



Some Issues of Assessing (Determining) Individual Need of Persons in respect of Whom Executive and Post-Penitentiary Probation is Applied

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Abstract

Introduction: the initial stage of probation presupposes determination (assessment) of individual needs of a person who has applied for assistance in re-socialization, social adaptation and social rehabilitation, in order to identify whether he/she has a difficult life situation and identify specific measures to overcome it. The article discusses problematic issues of determining (evaluating) need criteria for persons who have applied for assistance in the framework of executive and post-penitentiary probation, and suggests ways to solve them. *Purpose:* based on the analysis of the regulatory framework and empirical data of the penal system, to identify problems that arise in the activities of penitentiary institutions when assessing individual need of persons in respect of whom probation is applied, and to propose ways to solve them. *Methods:* formal legal, empirical methods of description and interpretation, theoretical methods of formal and dialectical logic. *Results:* the analysis of the regulatory framework governing probation and the empirical information on the assessment of individual need of persons to whom probation is applied provided by the bodies of the penal system, shows certain legal and organizational problems in the implementation of this activity. In particular, it seems necessary to clarify the definition of a difficult life situation, the criteria of individual need, and the algorithm of actions of an employee of the penitentiary inspectorate to assess (determine) the individual need of a person who has applied for assistance in re-socialization, social rehabilitation, and adaptation. *Conclusions:* in order to solve these problems, it is necessary to legislatively clarify a difficult life situation, the criteria of individual need by referring to other normative acts, and developing an algorithm for the

actions of an employee of the penitentiary inspectorate to assess (determine) the individual need of a person who has applied for assistance in re-socialization, social rehabilitation, and social adaptation. An approximate scheme of actions in the adaptation under consideration is developed.

Key words: execution of punishment; probation; penal system; convict, individual need; difficult life situation.

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Effective counteraction to crime in society is ensured not only by the inevitability of the application and execution of criminal punishment, which is the deprivation or restriction of the rights and freedoms of a convicted person, up to isolation from society, but also by re-socialization, social rehabilitation and social adaptation of persons who have served their sentences, providing for their return to society, adaptation to life in freedom, and overcoming negative effects of isolation. To solve these problems, the current legislation provides for such a type of activity as probation, while this activity is carried out not only in the Russian Federation, but also in many other countries [1, p. 205].

Probation, according to the federal law No. 10-FZ of February 6, 2023 “On probation in the Russian Federation”, is a set of measures applied to convicted persons, persons who have been assigned other criminal law measures and persons released from institutions carrying out punishments in the form of forced labor or imprisonment, who find themselves in a difficult situation, including re-socialization, social adaptation and social rehabilitation, protection of the rights and legitimate interests of these persons. It follows from this definition that probation is not applied 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 accept independent efforts to return to a full-fledged life in society [2, p. 281]. Probation should be carried out on the basis of the principle of taking into account individual characteristics, circumstances and needs [3, p. 181], accordingly, it is reasonable to apply probation measures only to those persons who, for objective reasons, cannot improve their situation by their own efforts and get out of a difficult life situation. The volume and amount of state support provided within the framework of probation should be inter-related with the financial situation, state of health, and other individual characteristics of the person to whom it is applied [4, p. 82].

According to Article 5 of the federal law “On probation in Russia”, penitentiary probation is carried out in relation to all convicts serving sentences of imprisonment or forced labor, while executive and post-penitentiary probation – in relation to persons in the difficult life situation, defined as circumstances, which worsen living conditions of people who are subject to probation, and consequences, which they cannot overcome independently. This definition almost completely repeats the definition of a difficult life situation established by Article 1 of the federal law No. 178-FZ of July 17, 1999 “On state social assistance”.

Therefore, in order to decide whether a convicted person or a person who has served a sentence is entitled to apply executive or post-penitentiary probation measures to him/her, it

is necessary to establish whether this person is in a difficult life situation.

The above definition of a difficult life situation in fact correctly reflects its essential features, but it is extremely general [5, p. 165; 6, p. 171; 7, p. 92]. Even a cursory analysis raises a number of questions. What factors affecting human life (environmental, physiological, economic, macro- and microsocial, spiritual and moral, etc.) constitute “living conditions” of the person in respect of whom probation is applied? What is the condition that makes living conditions worsened? What should be understood by the inability to “overcome independently” its consequences – a complete, objectively existing impossibility or subjectively determined difficulty, taking into account personal, professional qualities, material standard of living, health status and other characteristics of a particular subject? What does the legislator mean by overcoming the consequences – complete elimination of negative consequences, which result in the deterioration of living conditions, or partial improvement that brings the life situation, even if not to its original, but acceptable state for the subject? Therefore, relying solely on the legislative definition of a difficult life situation does not allow an objective assessment of the need for a particular person to apply probation measures to him/her.

In order to objectively assess the specific life situation in which the person who has applied for assistance finds him/herself and to make an informed decision on whether he/she has an individual need for probation measures, criteria for assessing individual need for re-socialization, social adaptation and social rehabilitation (criteria for individual need) were developed and fixed in Appendix 4 to the order of the Ministry of Justice of the Russian Federation No. 350 of November 29, 2023.

The above-mentioned application provides the following criteria for individual need:

- 1) the need to form, restore or strengthen family and social ties;
- 2) the need for social and legal advice;
- 3) the need for psychological help;
- 4) the need for assistance in obtaining documents necessary for the exercise of their rights;
- 5) the need for employment assistance;

6) the need for assistance in obtaining general education, secondary vocational education, vocational training, advanced training, and training in professional retraining programs;

7) the need for assistance in obtaining state social assistance on the basis of a social contract in accordance with Russian legislation;

8) the need for assistance in obtaining unemployment benefits;

9) the need for assistance in obtaining medical care, choosing a medical organization and obtaining a compulsory medical insurance policy;

10) the need for a temporary place of stay;

11) the need for assistance in obtaining retirement benefits;

12) the need for assistance in obtaining social assistance, including for combat veterans;

13) the need for assistance in social services;

14) the need for help in obtaining other assistance.

These criteria are formulated on the basis of types of social and other assistance provided by the legislation of the Russian Federation to persons in difficult life situations. The need for help in obtaining other assistance should include all other types of assistance provided for by law or by-laws that are not included in the criteria listed above. In the practice of territorial bodies of the penitentiary system (the Main Directorate of the Federal Penitentiary Service of Russia in the Sverdlovsk Oblast, the Main Directorate of the Federal Penitentiary Service of Russia in the Nizhny Novgorod Oblast, the Directorate of the Federal Penitentiary Service of Russia in the Penza Oblast, etc.) other types of assistance include the following:

- assistance in the cancellation of penalties in connection with arrears in utility bills;
- providing spiritual and moral assistance;
- organizing leisure activities;
- providing assistance in providing seasonal clothing;
- assistance in registration of disability.

As practice shows, most often people who apply for assistance indicate that they need other forms of assistance, such as spiritual and moral assistance from religious organizations and their representatives.

According to the Federal Penitentiary Service of Russia, of 25,892 persons in respect of whom executive probation was initiated in 2024, 7,400 (28.6%) were in need of obtaining documents necessary to exercise their rights, 5,381 (20.8%) – in need of employment assistance, and 4,541 (17.5%) – counseling on social and legal issues, 4,392 (17%) – receiving psychological assistance, 1,552 (6%) – receiving medical care, choosing a medical organization and obtaining a compulsory medical insurance policy, 1,423 (5.5%) – social assistance, including to combat veterans, 979 (3.8%) – unemployment benefits, 422 (1.6%) – education, vocational training, advanced training and professional retraining, 384 (1.5%) – assistance in obtaining state social assistance on the basis of a social contract, 356 (1.4 %) – assistance in social services. In 2024, 249 (1%) applicants were recognized as needing temporary residence, 142 (0.5%) were in need of forming, restoring or strengthening family and social ties, 81 (0.3%) – in need of assistance in obtaining retirement benefits. It is worth mentioning that 2,426 (9.4%) of those who applied for assistance were in need of other assistance.

In order to identify specific problems that arise in practice when determining (evaluating) criteria for individual need, the Research Institute of the Federal Penitentiary Service of Russia conducted a survey of employees of criminal executive inspections in December 2024, whose duties included assistance in re-socialization, social rehabilitation and social adaptation. So, 324 employees in 20 territorial bodies of the penal system belonging to all federal districts were interviewed.

The overwhelming majority (93.8%) of the respondents consider the system of individual need criteria provided for in Appendix 4 to the order of the Ministry of Justice of Russia No. 350 sufficient to determine the individual need of persons who have applied for assistance, 3.1% – excessive, and 3.1% – insufficient.

So, 89.5% of the respondents indicate certain problems when determining individual need criteria for persons who have applied for assistance in probation. The most common problem (52.4%) is that employees do not have a clearly defined list of documents necessary to

assess (determine) individual needs for each of the established criteria.

During the survey, 43.2% of the respondents state a lack of a specifically formulated algorithm for employees' actions to assess (determine) criteria for individual need, 34% – an insufficient level of interaction with public authorities, local governments, organizations when verifying information about the availability of criteria in individual need, 4.9% – insufficient or redundant criteria provided by the order of the Ministry of Justice of the Russian Federation No. 350, for an objective assessment of individual need of persons who have applied for assistance.

In our opinion, the system of criteria under consideration makes it possible to draw a conclusion about the need of a person applying for probation in the application of re-socialization, social adaptation and social rehabilitation measures. Nevertheless, as noted by the practitioners and experts in the field of penitentiary science interviewed, there are some problems related to the individual need assessment.

Thus, N.V. Ol'khovik points out that certain need criteria provided for in Appendix 4 to the order No. 350 of the Ministry of Justice of the Russian Federation do not match the need criteria for certain types of assistance provided for in other regulatory legal acts in the field of social services and social protection (in particular, federal laws No. 565-FZ of December 12, 2023 "On employment in the Russian Federation" of December 28, 2013, No. 442-F "On the basics of social services for citizens in the Russian Federation", etc.). In his opinion, in practice there may be a situation in which a person recognized as requiring assistance under Appendix 4 to the order of the Ministry of Justice of the Russian Federation No. 350 will not receive it from authorized entities (employment service, social protection service, etc.), since according to the criteria of the legislation that these entities are guided by this person cannot be recognized as being in a difficult life situation [8, p. 89].

I.S. Bushuev also underlines that the criteria for a difficult life situation in the federal law "On probation in the Russian Federation" and the order of the Ministry of Justice of Russia

No. 350 are not formulated in the same way as in the federal law "On the basics of social services for citizens in the Russian Federation" and the legislative acts of the subjects of the Russian Federation regulating the provision of social assistance [9, p. 11]. The federal law No. 442-FZ also fixes other criteria that disclose a difficult life situation, particular, a lack of means of livelihood, presence of intra-family conflict, including with people addicted to drug, alcohol, or gambling, people suffering from mental disorders; presence of domestic violence; presence of persons with disabilities in the family, including children with disabilities; presence of a child or children (including those under guardianship) experiencing difficulties in social adaptation.

In our opinion, we should agree with the position of I.S. Bushuev who proposes at the legislative level (in Article 5 of the federal law No. 10-FZ) to establish criteria for a difficult life situation for probation purposes. It seems to us that the specific list of these criteria should be the subject of detailed discussion with the participation of not only scientists, but also employees of the penal system and other probation subjects.

As for the criteria of individual need provided for in Appendix 4 to the order of the Ministry of Justice of the Russian Federation No. 350, they, in our opinion, are formulated exhaustively and cover the entire range of social conditions capable of creating a difficult life situation for a person serving or having served a sentence. In addition, among the criteria for individual need, there is "the need for help in other assistance", which allows probation officers to recognize a person in need of assistance whose life situation does not meet any of the listed criteria. Therefore, we believe that this list does not need to be expanded. Nevertheless, in our opinion, the wording of some criteria should be clarified by referring to current regulations (federal laws "On state social assistance", "On the basics of social services for citizens in the Russian Federation", "On employment in the Russian Federation", etc.).

An important problem pointed out by a significant number (43.2%) of the respondents is the lack of a clearly formulated algorithm for

employees' actions to assess (determine) individual need criteria, in particular, a lack of the list of documents required by employees to assess (determine) individual need for each of the provided criteria. This is especially important if we take into account the need to analyze the life situation of a convicted person according to all 14 criteria, which, due to the complexity and significant time expenditure, requires a clear program of action [10, p. 30; 11, p. 284]. To solve this problem, in 2025, the Research Institute of the Federal Penitentiary Service of Russia worked out practical recommendations "Methodology for assessing (determining) individual need of persons in respect of whom executive and post-penitentiary probation is applied in accordance with established criteria" and agreed it with the Department of the Organization of the Execution of Punishments not Related to the Isolation of Convicts from Society of the Federal Penitentiary Service of Russia. They contain an algorithm for the actions of employees of criminal executive inspections to assess (determine) individual need for re-socialization, social rehabilitation and social adaptation in accordance with Appendix 4 to the Order of the Ministry of Justice of the Russian Federation No. 350.

This algorithm has certain differences depending on which criterion of individual need it refers to; however, its general structure is based on a single scheme and implies the following actions of authorized officials.

1. An official of the criminal executive inspection asks the person who has applied for assistance the following questions:

- Do you want to receive some kind of assistance in re-socialization, social rehabilitation and social adaptation?
- Do you, in your opinion, have any grounds for receiving the type of assistance you have indicated?
- Do you feel that you are in a difficult life situation? What does this mean?
- What documents can you provide to confirm the grounds for obtaining the type of assistance you require? If you do not have the relevant documents, why they are missing (documents are not received, are in possession of other persons, or are lost) and who may have them?

– Have you previously applied to the authorized bodies to receive the type of assistance, when exactly? If so, what the grounds for refusal were. Do you think the circumstances have arisen after receiving the refusal to receive the type of assistance you have indicated? What documents confirm these circumstances?

2. The following documents are required from the person who has applied for assistance:

- documents confirming the grounds for obtaining the type of assistance specified by the law and other regulatory acts;
- a copy of the citizen's passport.

In the absence of supporting documents, a copy of the citizen's passport is required.

When deciding on the need for assistance in the framework of executive probation, the authorized person examines the documents contained in the personal file of the convicted person registered with the inspection in order to obtain information sufficient to assess (determine) the presence (absence) of individual need of the applicant for a specific type of assistance specified in the application.

3. An official of the criminal executive inspection sends a request to the authorized body (organization) providing this or that type of assistance, specifying:

- the basis for the request for information (the person's application for assistance; a legal status of a convicted person serving a sentence not related to isolation from society, with the exception of a fine imposed as the main punishment, or forced labor, or other criminal law measures, or his/her release from an institution executing a punishment in the form of forced labor or deprivation of liberty);

- the legal basis for requesting information (Clause 1 of Part 2 of Article 28 of the federal law "On probation in the Russian Federation"):

- a) a request to provide information on whether the person who has applied for assistance has legally prescribed grounds for obtaining assistance;

- b) presence (absence) of the fact of providing the specified assistance to this person;

- c) presence (absence) of the fact that this person has applied earlier for the provision of

the specified assistance, in case of refusal – the grounds for it;

- a date of sending the request, a signature of the official (head of the branch of the criminal executive inspection of the territorial body of the penitentiary system);

- an appendix (copies of the person's application for assistance and the documents provided by this person).

4. Based on the submitted documents, the official concludes that the person who has applied for assistance has grounds for receiving this type of assistance. It should be borne in mind that the conclusion is not final, these grounds are further evaluated by an employee of the authorized body (organization) making the decision to provide this or that type of assistance.

The lists of specific documents to be requested from authorized bodies (organizations) to confirm whether a person who has applied for probation assistance has individual need for re-socialization, social rehabilitation and social adaptation are determined depending on one or another criterion of individual need, the presence of which must be established. To determine this list, an official of the criminal executive inspection should use regulations of the relevant bodies (organizations) or seek advice from their staff.

Thus, assessment of individual need of persons in respect of whom executive and post-penitentiary probation is applied is carried out on the basis of the individual need criteria established by Appendix 4 to the order of the Ministry of Justice of the Russian Federation No. 350. In our opinion, based on the data from the survey of practical employees of criminal executive inspections, these criteria are formulated exhaustively and cover all spheres of life of a convicted person or a person who has served his/her sentence. Nevertheless, these criteria need to be clarified by referring to regulations that establish the grounds for obtaining certain types of assistance from government agencies or organizations.

The algorithm of actions of officials to assess (determine) individual need of persons who have applied for assistance in the framework of executive or post-penitentiary probation is developed in accordance with Appendix

4 to the order of the Ministry of Justice of the Russian Federation No. 350 and includes the following actions of an authorized employee: survey of the person who has applied for assistance in order to clarify the presence of a difficult life situation; receiving documents from the applicant confirming the existence of individual need criteria, sending requests for these documents to authorized bodies (institutions, organizations); examining documents available in the personal file of the applicant

registered with the criminal executive inspection; formulating a conclusion on the applicant's individual need for re-socialization, social rehabilitation and social adaptation. The specifics of assessing (determining) each criteria of individual need (bodies, institutions, organizations authorized to make decisions on the provision of a particular type of assistance, necessary documents, deadlines for consideration of applications, etc.) are established by relevant regulations.

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