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## THE LAW ENFORCEMENT BY THE BODIES OF CRIMINAL EXECUTIVE SYSTEM

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### THE CONCEPT AND GOALS OF EXECUTIVE PROBATION IN RUSSIA\*\*

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The subject of this study is the institute of executive probation in the context of an analysis of the legislative definition of this type of probation and its goals, as well as the possibilities and prospects for achieving these goals in practice.

The purpose of the article is to identify the main trends in the development of the institute of executive probation in Russia by analyzing the concept and objectives of this type of probation, and based on this, to propose directions for further improving the institute of probation and solving certain practical problems.

The research is based on a set of general scientific methods, such as systemic, functional and structural methods and private scientific methods (formal-legal and sociological methods).

Main results. Firstly, the author proposed a definition of the concept of executive probation, which includes a subjective feature (an indication of the categories of clients of executive probation), as well as an indication of the measures that can be applied to this type of probation. Secondly, the article defines the goals of executive probation, which include, in addition to those mentioned in the law, the goal of improving living conditions and the goal of stimulating law-abiding behavior among persons subject to probation. It is proposed to exclude the purpose of social rehabilitation.

Conclusions. The provisions of the Law on executive probation are valid for one year. The study of legislative regulation and law enforcement practice over this period of time made it possible to define the concept and goals of executive probation and, based on this, to establish those elements of the mechanism for the application of executive probation that primarily require qualitative study and improvement. Further study and development of the institute of executive probation is certainly necessary and justified, since it is socially significant and, in achieving the goals of probation, should lead to an improvement in the living conditions of probation clients and a reduction in recidivism.

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## 1. Introduction

On February 6, 2023, Federal Law No. 10-FZ 'On Probation in the Russian Federation' was adopted. This legislation marked a new stage in the study of theoretical and applied aspects of the development of social adaptation and resocialization of convicts and ex-offenders.

Prior to the adoption of this law, the introduction of probation in Russia had been a topic of debate among scholars and practitioners for several decades [1, pp. 36–42; 2, pp. 11–15; 3, pp. 18–25]. Attempts were made to develop and enact relevant legislation, which underwent public and academic scrutiny; however, these efforts were ultimately unsuccessful [4, pp. 98–100].

The social adaptation and resocialization of convicts remain a topic of significant attention and discourse within academic circles. Contemporary scholars have made notable contributions to the study of this issue, including V.A. Utkin [5; 6; 7], A.P. Skiba [8; 9; 10], N.S. Maloletkina [9], N.V. Olkhovik [11], P.V. Teplyashin [12], A.L. Agabekyan [13], M.R. Geta [14; 15; 16], A.I. Abaturov [17; 18], A.A. Korovin [17], and others.

Many studies primarily focus on either foreign experience of probation, or elements of resocialization and social adaptation of convicts that were in effect in Russia prior to the adoption of the aforementioned law. However, studies that address both the analysis of contemporary legal regulation and domestic probation practices are limited and fragmented.

The provisions of the Federal Law 'On Probation in the Russian Federation' regulating executive probation came into force on January 1, 2024. One year after its entry into force, the concept and objectives of executive probation can now be critically analyzed and other related aspects can be explored with regard to the initial experience of practical application of this law.

The subject of this study is the institution of executive probation, which includes the analysis of the legislative definition of this form of probation, its objectives, and the potential and prospects for practical achievement of these objectives.

The study employs general scientific methods, including system and functional-structural approaches,

logical methods (analysis and synthesis), as well as specific scientific methods of cognition (formal-legal and sociological methods).

The study uses data obtained by scholars in the field of executive probation, domestic probation legislation, and collected empirical data. The analysis of probation practices incorporates the results of the survey from probation officers and the study of 31 unique probation cases conducted in 2024 across two constituent entities of the Russian Federation (Tomsk Oblast and the Altai Republic).

Thus, the study provides a comprehensive analysis of the scientific and practical aspects of implementing executive probation, with a focus on its legal framework and initial results of enforcement practices. The study analyses the concept and objectives of this form of probation, and assesses the potential and prospects for practical achievement of these objectives. It addresses contemporary and socially significant issues, reflecting the current state of development of this institution.

## 2. Concept of executive probation

The legal definition of executive probation is articulated in Article 5 of the Federal Law 'On Probation in the Russian Federation.' According to Clause 2 of Part 1 of Article 5, executive probation is defined as a form of probation that constitutes a set of measures administered by corrective services. These measures are intended for individuals facing difficult life situations, serving non-custodial sentences (excluding those sentenced to fines as the primary penalty or forced labor), along with other criminal law measures.

The analysis of the aforementioned definition revealed several characteristics that define the content and features of executive probation:

1) executive probation is applied to convicts serving non-custodial sentences, as well as to those subject to other criminal law measures;

2) measures within the framework of executive probation are administered by corrective services;

3) substantive measures applied under executive probation are designed to achieve resocialization, social adaptation, and social rehabilitation, and to protect the rights and

legitimate interests of probationers (this characteristic is derived from the generic definition of probation in Clause 1, Part 1, Article 5 of the Federal Law).

The first characteristic for executive probation defines the categories of individuals who can be subject to executive probation supervision. This distinguishes executive probation from other forms of probation, as specific categories of individuals are established for each form of probation.

This characteristic may be misinterpreted due to the use of the term 'other criminal law measures'. In the Federal Law 'On Probation in the Russian Federation', this category carries the meaning that differs from that specified in the Criminal Code of the Russian Federation.

According to the Criminal Code of the Russian Federation, a literal interpretation of other criminal law measures refers to measures outlined in Section VI of the Criminal Code of the Russian Federation. The provisions of Articles 5 and 11 of the Federal Law 'On Probation in the Russian Federation' specify that other criminal law measures include suspended sentence, parole, deferred sentence, and other measures.

A number of scholars interpret the category of 'criminal law measures' both broadly and narrowly. As V.A. Utkin argues, the broad sense implies that any measure established by criminal law is, by its nature, a criminal law measure. In the narrow sense, criminal law measures are limited to those explicitly provided for by methods of criminal law; the author refers to these as criminal law measures [19, p. 95; 20, p. 188–189].

This approach suggests that any measure stipulated in criminal law may be referred to as criminal law measure as it is enshrined in criminal law [21, p. 70]. In this context, individuals specified in the Federal Law 'On Probation in the Russian Federation' who were subject to other criminal law measures are those receiving additional sanctions (beyond penalty) provided for by criminal law (suspended sentence, parole, deferred sentence, etc.). However, determination of the categories of individuals subject to executive probation must adhere to the specific list outlined in Part 1 of Article 11 of the Federal Law 'On Probation in the Russian Federation'. This list is closed and does not allow for a broad interpretation.

The next characteristic of executive probation

derived from the legislative definition is that executive probation measures are administered by corrective services [22, p. 14].

We argue, however, that this characteristic requires refinement, or more precisely, exclusion from the legislative definition of executive probation. Indeed, executive probation is largely implemented by corrective services [23, p. 92]. These institutions within the penal system evaluate the individual's specific needs, establish eligibility for assistance, and formulate individualized intervention programs. However, the probation activities may be provided by various probation entities. Article 6 of the Federal Law 'On Probation in the Russian Federation' specifies other probation entities, which include, in particular, state authorities of the constituent entities of the Russian Federation, state employment service agencies, social service organizations, and others.

The results of the analysis on executive probation practices in a number of constituent entities of the Russian Federation showed that the majority of the executive probation activities are carried out not only by corrective services, but also by other probation entities [24, p. 683]. The analysis of probation cases revealed that individuals most frequently required support in obtaining documents necessary for exercising their rights (36%), counseling on social and legal issues (21%), and employment assistance (11%). The individual needs criteria established for these individuals revealed the most in-demand activities, which include document restoration (typically identity documents), counseling, and employment assistance. These activities were not implemented directly by corrective services, but they were delivered through interdepartmental cooperation with internal affairs agencies and employment services.

Based on the analysis, we conclude that the provision, which specifies that a set of measures within executive probation is implemented solely by corrective services, is inaccurate and should be excluded from legislative definition of executive probation.

Thus, the current legislative definition of executive probation suggests essential characteristics that distinguish it from other forms of probation.

However, some of these characteristics may lead to ambiguous interpretation (for instance, the category of other criminal law measures). Therefore, the legislative definition of executive probation should be amended to align with the generic definition of probation while specifying a number of essential characteristics.

Based on the proposed approach, executive probation can be defined as a form of probation applied to individuals facing difficult life situations, as specified in Part 1 of Article 11 of the Federal Law 'On Probation in the Russian Federation'. This form of probation is implemented during the execution of non-custodial sentences and other criminal law measures, and represents a set of measures aimed at the resocialization and social adaptation of these individuals.

### 3. Objectives of Executive Probation

The objectives of the analyzed form of executive probation are not specifically outlined in the law; however, Article 4 of the Federal Law 'On Probation in the Russian Federation' outlines general objectives of probation, namely: correction of social behavior, resocialization, social adaptation and rehabilitation of individuals on probation, and recidivism prevention.

Since these objectives are formulated as the general objectives of probation, they can also be applied to executive probation. This section provides a deeper insight into some of these objectives.

With regard to the objectives of resocialization, social adaptation, and social rehabilitation for probationers, it is essential to first distinguish between these concepts and determine whether all of these objectives are applicable to executive probation.

These categories are not specified in relation to the aforementioned probation objectives; however, Article 5 of the Federal Law defines these as a set of specific measures.

It is evident that each of these categories can be considered both as a *process* (activity of implementing a set of measures) and as a *result* or an *objective*.

As defined by law, resocialization constitutes a set of socio-economic, pedagogical and legal measures aimed at reintegrating individuals sentenced to forced labor or incarceration and/or subjected to other criminal law measures back into society.

Based on this concept, resocialization, as an objective, implies the 'reintegration into society' of individuals on probation.

V.A. Utkin argues that the concept 'resocialization' has recently been widely used in the penal science and practice and is essentially derived from the concept of 'socialization.' The latter is understood as the process through which a person acquires positive social roles and relationships, assimilating a specific system of knowledge, skills, and values. V.A. Utkin defines resocialization as a 'return to socialization', that is discarding former behavior patterns and restoring positive socialties [5, pp. 75-80; 25, pp. 58-60].

By endorsing V.A. Utkin's opinion and considering the legislative definition of resocialization as a set of measures aimed at reintegrating of individuals into society, it can be concluded that convicts serving non-custodial sentences do not require resocialization. Consequently, the objective of resocialization for this category is unfounded in the context of executive probation. The logical consistency of this conclusion is substantiated by the fact that this category does not undergo social isolation, does not experience a rupture of social ties, and therefore does not require 'return to society.'

We assume that the objective of resocialization in the context of executive probation is somewhat limited and is appropriate only when applied to ex-offenders (for instance, convicts on parole).

The next objective established by law within the framework of probation is social adaptation of individuals on probation.

Social adaptation is legally defined as a set of measures aimed to help probationers take steps towards employment, and provide stable housing and other support fostering law-abiding behavior (Clause 6, Part 1, Article 5 of the Federal Law). In other words, social adaptation is the process by which individual adapts just to specific conditions within the social environment. As the objective of probation, social adaptation can be defined as the establishment of positive socialties (occupational, domestic, and other aspects) that ensure (or foster) their law-abiding behavior. Ultimately, social

adaptation measures are aimed at improving the living conditions of probationers, thereby encouraging their compliance with the law. In this context, the objective of social adaptation should be logically distinguished from the objective of social behavior correction to prevent conceptual redundancy.

In our view, the category ‘social rehabilitation’ specified in the Federal Law ‘On Probation in the Russian Federation’ is the most contentious and controversial.

As V.A. Utkin rightly notes, penal science and practice widely employ concepts that are similar in terminology but distinct in meaning: ‘resocialization,’ ‘correction,’ ‘social rehabilitation,’ and ‘social adaptation’ [5, p. 75]. Despite their incorporation into the Federal Law ‘On Probation in the Russian Federation,’ the improper application of these concepts creates terminological confusion. This, in turn, leads to setting of unrealistic and often unattainable objectives within penal policy.

Thus, the aforementioned assertions most accurately highlight the unacceptability and incorrectness of using the category of ‘social rehabilitation’ within the legal framework, particularly in setting it as the objective of probation.

As defined by law, social rehabilitation involves the restoration of lost social ties and functional capacities of probationers (Clause 7, Part 1, Article 5 of the Federal Law).

Thus, the restoration of lost social ties forms the core of resocialization, whereas the establishment of positive social ties is concerned with the mechanism of social adaptation.

The traditional interpretation of rehabilitation is the restoration of an unjustly violated legal or social status, good name, or reputation. This meaning is codified, in particular, in Article 5 of the Russian Code of Criminal Procedure, which defines rehabilitation as the procedure for restoring the rights and freedoms of an individual who has been illegally subjected to criminal prosecution, and for compensating for the harm caused. This definition, in turn, raises the question of the applicability of the concept ‘restoring one’s good name’ to a convicted criminal [5, p. 76; 25, p. 60].

We assume that the objective of social rehabilitation of probationers should be excluded from

the Federal Law ‘On Probation in the Russian Federation’. The measures designated as social rehabilitation should be logically redefined as aspects of social adaptation and resocialization.

Thus, an analysis of the objectives of executive probation yields the following conclusions.

- The categories of ‘resocialization,’ ‘social adaptation,’ and ‘social rehabilitation’ are employed by the legislator to denote a specific set of measures (process or activities) and to signify a desired outcome (objectives).

- The objective of resocialization within executive probation is limited in scope. Its pursuit is only justified for individuals who were previously imprisoned due to the imposition of a corresponding penalty.

- The objective of social adaptation can be defined as the establishment of positive social ties of individuals that improve their standard of living and ensure (foster) law-abiding behavior. Under this interpretation, and to eliminate conceptual redundancy, the objective of social adaptation can be logically consolidated with that of social behavior correction, as both are aimed at fostering law-abiding behavior.

- The objective of social rehabilitation should be excluded from probation legislation and the measures designated by law as social rehabilitation should be logically redefined as aspects of social adaptation (when establishing new social ties) and resocialization (when restoring lost social ties).

Thus, the objectives of executive probation include resocialization (for specific categories of convicts), social adaptation, improvement of living conditions, and encouragement of law-abiding behavior among probationers, as well as recidivism prevention.

Practical attainment of the stated probation objectives for cases with imposed probation that was initiated and completed within 2024 remains an open question. This is because a definitive objective appraisal of probation’s efficacy is inherently delayed and requires an extended post-implementation period. Nevertheless, the analysis of the studied cases indicates apposite effect of probation and the achievement of its objectives. The study results indicate that probationer shad their documents

necessary for social integration restored or issued (typically identity documents) in 9% of the studied cases. In 3% of the cases, employment was secured, and in an additional 3% of the cases, temporary accommodation was provided. In all the cases, probationers improved their living conditions, and the provided assistance contributed to their social adaptation and/or resocialization. Obviously, the efficacy of probation is largely determined by the motivation of probationers and the coordination among the probation entities involved. In this study, we have proposed specific measures for legislative defining the objectives of probation.

#### **4. Conclusions**

The analysis of the theoretical aspects and practical applications of executive probation yields the following conclusions.

1) The provisions of the Federal Law 'On Probation in the Russian Federation' governing the institution of executive probation were practically implemented within the first year of its entry into force. This is evidenced by documented cases of successfully completed executive probation in every constituent entity of the Russian Federation under the study. It can be asserted that the legislative framework for implementing executive probation is functional, although, in our view, it requires further refinement.

2) Based on the analysis of the legal definition of executive probation and identification of its shortcomings, the following definition is proposed: executive probation is a form of probation applied to individuals facing difficult life situations (Part 1, Article 11 of the Federal Law) while serving sentences not involving imprisonment and other criminal law measures, constituting a set of measures aimed at resocialization and social adaptation.

3) The objectives of executive probation are resocialization (for specific categories of convicts), social adaptation, improvement of living conditions, and encouragement of law-abiding behavior among probationers, as well as recidivism prevention. The objective of social rehabilitation is proposed to be removed from probation legislation.

This study has yielded some findings and recommendations regarding the legislative regulation and practical implementation of executive probation. These findings may serve as a basis for future research

and could prompt a more profound exploration of other aspects of the probation institution.

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