



## On Certain Conceptual Issues of the Scientific and Theoretical Model of Probation in the Russian Federation



**LARISA L. MALKOVA**

Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Vologda, Russia, pl-family@yandex.ru, <https://orcid.org/0000-0002-3968-8557>

### Abstract

*Introduction:* the article discusses some issues of the scientific and theoretical concept (model) of probation in the Russian Federation. The article analyzes its legal content, its relationship with other institutions of crime prevention and social support for the population. It is concluded that this institution is based on the rehabilitation/public protection model and probation itself is implemented beyond criminal liability, but is directly related to it. *Purpose:* based on the analysis of the problems of forming the probation institution in Russian legislation, to propose measures for its further improvement. *Methods:* formal-logical, system-structural and comparative-legal methods. *Results:* a number of problems in the area under consideration are identified and proposals are formulated (determining an appropriate relationship between legislative and subordinate levels of legal regulation, establishing the priority of administrative and legal norms in regulating the implementation of probation functions; legislative consolidation of algorithms for solving typical social problems of convicts and former convicts; improvement of the composition of probation subjects, ensuring proper proportionality in the legal consolidation of their powers and responsibilities; creation of a system of specialized post-penitentiary probation bodies based on regional institutions (centers) of social services for the population; improvement of scientific and methodological support for the activities of probation subjects; solving issues of professional training of personnel, involved in the implementation of probation functions). *Conclusions:* the interdisciplinary legal institution of probation has detailed legal regulations, but there are still problems to be addressed. To enhance efficiency of its implementation, it is required to further conduct research in the scientific and theoretical concept (model) of probation and integrate it into a unified system of crime prevention tools and the system of providing social assistance (support) to persons who find themselves in a difficult life situation.

**Key words:** administrative law; probation; re-socialization; social adaptation; social rehabilitation; prevention of offenses; interdepartmental interaction.

5.1.2. Public law (state law) sciences.

**For citation:** Malkova L.L. On certain conceptual issues of the scientific and theoretical model of probation in the Russian Federation. *Penitentiary Science*, 2025, vol. 19, no. 3 (71), pp. 320–327. doi 10.46741/2686-9764.2025.71.3.011.

### *Introduction*

With the federal law No. 10-FZ of February 6, 2023 “On probation in the Russian Federation” being implemented, issues of the functioning and development of the domestic probation system are increasingly becoming the subject of discussion at various scientific forums and in scientific publications. Issues related to the composition and individual powers of probation subjects, the formation of a system of their professional interaction, issues of technology and organizational and legal tools for implementing specific probation functions, solving various social problems of people in difficult situations are analyzed. At the same time, despite the fact that the basic federal law in this area has entered into force and its provisions are actively being implemented in subordinate legislation and law enforcement practice, the substantiation and development of the scientific and theoretical concept (model) of the probation institution are still of scientific interest and remain relevant for research. Conceptual approaches to meaningful and legal understanding of probation determine the essence of legislative regulation in this area, the industry affiliation and features of the legal construction of regulatory material, and, ultimately, the achievement of the goals set by the state when deciding to introduce probation institutions into the legal system. The conceptual provisions underlying the probation institution have a significant impact on its effectiveness, perception, level of responsibility and quality of implementation by government agencies of various departmental affiliations.

### *Legal content and goals of probation*

Probation in the legislation is defined as a set of measures applied to convicted persons, persons who have been assigned other measures of a criminal-legal nature, and persons released from institutions carrying out punishments in the form of forced labor or imprisonment, who find themselves in a difficult life situation, including re-socialization, social adaptation and social rehabilitation, protection of the rights, freedoms, and legitimate interests of these persons. The goals of probation are correction of social behavior, re-socialization, social adaptation and social rehabilitation of persons subject to probation, and prevention of new crimes. There are three types of probation

(penitentiary, executive and post-penitentiary), which differ in the composition and content of probation measures, the composition of the subjects implementing them, and the categories of persons to whom they apply. The initial premise in substantiating the idea of probation, its goals and content is to consider negative consequences of serving a criminal sentence in isolation from society, as well as various kinds of social problems that offenders have (breaking social ties, loss of social skills, etc.) as possible determinants of reoffending.

Thus, the content of probation as an interdisciplinary legal institution is determined by its goals. At the same time, it should be noted that the goals outlined in the federal law “On probation in the Russian Federation” are inherent not only in probation as such, since even before the adoption of this law they were set and implemented in relation to perpetrators within the framework of federal and regional social legislation, penal legislation and legislation on fundamentals of crime prevention. In fact, one could conclude that probation is, on the one hand, a means of preventing offenses regulated by the federal law No. 182-FZ of June 23, 2016 “On the fundamentals of the crime prevention system in the Russian Federation”, and on the other hand, a system of providing social assistance and other support to citizens in difficult situations regulated by the federal law of December 28, 2013 No. 442-FZ “On the basics of social services for citizens in the Russian Federation” and a number of other regulatory legal acts. Nevertheless, probation, in the sense in which it is provided for by the domestic legislator, has its own semantic content, which allows it to be institutionalized at the level of a separate federal law. Otherwise, it would only be a far-fetched, artificially created legal entity of intersectoral content, mechanically combining the already realized powers (functions) of social and other services.

Its content is based on the idea of systematizing work on re-socialization, social adaptation and rehabilitation in relation to a special category of subjects of law - convicts and persons released from prison who find themselves in a difficult life situation. The goals and content of probation are determined by the specifics of a difficult life situation of convicts (former convicts), which, in turn, are determined by char-

acteristics of this category of persons, such as complete or partial loss of skills to independently solve their own social problems, low social activity, insufficient level of legal awareness and legal culture, presence of psychological problems and often mental disorders, breakdown of socially useful ties, distrust of public authorities, as well as problems, related to stigmatization and social exclusion. At the same time, the federal law "On probation in the Russian Federation" does not position convicts and former convicts as special subjects applying for social assistance and support as a matter of priority and does not place them in a privileged position in relation to other categories of citizens who find themselves in a difficult life situation. Nevertheless, there is a special procedure for assessing their individual need for probation based on the application of specific assessment criteria developed taking into account characteristics of this category of people and their problems. It is worth noting that the law does not fix these evaluation criteria, this issue is regulated at the subordinate level, which does not seem to be fully justified from a legal point of view.

The main idea of probation is to create an integrated system of interaction between state authorities, local governments, public organizations and social service institutions in addressing issues of providing targeted social assistance to this category of citizens based on the introduction of a client-centered approach and a one-stop-shop social service technology. In other words, the purpose of adopting the federal law "On probation in the Russian Federation" was to focus the attention of state and non-state subjects of social rehabilitation activities on working with a special category of citizens, increasing their level of responsibility in this area, and legally consolidating the system of these subjects, their powers, administrative procedures, and professional interaction tools. Social (probation) events themselves are regulated by the norms of special social (labor, housing and other) legislation.

Speaking about the content of probation institution, it is also worth noting that probation is, on the one hand, a complex interdisciplinary legal institution regulated by the norms of various branches of law (administrative, labor, family, housing, social security law, etc.), and on

the other – an interdisciplinary phenomenon, the nature of which is not only legal, but also both psychological and pedagogical, social and economic in nature [1]. At the same time, it is the legal norms, primarily administrative, that determine the basis and content of probation.

#### *Features of the domestic probation model*

An appeal to foreign experience will help to better understand the essence of the scientific and theoretical concept (model) of the probation institution in the domestic legal doctrine. In particular, E.A. Sokolova and A.V. Tyumenev propose to divide the probation systems existing in European countries into four main types, each of which has a specific mission and goals:

- probation services based on the promotion of public measures and sanctions;
- probation services based on the model of assistance to the judicial system and effective judicial decision-making;
- probation services based on the rehabilitation/public protection model;
- probation services based on the model of punishment or enforcement of criminal law measures [2].

Identification of these types seems rather arbitrary, since in reality, foreign probation systems are usually presented in a mixed form and correspond to the characteristics of several of them at once. However, at the heart of such systems, one of the designated types can be distinguished as the leading one.

It seems to us that the domestic probation system correlates with the rehabilitation/public protection model, since it is based on social rehabilitation goals and the main system-forming principle is the principle of continuity and voluntariness in the application of probation. Probation in Russian legislation is not a measure of a criminal law nature or an activity for the execution of criminal penalties without isolation from society, it is not associated with the implementation of control and supervisory activities over the behavior of convicts, their performance of duties imposed by the court, restrictions and prohibitions, other sanctions and coercive measures, and also does not provide for such a function as pre-trial report preparation. The preventive purpose of probation stipulated by law is implemented mainly through social prevention measures (re-socialization, social adaptation and rehabilitation), as well as provision

of psychological and pedagogical influence on offenders. The largest number of applications from convicts contains requests for assistance in finding employment, receiving unemployment benefits, counseling on social and legal issues, providing temporary residence, and assistance in obtaining documents necessary to exercise their rights.

Probation abroad, on the contrary, is most often understood as an institution accompanying conditional imprisonment or postponement of a sentence, is associated with activities for the execution of alternative punishments to imprisonment, and with supervision by special authorities over the behavior of a convicted person, accompanied by the implementation of social correctional and social rehabilitation functions [3]. In the penitentiary systems of many countries, the probation service is the most important institution in the field of criminal justice and crime prevention, providing an opportunity to apply alternative types of punishment for committing a crime instead of actual imprisonment [4]. According to Recommendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules of January 20, 2010, probation relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender, that is, it is the state's reaction to the committed offense [5].

The analysis of scientific literature has shown that approaches to understanding probation among domestic researchers differ significantly: from defining it as an institution of criminal justice and crime prevention [6] to understanding it as a non-punitive form of neutralizing the causes and consequences of committing a crime, a special form of social responsibility, alternative to criminal and applied beyond criminal prosecution and penal activities [7]. We believe that the second approach was implemented in the federal law on probation in the Russian Federation.

Prior to the adoption of this law, the issue of adopting a law on post-penitentiary assistance to persons who have served their sentences in places of deprivation of liberty has been repeatedly raised in scientific circles [5]. Now the subject of probation provides for social rehabilitation and preventive activities in relation to various categories of persons who have violat-

ed the law. However, it should be borne in mind that probation does not apply automatically to all persons who are serving or have served their sentences due to the fact that its implementation, first, is not possible due to the limited forces and means of probation subjects and, second, is not always advisable, since it deprives the convicted person or the person who has served his/her sentence of the incentive to make independent decisions to return to a full-fledged life in society [1].

#### *Some problems of the probation institution in Russian legislation*

Analyzing conceptual approaches to the formation of the probation institution in Russian legislation, it is possible to point out a number of controversial points.

The first of them, in our opinion, is related to the justification of dividing probation into three types: penitentiary, executive and post-penitentiary. Here the question arises, whether the leading subject of probation (correctional institution, correctional center, criminal executive inspection) or the object of probation (convict/former convict) can fundamentally influence its goals and content? In principle, these are not different types of probation, but a single process implemented at different stages and by different entities. The only significant circumstance that allows us to talk about the possibility of distinguishing these types of probation is that penitentiary probation is carried out for all convicts serving sentences of imprisonment or forced labor, while for executive and post-penitentiary probation, according to Article 5 of the federal law "On probation in the Russian Federation", a prerequisite is a difficult life situation of a convict (former convict).

An analysis of the legislative norms allows us to conclude that the content of probation measures implemented within the framework of executive probation fully coincides with the measures of post-penitentiary probation (the legislator applied the corresponding reference to chapters 5 and 6 of the federal law "On probation in the Russian Federation"). Penitentiary probation, along with measures for social rehabilitation of convicts, preparation for release and obtaining social assistance, which are similar in content to and interrelated with post-penitentiary probation, provides for educational and psychological measures imple-

mented in accordance with penal legislation. At the same time, given that the domestic model of probation is implemented outside of criminal responsibility and on the basis of the principle of voluntariness (enshrined in law in relation to all types of probation), penitentiary probation, in our opinion, should not provide for the use of basic means of correction of convicts, which include educational work. It is worth mentioning that the goals of probation and penal legislation are similar in a certain part, however, penal activities are carried out by virtue of a court verdict (mandatory for the convicted person) and should not coincide with probation. Correction of a convicted person is the goal of criminal punishment, thus, it should not be enshrined in probation, given its social rehabilitation and voluntary nature. Hence, among the measures (directions) of penitentiary probation, the legislator should include, along with educational work, such basic means of correcting convicts as socially useful work, general education, vocational training and social impact, as well as medical care provision (in terms of treatment of socially significant or chronic diseases).

It seems that probation measures implemented at the penitentiary stage are only the initial stage of an integrated probation process, it is the support of a bridge designed to transfer a convicted person from places of deprivation of liberty, from a criminal environment to a free law-abiding society. Even the very names of penitentiary and executive probation seem to be not very successful in terms of terminology. In our opinion, it would be more logical and promising in practical terms to construct the regulatory material of the probation law in the context of algorithms (technologies) for solving typical social problems of people who are subject to probation, rather than individual types of probation, since the mechanisms for solving different social problems are fundamentally different. At the heart of each algorithm there should be a responsible executor responsible for the entire process of providing assistance in solving problems relevant to the profile of his/her activity, regardless of how and with the participation of which subjects they are solved.

It seems that pre-trial probation could claim the role of an independent type due to its specifics, but it is not provided for by domestic legislation.

The second point of discussion is the use of an approach that positions the institutions and bodies of the penal system of the Russian Federation (correctional institutions, correctional centers, criminal executive inspections) as key subjects of probation. In practice, most of the problems that make up the difficult life situation of a convicted person (former convict) are solved by specialists of other probation subjects (employment agencies, social service organizations, etc.). It seems that an employee of the institution executing sentences should be engaged at the initial stage of probation in the assessment of individual need, preparation of an individual plan and an individual card (entry) in the Unified Register of Persons subject to Probation, and subsequent transfer of the client (convict, former convict) to a third-party specialized service, which should be assessed from the perspective of probation effectiveness. At the same time, taking into account the specifics of the persons to whom probation is applied, the need to ensure continuity in working with convicts at the penitentiary and post-penitentiary stages, as well as the multiplicity of social and other problems they face, there is still a need for a single supervisory authority. The issue of departmental affiliation of this body can be solved in different ways.

As the third point of discussion, the legislator's approach to establishing the relationship between state and public participation in the probation system should be noted. Public organizations are not officially included in the number of probation subjects. Probation legislation assigns them the role of assisting in implementation, while assigning them the task of establishing probation centers. It seems that if the concept of probation presupposes primarily state participation in its implementation, then it is necessary to provide for broader government participation in the activities of such centers, including financing issues, or the creation of centers in the form of a budgetary social service institution [8]. Public organizations play a significant role in working with juvenile offenders, in organizing social, educational, cultural, educational and leisure activities. We believe that legislation should systematize and define in more detail the main areas of interaction with public associations in the process of solving probation tasks, the subjects and forms of



such interaction, as well as various procedural aspects.

The fourth problem of the non-punitive social rehabilitation model of probation, in our opinion, is that convicts (former convicts) who do not want to voluntarily participate in probation programs are actually excluded from this model, including because they refuse to cooperate with the administration of a criminal executive inspection [8]. This model is designed exclusively for positively motivated individuals or for so-called “convinced dependents” who are not accustomed to solving their problems on their own. Undoubtedly, there is a category of people who have firmly embarked on a criminal path, but there are also those who would like to break with an antisocial lifestyle, need help, but do not seek it for a number of subjective reasons. This problem deserves attention, since probation covers not only measures that imply solution of social problems (lack of housing, work, etc.) by convicts on their own by contacting the relevant social services on their own, but also by taking various socio-pedagogical and psychological measures, which is an important means of resocializing convicts and preventing repeat crime [8].

The fifth point of discussion should be recognized as the legislator’s ambivalent approach to the legal regulation of probation, which provides, along with the imperative consolidation of the powers of probation subjects in the law, the use of a dispositive method of legal regulation manifested in determining the role of local governments, commercial and non-profit organizations in the probation system, in transferring the regulation of many procedural issues of probation functions to the level of model agreements on cooperation between territorial bodies of the Federal Penitentiary Service of Russia and institutions, executing sentences in the form of imprisonment or forced labor, with employment agencies, educational, medical and other organizations. As of the end of 2024, the territorial bodies of the Federal Penitentiary Service of Russia concluded 980 cooperation agreements with probation subjects. Correctional facilities and correctional centers concluded 3,106 agreements, including 900 with institutions in the field of employment, 564 with educational institutions and 1,642 with other organizations.

Given the very meaning of adopting the federal law “On probation in the Russian Federa-

tion”, it seems advisable to regulate the implementation of probation functions through the adoption of appropriate administrative and legal procedures (administrative regulations) rather than cooperation agreements, for example, in the form of joint interdepartmental orders or a single regulatory legal act – a resolution of the Government of the Russian Federation [9].

Among the so-called bottlenecks of the domestic probation model is the problem of ensuring proper parity of the social rights of convicts and persons released from prison with the social rights of other categories of citizens who find themselves in a difficult life situation. As noted earlier, the law on probation does not position convicts (former convicts) as a special privileged category of citizens in need of social support (assistance) and does not provide for the allocation of additional funding to solve their social problems. However, the implementation of the norms of probation legislation and the goals set forth therein requires the creation of special units in the structure of bodies and institutions of the penal system of the Russian Federation, the development and implementation of a specialized state information system for registration of persons subject to probation, as well as the adoption of a number of other measures that are provided at the expense of budgetary funds. In this regard, the issue of balancing the social rights of convicts (former convicts) with the rights to social protection, support and assistance of other (law-abiding) categories of citizens who find themselves in a difficult life situation remains relevant.

Finally, some authors note that probation, being a complex intersectoral legal institution, includes a wide range of issues related to both the exclusive jurisdiction of the Russian Federation and the joint jurisdiction of the Russian Federation and its subjects, which reflects the principle of federalism in its organization, the logical development of which is a system of legislation covering normative legal acts of both federal and regional levels [1]. Undoubtedly, legal regulation of probation issues provides for the framework consolidation of this legal institution at the level of federal legislation (federal law “On probation in the Russian Federation”, orders on model agreements on cooperation of probation subjects, etc.) and more specifically at the level of regional and local regulatory legal acts

(creation of interdepartmental working groups on probation and others). At the same time, this statement is rather controversial in terms of exclusive jurisdiction of the Russian Federation, since the domestic legislator positions the probation institution as a set of social rehabilitation measures and does not consider it as a criminal law measure or the main means of correcting convicts. Probation issues are not regulated by the norms of criminal (penal, criminal procedure) legislation under the exclusive jurisdiction of the Russian Federation, although they fall within the purview of bodies and institutions of the penal system. The presence in the law of norms referring to penal legislation in the implementation of educational, social and psychological work with convicts (articles 13, 14) seems to be a conflict rather than a well-thought-out legal construction, taking into account the principle of voluntary probation (Article 3).

#### *Ways to improve the probation institution*

Based on the analysis of the above-mentioned problems of the content of the scientific and theoretical concept (model) of probation in Russia, a number of promising areas for its further improvement can be identified:

1. Determining the appropriate relationship between legislative and subordinate levels of legal regulation of probation issues (for example, consolidation of assessment criteria for individual need in law).

2. Establishing the priority of administrative and legal norms in regulating the implementation of probation functions through the adoption of appropriate administrative procedures as an alternative to concluded agreements on interdepartmental cooperation.

3. Excluding reference norms to penal legislation from the law on probation. We believe it is necessary to distinguish more clearly between probation measures and measures implemented in the framework of the execution of criminal punishment taking into account the accepted social rehabilitation model of understanding the content of probation.

4. Fixing algorithms (technologies) for solving typical social problems of persons in respect of whom probation is applied in the law on probation.

5. Improving the composition of probation subjects (by distinguishing between subjects that perform policy-making and regula-

tory functions in this area (federal ministries and federal services) and subjects that actually perform probation functions (employment agencies, social service institutions, probation centers, medical institutions, educational organizations, etc.) by supplementing the list of probation subjects with local government bodies, municipal institutions, public organizations, etc.), as well as ensuring proper proportionality in the legal consolidation of their powers and responsibilities (currently, only the powers of institutions executing criminal penalties have received detailed regulation).

6. Creating a system of specialized post-penitentiary probation bodies based on regional institutions (centers) of social services for the population.

7. Improving scientific and methodological support for the activities of probation subjects, solving issues of professional training of personnel involved in the implementation of probation functions.

#### *Conclusion*

Summing up the research, it can be concluded that the intersectoral legal institution of probation in the Russian Federation is based on the rehabilitation/public protection model, which provides for the achievement of the goals of correcting social behavior, re-socialization, social adaptation and social rehabilitation of persons subject to probation, and preventing them from committing new crimes through a complex of social rehabilitation, preventive and other measures applied on a voluntary basis outside of criminal prosecution and penal activities. An integral part of the institution of probation is the organizational and legal mechanism of its implementation fixed in the legislation - the system of probation subjects, their powers and tools of professional interaction. The implementation of probation is regulated at the federal, regional and local levels by legal norms of various industry affiliations and is carried out on a multi-subject basis with the participation of both state and non-state organizations. The Russian concept (model) of probation is based on the experience of foreign countries in the field of re-socialization of persons convicted of crimes, representing a complex interdisciplinary phenomenon and an integrated legal institution based on the norms of administrative law.

## REFERENCES

1. Babayan S.L., Ustinov A.A. Assistance in the restoration and strengthening of social ties to persons subject to probation: legal and organizational issues. *Penitentsiarnaya nauka = Penitentiary Science*, 2024, no. 3 (67), pp. 279–288. (In Russ.).
2. Sokolova E.A., Tyumenev A.V. Constitutional and legal aspects of regulation of the probation system in Russia. *Chelovek: prestuplenie i nakazanie = Man: Crime and Punishment*, 2024, no. 2, pp. 175–183. (In Russ.).
3. Karoli B. Alternative measures of criminal punishment. In: *Al'ternativy tyuremnomu zaklyucheniyu v Respublike Kazakhstan: materialy mezhdunar. konf.* [Alternatives to imprisonment in the Republic of Kazakhstan: proceedings of the International Conference]. Moscow, 2000. Pp. 67–68. (In Russ.).
4. Mel'nikova O.V. The probation service is a priority area for the development of the penitentiary system of the Russian state. *Pravo i gosudarstvo: teoriya i praktika = Law and the State: Theory and Practice*, 2021, no. 11 (203), pp. 220–222. (In Russ.).
5. Golodov P.V. Probation in the Russian Federation: some problems of the content and legal regulation. *Penitentsiarnaya nauka = Penitentiary Science*, 2022, vol. 16, no. 2 (58), pp. 194–203. (In Russ.).
6. Luzgin S.A. Probation service of the Federal Penitentiary Service: scientific and practical approaches to the formation and organization of activities. In: *V Mezhdunarodnyi penitentsiarnyi forum "Prestuplenie, nakazanie, ispravlenie": sb. tez. (g. Ryazan', 17–19 noyabrya 2021 g.): v 9 t. T. 5* [V International penitentiary forum "Crime, Punishment, Correction": collection of theses (Ryazan, November 17–19, 2021): in 9 volumes. Volume 5]. Ryazan, 2021. Pp. 344–347. (In Russ.).
7. Dvoryanskov I.V. Prospects for the implementation of the probation system in Russia. In: *V Mezhdunarodnyi penitentsiarnyi forum "Prestuplenie, nakazanie, ispravlenie": sb. tez. (g. Ryazan', 17–19 noyabrya 2021 g.): v 9 t. T. 1* [V International penitentiary forum "Crime, Punishment, Correction": collection of theses (Ryazan, November 17–19, 2021): in 9 volumes. Volume 1]. Ryazan, 2021. Pp. 114–120. (In Russ.).
8. Golodov P.V., Chetina A.A. Certain problems of legal regulation of interaction between subjects of re-socialization, social adaptation and social rehabilitation of persons registered with the criminal executive inspection. *Evrasiiskii yuridicheskii zhurnal = Eurasian Law Journal*, 2024, no. 12 (199), pp. 479–481. (In Russ.).
9. Ol'khovik N.V. Legal issues of applying executive probation. *Ugolovnaya yustitsiya = Russian Journal of Criminal Law*, 2024, no. 23, pp. 88–91. (In Russ.).

## INFORMATION ABOUT THE AUTHOR

**LARISA L. MALKOVA** – Candidate of Sciences (Economics), Associate Professor, associate professor at the Department of Humanities and Socio-Economic Disciplines of the Law Faculty of the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Vologda, Russia, pl-family@yandex.ru, <https://orcid.org/0000-0002-3968-8557>

*Received May 28, 2025*