses which accompany imprisonment. For all that, the views of those who work in the colonies or visit them as part of their job differ somewhat from the views of those who never come in touch with the realities of prison life. Colony and SIZO staff comment on the negative consequences of destroying ties with family and friends. In a colony a youngster does not have opportunities to interact with people close to him, in the first instance with members of his family: ‘... never-ending homesickness, it’s there in the letters, in conversations. Of course they want to go home ...’ (Governor of SIZO)

Psychological effects, character change as a consequence of either being in a colony or of getting sent to one are usually mentioned by those who have dealings with a youngster before he gets sent to prison. ‘I don’t want

Girl in colony hall, Russia

to say that once you've ended up in prison, that's it, you are finished as a person. No, that's not what I want to say at all. But the fact of the matter is that such individuals do have warped psyches.' (Defence lawyer)

Other negative consequences of spending time in a colony that these professionals mentioned included: the wasted years of a child's life, worsening health, the holding back of personal and cultural development. Among the positive consequences, people mentioned good living conditions, getting an education in school. However, hardly anyone spoke exclusively of positive aspects and, as a rule, professionals who mentioned positive consequences also referred to negative ones. Governors, recognizing that they cannot combat recidivism but only encourage it, honestly admitted that their present capabilities are limited to giving the law-offending youngster an education and some kind of professional skill.

In the other regions the responses were more critical:

All the experts without exception, including colony staff, recognize that as the final instance [in the chain] a colony, both because of its organization and by definition cannot exercise an educational function. Time spent

in a colony leads only to one outcome: it operates as a mechanism for reproducing juvenile crime.

Time spent in a colony produces the ability to adapt [your behaviour] to that of your immediate circle and, after release, it is difficult to build relationships with people who are not like your fellow inmates. It becomes more difficult to find mutual understanding with others, and some of the youngsters seek out familiar ways of interacting – in gangs where they will be understood and accepted. When they are released, they already behave in such a way in civilian life, they want to recreate the environment, make it similar to that, which they knew in colony. (Criminal investigator)

The professionals echo the words of the children, quoted in the Introduction, and their views are shared by the majority of the general public. People may repeat the proverb 'The place for a thief is prison', but they do not actually think so when the thief is a child. Respondents in the survey in St Petersburg, Saratov and Ulyanovsk were asked to identify up to three positive (and negative) aspects to detention in a colony. Just under 10 per cent identified more positive aspects than negative, 40 per cent emphasized the negative. But which did rate highly as positive? *'Finish school, get a skill'* (67 per cent) led the field. *'Safeguarding society from the threat of recurring crimes'* was identified by 25 per cent; *'isolating the youngster from unsuitable parents'*, *'punishment and deterring others'*, and *'curing drug addiction, alcoholism and psychological disorders'* were all noted by less than 20 per cent. In contrast several negative aspects received higher ratings: *'risk of TB, AIDS'* topped the list (56 per cent), followed by *'the high risk of creating a recidivist'*, and *'the risk of becoming a victim of prison brutality'* (both over 50 per cent), *'damaging the juvenile's psyche and his personality'* (44 per cent), *'depriving the offender of any future perspective of living a normal life'* (32 per cent), and *'causing moral suffering from the separation from relatives and friends'* (20 per cent). Russian adults have few expectations that a custodial sentence will deter or rehabilitate a youngster, and little stomach for this kind of punishment.

The similarity between the views of the general public and those of the professionals is striking. The general public is fairly evenly divided between those who think that there is a high likelihood of recidivism because of a young person's coming under criminal influences while in detention

(52 per cent), and those who are not persuaded of this (48 per cent) but, in answer to further questioning on *the causes* of recidivism, '*the lack of social support for those who are released from a colony*' led the list (70 per cent identified this), followed by '*acquiring prison skills*' (64 per cent) while only 18 per cent thought certain children have '*an inborn criminal inclination*'.

The sociologists report:

The majority of the experts ... commented on one of the negative aspects of life 'behind bars', that of criminal socialization. It is in the colonies that new acquaintances are made, with those who have criminal experience and are far from being positive models, inclusion into a criminal subculture occurs, and new criminal expertise is acquired. As a result of this the youngster '... will get a theoretical grounding in all aspects ... will know how and what, all the basic principles will be explained to him either in prison or in the juvenile colony, and that's it'. (Governor of SIZO)

And even if he wants to, the juvenile convict is often simply not able to withstand the influence of the environment and of the criminal authorities, facing as he does physical and psychological violence, hazing: '... there no rules of any kind exist, no system of order, and all the rest. And what to expect from their fellow inmates, they also don't know'. (Criminal investigator)

In reality the experts, including those who work in the correctional institutions, view the sending of [a youngster] to a colony as the equivalent of placing him in an organized criminal fraternity. First, because the colonies contain inmates convicted for the most part for serious and especially grave offences, and secondly because prison culture is imbued with its own particular type of order, which is stronger than the discipline and control imposed by the prison officer. Even such a plus, as regards a colony, as the good living conditions compared with those which some of the kids had while free, works in favour of recidivism, because they get used to life in a colony. Among the inmates of a children's colony there are those who find it attractive to live according to the principle 'served my time – was released – back in again'.

Yet simultaneously the professionals 'are inclined to ascribe a great deal of the responsibility for recidivism on the environment in society, the situation in the colonies, and on the immediate circle around the ex-prisoner rather than on the youngster himself, his strength of will and his wish to change things in his life'.

The sociologists conclude:

Without the overall reform of the system of preventive work with homeless children, without help in reintegrating those released from the colonies into the community, without a system of social services to support families and to find employment for youngsters, the liberalization of individual clauses of the criminal law will not bring about a change in the system as a whole, or a decrease in youth crime and recidivism but, on the contrary, will only increase the negative influence of the immediate environment and produce more recidivists.

Good analyses of recidivism, which attempt to distinguish the different factors that influence the rate of reoffending, are in short supply. Data from some other countries, including from England and Wales, suggest that reoffending is higher among those sentenced to custody than among those engaged in community service, and there is scattered evidence from Russia that those in the colonies (some of whom start their careers in secure special schools) are more likely to reoffend than those treated more leniently (*Вопросы ювенальной юстиции* № 1). Colony staff often have a pretty good idea of which youngsters they will see again, after a short time out, but they have no knowledge of the future careers of those who leave, aged 18 or older, either to return to society or to complete their sentence in an adult colony. Surely the resources should be found to finance a proper study of the consequences of spending society's money on locking up young people? Is detention not only costly and damaging for young people, but does it also create future costs for society by setting some of these children (how many?) on a career of crime that could have been avoided? Or does the evidence suggest that other factors (family influence, homelessness, lack of work or of community support...) are the more important in determining a young person's future behaviour?

All recognize that, even for those not damaged by their time in a colony, the future is bleak.

Nowhere to go...

Today, to leave prison and find work, find a place to study, is difficult, practically impossible, no one will take you on ... (Head of department of education)

As Pertsova, the ex-head of the GUIN department for juvenile colonies, argued in 2002, 'the majority of them have nowhere to go, even those who have parents. No one is waiting for them at home, nor in the factories' (2002: 47).

The lack of cooperation between the agencies of the justice system and social welfare agencies, including educational institutions or employment agencies, accentuates the problem. 'In general we simply interact – from time to time,' said the Governor of a colony. An example of this interaction is the exchange of information and the supplying of documents. A representative of the youth police noted that they receive information from the correctional institutions after substantial delays: 'Sometimes we are notified six months [after the release], and sometimes we never receive anything...' (Head of youth police department).

There is only the undermanned and under-resourced Inspectorate of the Prison Service. In a few cities or towns, enterprising NGOs have stepped in to try to fill the hole left by the government. They work with the colonies, police or local authorities to support the kids on police record or released from colony. Projects include programmes to counter the isolation of the children in the colonies and prepare them and local institutions for their return to society. One of the most developed and successful of these is run by staff and students from Krasnoyarsk State University, who, with support from the regional leadership of FSIN, work with small groups of inmates both before their release and afterwards.³ Much depends upon the willingness of the governor of a colony or of the regional FSIN leadership to embrace innovations, and all involved recognize that such projects cannot do more than help small numbers of children. It seems that among the professionals and experts who work in or with FSIN, to a much greater extent than among their colleagues in the procuracy or courts, there is a recognition of how dysfunctional the reliance upon detention is, and of the need to reform the system as a whole. And this view is shared by

the majority of the public: children require a different treatment from adults.

I think that if we are talking of justice, we must have adults in mind: you committed a crime, you must bear the punishment. But in relation to children ... when they commit a crime, they are the ones who suffer most of all. In my view, they are the prime sufferers. (Deputy head for education in a special school)

A child ... even if he is a nasty little liar, steals and does all kinds of objectionable things, all the same we are seeing the results of someone else's work. What happens – at first something goes wrong in the nursery or in the family, the parents of course are ticked off, but it's the child who is locked up, it's he who has to serve a sentence. It turns out that as well as loading it all on him, he has to answer for it all as well. No one wants to help him, but to make him answer for it – all are willing to do that. (Activist, Memorial)

The view of the child as the victim of society is coupled with a strong state-welfare orientation.

Society is responsible for not giving youngsters legitimate ways of earning self-esteem. For example, through sport, success at school, etc. You can get top marks for an essay in school, you can stand out for your knowledge, and you can gain self-esteem on the street, you can gain self-esteem through being one of a gang of youngsters, you can gain self-esteem as a criminal. And why do it that way? Because there are no other ways open to you. (Psychologist, SIZO)

Public support for sentencing policy?

Present policies enjoy little public support. Again we draw from the 2004 survey.⁴ In answer to the question: *'In your view, ought one to impose such a sentence as detention upon a 15-year-old who has committed a non-violent crime? If you think one should, then what, in your view, ought to be the maximum period of detention for such a teenager?'* nearly half the respondents said detention should *not* be used, a quarter advocated for no more than three months, and a further 15 per cent for a maximum of one year.

The very limited support for custody was confirmed when respondents were presented with a series of individual cases (we cite a few examples), and a card of measures to choose from:

- A 15-year-old entered an apartment and stole money, valuables, a video-audio centre, and food. Which measures, in your view, should one adopt towards this teenager?
- A 15-year-old took a mobile phone and money off another. How, in your view, ought one to treat this young offender? And what if the 15-year-old is under the influence of alcohol or drugs?
- A 15-year-old boy attacked a pensioner returning from the Savings Bank, and made off with her handbag with money in it.
- A 15-year-old was arrested for selling drugs in school? Don't consider whether they were hard or soft drugs – the important fact is the selling of drugs in school.

This was the choice of measures:

- 1 Have a talk with the teenager and parent
- 2 Fine the parents, oblige them to repay the cost
- 3 Place on police register
- 4 Place in special school
- 5 Give a suspended sentence – custody for a further offence
- 6 Sentence to custody in a juvenile colony
- 7 Other measures (which?)

The results are tabulated in the accompanying table.

We note that the only offence for which even a quarter of the respondents would favour detention in a colony is that associated with drugs (but sending to a special school pushes the numbers up), and we see the anxiety about alcohol reflected in the two mobile phone cases. Maybe, when faced with this list of options, some people find an option they positively favour while others proceed by eliminating those that they positively *do not* favour (for example, detention) or that they think will not work (parental intervention) and end up choosing the police register because, after all, they think that *something* must be done. This could suggest that, if alternative measures were available (community service, reparations for damage, and a better use of fines) they would receive support. But Russian adults know

Preferences for action: five cases involving a crime by a 15-year-old who:

Appropriate action?	Sells drugs in school	Burgles flat	Attacks and robs pensioner	Robs youngster of mobile/ money when drunk	Robs youngster of mobile/ money when sober
Talk to child/ parents	4	3	2	3	7
Fine parents/ repay	—*	17	20	16	42
Put on police register	24	24	40	37	35
Special closed school	16	13	18	22	7
Suspended sentence (further offence will carry detention)	25	29	14	14	7
Detention in a colony	28	13	6	4	1
Other/difficult to say	3	2	2	4	2
Total	100	100	100	100	100

Note: * The 'fine' option was not included for this question, which may skew the results.

little of such measures: few had heard of juvenile justice, or restorative justice, and even in the two cities where there have been projects involving social workers working with judges, very few knew of them.

Respondents, given a list of options, were asked: *'In your view, which are the most important aims of today's justice system for young people? Choose, please, no more than three answers.'* They were then asked: *'And what in your view, ought to be the main aims of the justice system in relation to young people? A maximum of three answers...'*

They were also asked for their ratings of the institutions of the criminal justice system and the KDN: *'In your opinion how well or badly do you think the following institutions exercise their responsibilities towards young people?'* All were rated very poorly, with the police doing worst of all (62 per cent considered that they do a poor job), followed by the SIZO (46 per cent). The assessment of almost any government institution today is poor.

Russian views on the criminal justice system in relation to young people

Aims of today's justice system for young people:	Are:	Should be:	Disparity
To punish an offence	61%	40%	-19%
To isolate the offender from society	47%	19%	-28%
To deter the offender and others	26%	15%	-9%
To ensure that justice is done	25%	55%	30%
To show society's disapproval of the crime	20%	32%	12%
To re-educate the offender	24%	55%	31%
To compensate the victim for loss of property/damage	16%	30%	14%

These attitudes are distributed fairly evenly among the Russian population and do not depend upon standard social characteristics. How can we explain the support for a softer approach to young offenders? Are Russians simply reacting against what is still a harsh system (long sentences served far away from home) and have a low opinion of today's institutions, or do they think very differently about the virtues of punishment or about holding a child responsible for his or her actions? We take this up in chapter 7.

The majority of the Russian public would prefer softer, alternative sanctions. This should encourage reformers. Too uncritically, we suggest, politicians and academics have assumed that the public's punitive response to adult criminals extends to young offenders. But, as far as the treatment of children is concerned, it seems that it is the legislator who is lagging behind.

Explaining the stalling on reform

The post-Soviet government inherited a system whose procedures and practices inevitably send large numbers of children to serve sentences in colonies. Although damaging to the children and to society, the reluctance on the part of the political leadership, whether under Yeltsin or Putin, to introduce anything other than cosmetic reforms has been striking. Yeltsin placed a moratorium on the death penalty for adults but, with no personal commitment to reducing the level of incarceration, was not disposed to take up an issue that would do little for his popularity. Under Putin, amendments to the Codes initially promised lower custody figures, and Putin has himself

shown interest in juvenile justice reform, only to then back away, effectively stalling the process. How do we explain this?

In the early post-Soviet years, so many issues demanded attention, many higher up the list than justice for juveniles. The Soviet economy had stagnated, while capitalism in the west had forged ahead. The aspirations were for a better standard of living, travel abroad, open information, better social services, an end to party control over all activities, while retaining welfare provision. These issues took priority, and their realization proved unmanageable. Although the new 'democrats' and the 'communists' claimed to possess platforms for action, there were too many different, ill-thought-out ideas, and the political elite splintered, regrouped and took up different issues in an often erratic fashion. Yet this cannot suffice as an explanation. Reform has remained painfully slow or simply been blocked under the Putin presidency.

Almost everywhere the treatment of adult criminals, who are considered a far greater social danger, dominates decision-making on criminal policy. Russia is no exception. Policy towards young offenders has been driven primarily by policy towards adults, where a conservative attitude prevails. Despite occasional statements from political leaders, reform of the criminal justice system and the introduction of alternative sentencing policies have never been high on the political agenda. The young have, in the main, only benefited, marginally, from changes that had the adult population as their main focus.

In the 1990s, as crime rates rose, the public registered its concern with law and order, a majority believed harsh measures would deter crime or put criminals out of action, and the death penalty still enjoyed strong support. There were no leading politicians or Supreme Court judges anxious to make juvenile justice for children an issue. The new Codes (Criminal and Criminal Procedure) passed by the Duma in 1996 were sadly disappointing. The Supreme Court was cautious, the Ministry of Internal Affairs and the Ministry of Justice engaged in inter-ministerial infighting over the transfer of GUIN (the prison service and inspectorate) to the Justice Ministry, and serious budget delays or simply non-payment of assigned funds occurred. By 1998, with the transfer over, and Kalinin in charge, the GUIN leadership began to appear on shared platforms with the NGOs to argue the case for less imprisonment, but this received no support from the other law and order ministries. The majority of the justice officials – from police and prosecutors to judges and prison officials – continued to carry out their departmental roles in the ways to which they were accustomed, and with less funding.

In this inauspicious environment a small number of penal reformers have struggled to make themselves heard. Among them are activists, some with prison experience but not themselves lawyers, a few academic lawyers and criminologists. The reform community, and this is also relevant, is small and scattered. It cannot count among its members leading professors from Moscow and St Petersburg state universities (as could the pre-1917 reformers) nor Supreme Court judges. The sociological data are not there, nor an active community of criminologists. And, perhaps most disappointing of all, neither the corpus of judges nor representatives of the KDN have demonstrated any particular interest in reforming the system. Those among them who take up the cause can be counted on the fingers of one hand.

How much weight should we place upon the inheritance of the past? And which parts of the past? Russia's Stalinist past when labour colonies became part of the social landscape and children lost their entitlement to different treatment from adults or the stagnation of the Brezhnev period? The shadow of the past still lies over the present. It is not so much, I would argue, that the Stalinist Gulag bequeathed a system of labour colonies, long sentences and harsh conditions, which continued to exist throughout the Khrushchev, Brezhnev and Gorbachev periods as part of society. It is rather that the long period of Soviet rule produced a public, used to its exclusion from participation in decision-making ('I never thought,' said one the respondents to the survey, 'that anyone would be interested in my views on how to respond to juvenile crime') and which acquiesces in the continuation of harsh policies. The absence – since the period of Stalinist repression – of a tradition of political and social activism has allowed the conservatism of the government and judicial apparatus, which became ingrained in the Brezhnev period, to go unchallenged. In their turn the bureaucratic ministerial institutions find it almost impossible to conceive of a role for social or informal organizations outside of their control. Yet, at the same time, the Soviet past has bequeathed a belief in welfare as part of the state's responsibilities – a responsibility that it did not meet but one that it ought to – and this is particularly relevant in the case of children.

Had a stronger and more united community of experts and activists existed, possibly it could have persuaded political leaders and won parliamentary support for a change of direction in the reforming period of the early 1990s. However, the content of the Codes indicates that powerful conservative lobbies existed. The ministries, and the courts and procuracy, institutions in a system that has a bureaucratic core, settled firmly into their entrenched

positions and fended off unwelcome change. Voices calling for a properly funded system of social workers for young people and a probation service, for a follow-up system of reintegration into the community, and for the use of restorative justice approaches tend to hear their own echoes. The media has shown little interest in the topic.

Does this mean, to return to Kalinin's statement at the beginning of chapter 4, that the chances of introducing a more just and humane response to young law-breakers are receding into the distance? Not necessarily, we shall argue. The relationship between penal reform and the political environment is less straightforward than he implies. Kalinin is right if he wishes to emphasize that without free and open discussion, without expert input into policy-making and independent control over ministerial behaviour, an unaccountable and unenlightened government is more likely to drag its feet. Why, after all, should an executive act progressively and take on the inbuilt conservatism of the law and order ministries, especially if there is no pressure from below for change?

But, even in a democratic environment with an independent criminal justice system, and active campaigning organizations, elected politicians may pursue punitive policies. We have seen this happen in the United States and in England and Wales. If, in one environment, populist agendas from politicians fearful of losing elections may override expert and professional opinion, in another they may push forward a reforming agenda, sometimes with popular support or at least consent. The relationship between politicians, professionals and the public – in a democratic society – can take different forms, with different consequences. In Russia, however, reforms have come in undemocratic environments. The issue then becomes a rather different one. Does the present Russian policy-making (or political) environment have the potential for reform of the existing juvenile justice system? We turn to this in the final chapter.