



Juvenile Probation in the Republic of Kazakhstan and the Kyrgyz Republic: Key Features in Penal Legislation

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Abstract

Introduction: the article considers penal legislation and special regulatory legal acts in the field of juvenile probation (probation for minors) in the Republic of Kazakhstan and the Kyrgyz Republic. It describes the regulatory content of juvenile probation in these states and compares it with the domestic legislation. *Purpose:* to determine possibilities of implementing the provisions of Kazakh and Kyrgyz penal legislation on probation in the Russian penal legislation. *Methods:* dialectical, formal-logical, comparative-legal, etc. Results: it is established that the penal legislation of the Republic of Kazakhstan and the Kyrgyz Republic in the field of juvenile probation (probation for minors) has significant differences from the penal legislation of the Russian Federation. The content of juvenile probation is fixed in the penal codes of these countries and special laws on probation. Types, forms, subjects and principles of juvenile probation are assessed. The absence of significant provisions of the Russian penal legislation in relation to juvenile probation issues is revealed. Proposals on the implementation of legislation in the field of juvenile probation of the Republic of Kazakhstan and the Kyrgyz Republic in the penal legislation of the Russian Federation are formulated. *Conclusions:* the comparative legal analysis of the probation legislation of the Russian Federation and other countries indicates differences in approaches to the legal consolidation of implementation in practice. One of these differences is the legislative consolidation of probation for minors, or juvenile probation, in the republics under consideration and its absence in Russia. Codified acts define the basis of the institution under study. At the same time, special regulatory legal acts on probation complement its content and define its features. In the Russian Federation, the legal regulation of probation is currently based only around a special probation law. It seems that this approach leaves room for improvement. The implementation of legislation on probation in the Republic of Kazakhstan and the Kyrgyz Republic, including in relation to minors, provides for its division into types (pre-trial, sentencing, penitentiary, post-penitentiary). In this case, pre-trial probation is a type of probation that is not available in the Russian Federation. Determination of minors as specified categories of probation clients should become an absolute guideline in the Russian legislation in the future. In our opinion, the existence of a separate chapter in the legislation of the Kyrgyz Republic regulating the use of juvenile probation is a priority for the development of domestic legislation in

the field of probation. We consider the consolidation of educational influence on minors during the period of executive and post-penitentiary probation in the Kyrgyz Republic to be the right step due to the fact that this area of probation is not legally regulated either in the Republic of Kazakhstan or in the Russian Federation. Special attention in our country should be directed to the implementation of the priority of educational measures over coercive ones. The possibility of such an implementation has yet to be evaluated. The improvement of juvenile probation in the Russian Federation should follow the path of expanding the types of probation, its subjects, and the mechanism of implementation.

Key words: juvenile probation; juvenile convicts; correction; re-socialization; probation control (supervision); social and legal assistance; educational impact.

5.1.4. Criminal law sciences.

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Introduction

The institution of probation widespread in many countries has a serious scientific and practical basis with appropriate legal regulation [1, pp. 195–196; 2, p. 204]. It varies in legal regulation methods, implementation mechanisms, work with clients in respect of whom it operates, and other issues [3, pp. 4–6]. These issues have been repeatedly discussed in the legal literature [4, p. 226; 5].

The federal law No. 10-FZ of February 6, 2023 “On probation in the Russian Federation” legislatively established probation in Russia. At the same time, a comparative legal analysis of probation legislation in different countries indicates differences in approaches to the legislative consolidation of types of probation and implementation in practice [6, p. 16]. One of these differences is the use of probation for minors, or juvenile probation. In domestic legislation, this area is not singled out separately, probation for minors is implemented on a common basis with other categories of persons covered by it. This underscores the need to revise the legislative approach in line with the evolving criminal and penal policy of the state, with priority given to preventing juvenile delinquency [7, pp. 55–56]. At the same time, one of the ways to resolve this issue may be a comparative legal analysis of probation legislation in the CIS countries, which is close to domestic legislation.

The Republic of Kazakhstan and the Kyrgyz Republic were among the first CIS countries where probation for minors was legislated. Today, both legislation and the practice of applying juvenile probation have actually been formed there. These

facts indicate the possibility of their use in law-making and law enforcement activities in the field of probation for minors in the Russian Federation, which determines the relevance of the publication, its novelty, theoretical and practical significance.

Results

It should be noted that in the Republic of Kazakhstan and the Kyrgyz Republic, the implementation of probation for minors is stipulated both by penal codes and special laws on probation [8–11]. In our opinion, this legislative technique is justified, since it formally includes probation in the sphere of penal legislation and relevant legal relations, which indicates the possibility of reflecting the content of probation in the Criminal Code of the Russian Federation, where it has not been consolidated. This issue has been repeatedly highlighted in the legal literature [12, p. 74].

In particular, probation control in relation to minors is fixed in Article 20 of the Penal Code of the Republic of Kazakhstan. It is carried out by the probation service in relation to those sentenced to probation and to punishment in the form of restriction of freedom. In addition, the code identifies the police as an additional subject of probation control over minors released on parole from places of detention, as well as in relation to persons who have been assigned compulsory educational measures. Part 2 of Article 20 of the Criminal Code of the Republic of Kazakhstan explicitly provides for the registration of a minor by the probation service or the police only in the presence of parents (legal representatives), and in some cases a teacher or

psychologist. Mandating the involvement of parents (legal representatives) and specific professionals (teachers, psychologists) demonstrates the ongoing implementation of juvenile justice and probation frameworks in Kazakhstan.

Besides, when minors are wanted and detained, the probation service immediately summons parents (legal representatives) to interview and establish the reasons and conditions that contributed to evading punishment. Employees of the probation service together with representatives of the guardianship authority conduct a quarterly survey of the housing conditions of minors.

It is worth noting that the Penal Code of the Republic of Kazakhstan regulates other elements of probation control in relation to minors (Article 21). In particular, they must periodically report to the probation service, provide a report on their behavior, participate in preventive conversations, and inform about a change of residence.

As for probation control over minors on the part of the police, the Penal Code of the Republic of Kazakhstan establishes its implementation on a common basis with adult convicts. It provides for the personal registration of minors, the use of electronic tracking devices, and directing minors to local executive bodies, public associations and other organizations for social and legal assistance (Article 169 of the Penal Code of the Republic of Kazakhstan).

In addition to probation control, the content of probation for minors also includes the provision of social and legal assistance to them within an individual work program. Key elements of this program are aimed at strengthening positive social ties of convicts and assisting released persons in returning to an independent life in society (re-socialization). A psychologist diagnoses individual psychological characteristics of each minor's personality and provides psychological assistance in adapting to punishment conditions and social environment, optimizing interpersonal relationships, as well as preparing for release (Article 125 of the Penal Code of the Republic of Kazakhstan). Additionally, we note that when preparing a minor for release from serving a sentence of imprisonment (6 months in advance), the correctional institution administration notifies the probation service about this. This provision is absent in the Russian penal legislation, as well as the provision that probation officers may accompany a minor under the age of sixteen to his/her place of residence (Article 167 of the Penal Code of the Republic of Kazakhstan). These measures

generally demonstrate their effectiveness. Positive and negative aspects of the implemented probation measures have been widely covered in the legal literature of the Republic of Kazakhstan [13, pp. 3–8; 14, pp. 4–6; 15, p. 67].

The Penal Code of the Kyrgyz Republic also regulates the specifics of probation supervision of minors. At the same time, unlike the penal legislation of the Republic of Kazakhstan, in the Kyrgyz Republic, social workers or other representatives of specialized child protection agencies, as well as employees of the department of juvenile affairs, may additionally be involved in probation supervision of minors (Article 167 of the Penal Code of the Kyrgyz Republic). In our opinion, this legislative approach seems the most effective. We share G.B. Zhunushova's point of view on this issue [16, p. 93] and consider it possible to propose this approach to implementation in the Russian Federation.

Additionally, the Penal Code of the Kyrgyz Republic establishes the obligation of the probation authority and guardianship authorities to check the living conditions of minors on a quarterly basis, with the results recorded in the examination report (Part 2 of Article 167). In addition, with positive results of correction (re-socialization) and full compensation for damage, the probation supervision period may be shortened after half of its term (Part 3 of Article 167). According to other provisions regarding probation supervision, the Penal Code of the Kyrgyz Republic is in many ways similar to the provisions of the Penal Code of the Republic of Kazakhstan.

The analysis of juvenile probation in the penal legislation of the Republic of Kazakhstan and the Kyrgyz Republic indicates that the codified acts define the basis of the institution under study. At the same time, special regulatory legal acts on probation supplement its content and define its features [17, p. 299; 18, p. 272]. It seems advisable to consider them, since in the Russian Federation the legal regulation of probation is currently based only around a special law.

The law of the Republic of Kazakhstan No. 38-VI of December 30, 2016 "On probation" regulates its content and the specifics of its application to minors by type of probation (pre-trial, sentencing, penitentiary, post-penitentiary). In this case, pre-trial probation is a type of probation that is not available in the Russian Federation. We consider this fact to require additional scientific research and, as the practice of probation develops, a possible legislative solution in Russia. The specifics of probation for minors include

mandatory consideration of individual and age characteristics, involvement of the family in basic activities with a registered person, organization of interaction with guardianship authorities, organizations performing functions to protect the rights of the child, individual citizens (specialists, experts, etc.), public associations and other legal entities.

Separately, Article 19 of the law "On probation" notes the procedure for probation control in relation to minors. In many ways, this procedure is expressed in the form of reference norms to the mentioned above provisions of the Penal Code of the Republic of Kazakhstan. However, there are features that need to be specified separately. In particular, it is noted that a quarterly check of housing conditions is required in relation to a minor [19, pp. 35–36]. This function is assigned to the probation service together with representatives of the guardianship authority of the minor with the preparation of an examination report. We have already noted the consolidation of a similar function in the Penal Code of the Republic of Kazakhstan. In this case, it is reflected in the law of the Republic of Kazakhstan "On probation", which confirms the possibility of its use in the Russian Federation.

The law of the Kyrgyz Republic of February 24, 2017 No. 34 "On probation" in relation to minors also contains important provisions that require analysis and assessment in the context of the topic under consideration. Firstly, it should be noted that minors are identified as a specified category of probation clients. They are subject to sentences that do not involve isolation from society, as well as compulsory measures of a criminal-legal nature, in particular, compulsory educational measures and restrictions on behavior with a warning (Article 5). This classification enables the determination of the probation client's category and the key areas around which probation activities will be organized. Obviously, the use of criminal punishment without isolation from society and compulsory educational measures in the Russian Federation will be different, but the fact of referring minors to probation clients is important. Besides, in the Kyrgyz Republic, additional social survey of minors is conducted as part of making a probation report and preparing minors for parole.

In connection with the classification of minors as a specified category of probation clients, the law "On probation" has a separate chapter "Juvenile probation", which stipulates that juvenile probation is carried out in order to ensure the rights and legitimate interests of minors, prevent them from

re-committing offenses, ensure the effectiveness of the psychological and pedagogical process, as well as their resocialization and reintegration to the society [20, p. 22; 21, p. 35–37]. The presence in the legislative act of a separate chapter regulating the use of juvenile probation, in our opinion, is the main thing that the Russian legislator should pay attention to in the field of probation. We believe that this legislative technique can be adopted for implementation in the Russian Federation.

The application of juvenile probation in the Kyrgyz Republic is carried out in compliance with the following principles:

- 1) mandatory participation in juvenile probation of parents, legal representatives, guardians, trustees, authorized state bodies for the protection of children and the public;
- 2) a psychological and pedagogical approach to activities conducted with minors, involving appropriate specialists;
- 3) specialization of probation authorities (officials) in working with minors;
- 4) carrying out activities for minors separately from other probation clients;
- 5) ensuring access to social and legal services provided.

The Law "On probation" separately regulates activities of juvenile probation:

- 1) resocialization and personality formation;
- 2) promoting life skills, law-abiding, healthy lifestyles, generally accepted values and rules of behavior in society;
- 3) development of independence;
- 4) development of family and community capabilities for preventing children from getting into a difficult life situation;
- 5) getting an education;
- 6) provision of social housing and assistance.

In addition, it is noted that probation for minors is based on a socio-psychological study of the client's personality and implies exerting a psychocorrective effect on him/her to change moral and value orientations and develop internal self-esteem and motivation for positive changes and participation in the individual program of social and legal assistance.

The following work with minors is carried out:

- 1) establishing and maintaining socially useful and permanent ties with their parents, relatives or legal representatives, as well as other persons who have a positive influence on them;
- 2) ensuring and developing capabilities of the family and the social environment to provide them with the necessary assistance;

3) eliminating the causes of homelessness and neglect of minors;

4) taking measures provided for by law to prevent and suppress the facts of family violence against underage clients of juvenile probation;

5) establishing guardianship, assisting adoption of minors;

6) ensuring training in a special educational organization;

7) providing social housing (dormitories) for underage orphans released from juvenile correctional facilities.

It is noted that the plan and program for minors are subject to periodic review, taking into account the results of monitoring them.

The provisions of juvenile probation in the Kyrgyz Republic should be considered in more detail.

First of all, let us focus on the educational impact on minors during the period of executive and post-penitentiary probation (Article 15 of the law "On probation"). This area of probation is legally regulated neither in the Republic of Kazakhstan nor in the Russian Federation. It should be noted that the educational impact is carried out not only on minors, but also on all probation clients and is aimed at promoting generally recognized and well-established rules of behavior in society (law-abiding behavior) and moral values, raising educational and cultural levels, focusing on independent solution of problems, as well as forming awareness of the illegality of the offense committed in probation clients.

The main forms of educational impact on minors are conducting preventive conversations, participating in public events, informational and cultural educational events (informing about the risks of socially significant diseases and the consequences of illegal behavior, promoting a healthy lifestyle), organizing lectures, trainings, and seminars.

Non-profit organizations, relatives, volunteers and other persons who have a positive impact on the behavior of minors are involved in educational activities. These activities are carried out without interrupting work, studies and activities provided for in the individual program of social and legal assistance.

Attention is also drawn to the provision that establishes the priority of educational measures over coercive ones. This is a unique case in penal practice (Part 6 of Article 15 of the law "On probation"). The possibility of its implementation in the Russian Federation has yet to be assessed.

Assistance in the rehabilitation and socio-legal

assistance to minors as probation clients in the Kyrgyz Republic is largely similar to the programs in the Republic of Kazakhstan and the Russian Federation. However, certain provisions of the law "On probation" are worth noting. Thus, social assistance to minors is provided in accordance with an individual program of social and legal assistance. The provision of social services to minors is carried out within the framework of the state social order. In addition, minors are assisted in obtaining benefits, compensations, and medical insurance. If necessary, they are registered with the social security and health authorities (Article 25). Additionally, minors are provided with counseling on social services and assisted in completing the necessary documents. To determine disability, probation clients, including those in correctional institutions, undergo a medical examination at a specialized medical organization.

The program of social and legal assistance to minors provides for the restoration and formation of socially useful relationships (Article 26) in order to form a new system of attitudes, norms and values, appropriate skills of social behavior, and improve the social status of minors. Probation authorities assist in strengthening positive social ties between minors and their families, relatives, persons who have a positive impact on the behavior of minors, labor collectives, educational institutions, and non-profit organizations. Non-profit organizations, relatives of minors and other persons who have a positive influence on their behavior are also involved in this work.

Provisions on the implementation of psychological assistance to minors (Article 18) can be singled out separately. So, initially, information and analytical work is organized to establish socio-psychological characteristics of these individuals and to identify their needs for psychological assistance.

Forms of psychological assistance include conducting individual and group psychological trainings on psychocorrective therapy aimed at changing moral and value orientations, overcoming aggression, interpersonal problems, reconciliation with victims, individual psychological work, and forming motivation to participate in special medical programs. This area of work is actively developing in Russia and the specified provisions of the Kyrgyz legislation on probation can certainly be used in the domestic legislation and the practice of implementing the relevant types of probation.

Getting education stands out in Kyrgyz probation programs for minors (Article 22). Thus, minors are

assisted in obtaining basic general, secondary general and secondary vocational education. Teenagers enroll in special educational institutions to receive basic general and secondary general education on a voluntary basis. Having a criminal record is not a reason for refusing admission to these organizations. Training is carried out on a common basis with other students. If necessary, documents for education are restored to minors, and special dormitories are provided for their stay. During the period of study, state educational organizations monitor minors' behavior and training. They immediately notify the probation authorities about non-fulfillment of the curriculum and negative behavior.

Conclusions

The comparative legal analysis of probation legislation of the Russian Federation and other countries indicates differences in approaches to the consolidation of types of probation and its implementation in practice. One of these differences is the legislative consolidation of probation for minors (juvenile probation) in the Republic of Kazakhstan and the Kyrgyz Republic and its absence in the Russian Federation.

The assessment of juvenile probation in the penal legislation of the Republic of Kazakhstan and the Kyrgyz Republic indicates that the codified acts define the basis of the institution under study. At the same time, special regulatory legal acts on probation complement its content and define its features. In our opinion, this legislative technique is justified, since it formally includes probation in the sphere of penal legislation and legal relations, which indicates the possibility of reflecting the content of probation in the Penal Code of the Russian Federation, where it has not been consolidated. In the Russian Federation, the legal regulation of probation is currently based only around a special probation law. So, this approach could be improved.

The implementation of the legislation on probation in the Republic of Kazakhstan and the Kyrgyz Republic, including in relation to minors, provides for its division into types (pre-trial, sentencing, penitentiary, post-penitentiary). Pre-trial probation is not available in the Russian Federation. We consider this fact to require additional scientific research and, as the practice of probation develops, a possible legislative solution in the Russian Federation;

The recognition of minors as a distinct category of probation clients should be established as a guiding principle in Russian legislation. This would

enable the clear identification of the probation client category and the key areas around which probation activities should be structured.

It is reasonable to fix a separate chapter in the law regulating the use of juvenile probation in the Russian Federation.

We consider the consolidation of educational influence on minors during the period of executive and post-penitentiary probation in the Kyrgyz Republic to be the effective measure, since this area of probation is not legally regulated either in the Republic of Kazakhstan or in the Russian Federation.

The penal legislation of the Republic of Kazakhstan and the Kyrgyz Republic identifies additional subjects of probation control (supervision) over minors in the form of various divisions of internal affairs bodies (police), social workers or other representatives of specialized child protection agencies. In our opinion, this legislative approach should be proposed for implementation in the Russian Federation.

The mechanisms for the implementation of juvenile probation in the Republic of Kazakhstan and the Kyrgyz Republic, in particular participation of parents (legal representatives), teachers or psychologists, may be applied in the activities of criminal executive inspections of the Federal Penitentiary Service of Russia.

The following experience of the Republic of Kazakhstan and the Kyrgyz could be also used in Russian practice: the probation service fulfills additional duties of searching and detaining minors in terms of contacting parents (legal representatives) to interview and establish the reasons and conditions that have contributed to evasion from serving sentences, as well as checking minors' housing conditions and making an examination report.

We back the legislative approach of the Republic of Kazakhstan that the correctional institution administration notifies the probation service about preparing a minor for release from serving a sentence of imprisonment 6 months in advance. The Russian penal legislation lacks such a provision, as well as the one stipulating that probation officers may accompany a minor under the age of sixteen to his/her place of residence.

We believe that a practical approach in terms of mandatory consideration of the individual and age characteristics of minors, involving the family in the main activities, organizing interaction with guardianship authorities, organizations responsible for the protection of children's rights,

individual citizens (specialists, experts, etc.), public associations and other legal entities should be taken into account, while improving the laws and regulations of the Russian Federation in the field of probation.

Special attention in the Russian Federation should be directed to the implementation of the priority of educational measures over forced ones. The possibility of such an implementation in the Russian Federation has yet to be assessed.

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