



## Probation in the Russian Federation: Some Problems of the Content and Legal Regulation

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### Abstract

*Introduction:* the article discusses some issues of regulatory support for creating a probation system in the Russian Federation, aimed at resocialization, social adaptation and rehabilitation of convicts and persons released from places of deprivation of liberty. *Purpose:* based on the analysis of the content of the draft law on probation submitted for public discussion, to identify current legal problems in this direction and propose measures to solve them. *Methods:* formal-logical, system-structural and comparative-legal methods are used in the course of the study. *Results:* the following legal problems are identified: the framework nature of the draft law, abstractness of the content of its individual norms, inconsistency of the legal content of probation and its individual types (directions), insufficiency of specific legal mechanisms to assist convicts and persons released from places of deprivation of liberty in social adaptation and rehabilitation. To further improve the legal framework of probation in the Russian Federation the author developed the following proposals: specifying powers and mechanisms of interaction of probation subjects, content of probation procedures and measures; strengthening legal regulation of the preventive direction of probation; introducing reconciliation (mediation) procedures with the victim (pre-trial probation); determining the place of public control in the field of probation; creating a single body in the system of state and municipal structures to which probation functions would be assigned; ensuring proper parity of social rights of convicts and persons released from prison with those of other categories of citizens who find themselves in a difficult life situation. *Conclusions:* elaboration of the draft law on probation has become an important stage in the development and humanization of domestic legislation; its adoption and subsequent implementation will form a fundamentally new system of work with convicts and persons released from prison, providing for widespread application of social rehabilitation and preventive measures to them, which, in turn, will have a positive impact on the level of their socialization and the state of recessive crime in the country.

**Keywords:** criminal policy; probation; alternative punishments; resocialization of convicts; social adaptation; social rehabilitation; crime prevention.

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### *Introduction*

The issue of the need to organize a probation system in the Russian Federation has been actively discussed at the state level and in the scientific community over the past few years. Creation of a nationwide system of post-penitentiary assistance to persons released from places of deprivation of liberty was discussed in 2009 in Vologda at the meeting of the Presidium of the State Council of the Russian Federation. The probation service establishment was stipulated by provisions of the Concept for long-term socio-economic development of the Russian Federation for the period up to 2020 and the Concept for development of the penal enforcement system of the Russian Federation up to 2020. The probation service was to provide post-penitentiary adaptation and socio-psychological support for persons released from places of deprivation of liberty. The Decree of the President of the Russian Federation No. 761 of June 1, 2012 "On the national strategy of actions in the interests of children for 2012–2017" provided for creation of the probation service for juvenile offenders [14]. In 2011–2012, an attempt was made to create a full-fledged probation service in Russia, which failed [13]: the draft federal law "On probation in the Russian Federation and the system of bodies and organizations implementing it" was not implemented, and in 2015 work on formation of a probation institute in Russia was suspended [18, p. 7].

The Concept for development of the penal enforcement system of the Russian Federation for the period up to 2030 again stipulates creation and development of the probation system. However, this planning document does not set a task of establishing an independent probation service, but forming a single integral system for interaction of state authorities, local self-government, public organizations, institutions and organizations (enterprises) of social services when addressing issues of providing targeted social assistance to convicts and persons released from places of deprivation of liberty. As noted in the Concept, serving a criminal sentence in isolation from society entails weakening and often complete rupture of social ties, loss of life skills in society, which leads to formation of a maladaptive orientation in behavior and, as a consequence, commission of repeated

crimes. Punishments without isolation from society and suspended sentences in practice are also far from always accompanied by effective individual preventive and social rehabilitation work with convicts. This is largely due to insufficient capabilities of the penal enforcement system to use the entire scope of means of influencing the offender: for example, personnel, financial, technological difficulties. These circumstances triggered creation of an effective system for resocialization and social adaptation of convicts and persons released from places of deprivation of liberty (probation system).

Legislative consolidation of this institution is a priority measure for the creation and development of an effective probation system in the Russian Federation. For this purpose, the Ministry of Justice of the Russian Federation has prepared and submitted for public discussion a draft Federal law "On probation in the Russian Federation" (Project ID 01/05/04-22/00126333). Public relations arising in the field of organization and functioning of probation in the Russian Federation is the subject of regulation of this federal law. In order to scientifically comprehend the proposed law and search for opportunities for its further improvement, we conducted a scientific and theoretical study, the results of which are presented in this article.

### *Results of the analysis of the law content*

The draft Federal law "On probation in the Russian Federation" (hereinafter referred to as the draft law on probation) normatively defines basic concepts used in the regulated sphere; establishes goals and objectives of probation; sets powers, principles and organizational foundations of the activities of probation subjects, and a legal status of persons engaged in probation. Probation is aimed at correction of social behavior, resocialization, social adaptation and social rehabilitation of persons, and prevention of their commission of new crimes.

The legal structure of the draft law is based on the approach positioning probation as a set of measures of a social rehabilitation, supervisory and preventive nature, implemented both at the stage of execution of criminal punishment (sentencing (executive) probation, penitentiary probation) and at the post-penitentiary stage (post-penitentiary probation), as well as aimed at legal institutionalization of a uni-

fied system of probation subjects, regulation of their rights, duties, responsibilities and professional relationships. The chosen approach makes it possible to take into account the social value of probation as a whole, maximize its significant social rehabilitation and preventive potential in working with convicts and persons who have served their sentences, and ensure uniform principles and integrity in the work of probation subjects. A similar approach is used in the legislative regulation of probation in certain foreign countries. For example, the Law of the Republic of Kazakhstan of December 30, 2016 No. 38-VI "On probation" establishes the following types of probation: pre-trial, sentencing, penitentiary, and post-penitentiary.

It should be noted that a significant amount of the normative material presented in the draft law on probation duplicates the content of the norms of penal legislation and some by-laws in this area (it includes separate powers of correctional institutions, correctional centers and penal enforcement inspectorates (PEI), the rights, duties and responsibilities of convicts, tasks and the procedure for carrying out educational, psychological and social work with convicts). In addition, the authors of the draft law use a large number of blank norms referring to the rules defined by the penal legislation, legislation on education, legislation in the fields of social services and public health protection, personal data protection, etc. Thus, the draft law on probation, defining the basics of the probation system in the Russian Federation, legal status and activities of its subjects, in fact, is a framework intersectoral regulatory legal act of the legislative level, structured by analogy with the Federal law No. 182-FZ of June 23, 2016 "On the basics of the system for preventing offenses in the Russian Federation" (hereinafter – the law on the system for preventing offenses). The subject of legal regulation of the latter also includes implementation of forms of preventive influence, such as resocialization, social adaptation and social rehabilitation, including in relation to persons serving sentences without isolation from society, who have served a sentence of imprisonment and (or) subjected to other measures of a criminal nature.

In this regard, it seems that due to a great number of legal norms that duplicate regulatory provisions of other federal laws in the draft law on probation, there are risks of unjustified

intrusion into the regulation subject of these laws, including regulation of penal relations. On the one hand, in this situation the legislator may adopt a federal law on introduction of appropriate amendments and additions to the special legislative acts already in force regulating issues of social adaptation and rehabilitation of persons in difficult situations (including the law "On the system for crime prevention" as a basic one), while focusing on convicted persons and persons released from places of deprivation of liberty, along with other categories of citizens. At the same time, taking into account special importance of the issues of crime prevention on the part of this category of persons, as well as the fact that a significant amount of regulation in this area falls on regional and local levels, adoption of the law on probation at the federal level is still seen as an urgent need.

Special attention should be paid to the legal definition of probation, enshrined in the draft law on probation. Clarification of the content of a particular definition predetermines successful implementation of those measures that follow from its content [6]. Yu.A. Golovastova rightly notes that the "distorted use of basic legal categories (and probation is such) leads to spontaneous rule-making, the manifestations of which change the essence of legal regulation" [2, p. 5].

As we have already indicated, the authors of the draft law understand probation as a set of measures of a social rehabilitation and preventive nature. At the same time, understanding of this term, which has developed in the domestic scientific doctrine and legislative practice of some foreign countries, differs quite significantly from the one proposed in the draft law, which, in turn, significantly affects the content of its regulation subject.

The term "probation" (from Lat. *probatio* – trial) is used most often as an institution accompanying conditional imprisonment or postponement of a sentence [8, p. 67], as well as in connection with activities for the execution of punishments alternative to imprisonment [4]. The essence of probation consists in compulsory supervision of convicts' behavior and performance of duties assigned to them by the court, correction of their behavior, assistance in social adaptation and prevention of commission of repeated crimes [9, p. 121]. Probation is usually provided for

minor and medium-gravity crimes, only in case the defendant expresses his/her willingness to comply with all the requirements and restrictions established by the court [10, p. 114]. At the same time, the nature and features of the forms of expression of probation institutions are directly dependent on the legal system of the relevant state. Thus, in some states, probation is a punishment (Sweden, Finland, Latvia), in others – measure of a criminal nature (England, Denmark) or the one connected with release from punishment (Austria, Estonia). Finally, in some countries it does not constitute an institution at all (USA) [19, pp. 13–14]. In the penitentiary systems of many world countries, the probation service is the most important institution in the field of criminal justice and crime prevention, which provides an opportunity to apply alternative types of punishment for committing a crime, instead of real imprisonment [13].

According to the Recommendation CM/Rec (2010) of the Committee of Ministers to member states on the Council of Europe Probation Rules of January 20, 2010, probation relates to the execution in the community of sanctions and measures, defined by law and imposed on an offender, that is, it is a reaction of the state to the committed offense. At the same time R.V. Novikov notes that in a combination of measures to support an offender and ensure compliance with the imposed restrictions, it is important to strike a balance, since the emphasis solely on rehabilitation measures or a formal approach to establishment of restrictions can lead to a crisis of the probation system [14]. Thus, the “probation system provides for the application of support measures and ensuring that a person complies with the obligations and restrictions imposed on him/her by criminal law in connection with the committed crime” [14].

In general, probation is a complex criminal legal measure (regime), aimed at influencing the person who has committed the crime, testing the offender by imposing legally stipulated duties, restrictions and prohibitions on him/her, in control (supervision), combined with the application of measures to correct his/her social behavior and providing him/her with assistance (psychological, medical, household and labor arrangements) in social adaptation [1]. The purpose of such a test is to determine the possibility of correcting the

convicted person, stopping his/her antisocial behavior without applying stricter measures – criminal punishment. The test is based on trust and assistance to the convict, his/her active and socially responsible position in the process of correction (socialization).

S.A. Luzgin adheres to a similar position, defining probation as an institution of criminal justice, crime prevention, resocialization and social adaptation of released convicts, which includes a system of activities and individual measures of a socio-legal, educational, psychological, control and rehabilitation nature aimed at correcting behavior of certain defined by law categories of offenders with a purpose of their correction, resocialization, re-adaptation into society and crime commission prevention [11].

However, there are different points of view. According to I.V. Dvoryanskov, probation is not a punishment or other measure of a criminal nature, there is no criminal liability; it is an alternative to criminal prosecution, non-punitive form of neutralizing causes and consequences of committing a crime, special form of social responsibility, alternative to criminal [7]. The key difference between probation and criminal law measures is that it is applied outside of criminal prosecution and criminal enforcement activities [7].

It seems that the combination of diverse measures in the concept of the institute of probation, ranging from measures of social adaptation to the one of criminal punishment and correction of convicts, control (supervision) and prevention of offenses, makes its content unnecessarily abstract and pointless. It is important to determine, whether probation should be endowed with a specific criminal-legal content (positioned as an independent type of criminal punishment or another measure of a criminal-legal nature), represent a preventive legal measure (by analogy with administrative supervision or a criminal-procedural prohibition on certain actions) or just a complex of criminal-executive and social rehabilitation measures, as well as the relevant activities of probation subjects? The initial solution of this fundamental issue would contribute to improving the quality of normative material, determine specific directions of its further development. For example, probation could be positioned as a criminal-legal measure combining punishment in the form of restriction of liberty, condi-

tional conviction and postponement of serving a sentence, as well as release on parole. In the proposed draft law on probation this term covers the entire complex of educational, social rehabilitation and preventive measures implemented in relation to persons who have committed criminally punishable acts, both at the stage of execution of punishment and at the post-penitentiary stage.

Ambiguity in the solution of this issue is already inherent in the formulation of the purpose and principles of probation (Article 4 of the draft law on probation). Probation goals do not involve implementation of criminal liability, only correction of social behavior, resocialization, social adaptation and social rehabilitation of persons engaged in probation, prevention of their commission of new crimes. In this case, a natural question arises: what about sentencing (executive) probation, which provides for the execution of criminal penalties not related to isolation of the convicted person from society and the use of other measures of a criminal nature? The analysis of the rights and obligations of the penal enforcement system in the field of sentencing (executive) probation (Article 19) allows us to conclude that the difference between this legal institution and the institutions of penal law regulating execution of punishments without isolation from society consists only in giving the penal system powers in the field of social work. Article 17 establishes that this type of probation is applied on the basis of a court verdict. At the same time, according to Article 3 of the draft law on probation, the voluntary nature of its application is fixed as one of the principles of probation. Probation areas, such as execution of criminal penalties (other measures of a criminal legal nature), control (supervision) of convicted persons and persons who have served their sentences, use of special measures to prevent offenses (part 2 of Article 18), as well as educational work (articles 19, 21, 22 and 25) do not correlate with this principle. In addition, attention is drawn to the fact that among the subjects applying sentencing (executive) probation, only the penal enforcement system is indicated, while other subjects of crime prevention remain on the sidelines.

Thus, despite the fact that the approach to the meaningful definition of probation in the form of a complex of diverse measures has already found its support in the scientific community and implementation in the legislation

of some foreign countries, it still seems more reasonable to position probation with regard to its criminal legal content, and all other measures (for example, providing former convicts assistance in social adaptation and rehabilitation) should be attributed to other functions of the probation service (system).

Provision of control and supervision of persons is one of the tasks of probation. In this case, it is not entirely clear what kind of supervision we are talking about: applied as part of the execution of a sentence in the form of restriction of liberty or administrative supervision of persons released from places of deprivation of liberty. In the latter case, there is competition with the norms of the Federal law No. 64-FZ of April 6, 2011 "On administrative supervision of persons released from places of deprivation of liberty" implemented by the police. Probation involves convicts, as well as persons released from institutions executing punishments in the form of forced labor or imprisonment, who find themselves in a difficult life situation. Consequently, it can be assumed that supervision is carried out in relation to those sentenced to restriction of liberty and, possibly, in relation to that part of the released convicts subject to administrative supervision who find themselves in a difficult life situation.

The draft law on probation proposes a concept of penitentiary probation, which includes, among other things, a set of measures aimed at correcting the convicted person. At the same time, correction of convicts and prevention of crimes on their part are the goals of criminal punishment and are implemented in the process of its execution. It turns out that the goals of penitentiary probation and the goals of punishment largely coincide. Moreover, according to Article 21 of the draft law on probation, penitentiary probation is carried out, *inter alia*, by conducting educational work with persons sentenced to imprisonment or forced labor (in accordance with the procedure established by the penal legislation).

The above indicates that the authors of the draft law actually attempted to bring together, within the framework of a special law, all measures of educational influence implemented in relation to persons sentenced to imprisonment and forced labor at the penitentiary and post-penitentiary stages. At the same time, the use in the framework of probation, along

with educational work, of other basic means to correct convicts (socially useful work, general education, vocational training, social impact and regime) is not regulated by the draft law in any way.

In our opinion, it would be advisable to more clearly distinguish the norms of the draft law on probation from the norms of the Criminal Code of the Russian Federation and the Penal Code of the Russian Federation. However, their complete differentiation does not seem to be entirely correct in terms of ensuring the complexity and continuity of social rehabilitation and preventive work with convicts. In this case, only the norms regulating relations arising at the post-penitentiary stage would be a subject of the draft law on probation. It is worth noting that until recently, in legal science and practice, the issue of adopting a federal law on social assistance to persons who have served a criminal sentence in the form of imprisonment has been worked out. For example, the draft federal law No. 97802711-2 “On social assistance to persons who have served their sentences and control over their behavior” was discussed even in 1997–2000 [14]. In addition, there is experience in adopting such laws at the regional level (for example, the regional law of the Arkhangelsk Oblast No. 402-27-OZ of December 16, 2011 “On social adaptation of persons released from institutions of the penal system”, the law of the Tyumen Oblast No. 98 of May 12, 2011 “On resocialization of persons who have served a criminal sentence in the form of imprisonment and (or) those who have been subjected to other measures of a criminal-legal nature”, etc.). This practice looks very logical, since most of the issues related to social adaptation of former convicts are solved at the regional and local levels.

As we have already noted, the draft law on probation is largely of a framework nature, contains a large number of general provisions and references to the current legislation, requires subsequent adoption of concretizing amendments and additions to other regulatory legal acts. For example, Article 37 of the draft law on probation is devoted to the issues of assistance in finding employment to persons in respect of whom post-penitentiary probation is carried out, but it does not contain specific mechanisms for such assistance.

According to Article 10 of the draft law on probation, the Ministry of Labor of the Russian

Federation coordinates activities of post-penitentiary probation carried out by the executive authorities of the constituent entities of the Russian Federation in the provision of public services in the field of employment and social protection (service) of the population, including issues of job quotas. At the same time, with regard to the issues of job quotas, the draft law only provides for the preparation of appropriate methodological recommendations. Unfortunately, there are no clear guidelines for solving this issue at the legislative level.

Article 14 of the draft law on probation, which establishes the powers of the Commission on Juvenile Affairs and protection of their rights in the field of probation, also contains only vague formulations concerning assistance in the labor and household arrangement of minors, and only within the framework of post-penitentiary probation.

Article 13 of the draft law on probation establishes the rights of state authorities of the RF subjects in the field of probation, and the powers and obligations of other subjects of probation (in fact, the list of rights represents the powers).

In this regard, the adoption of a federal law on social adaptation of persons who have served a sentence of imprisonment would be preferable. At the same time, the use of the term “probation” as a basis, relying on the complexity and continuity in its implementation on a many-subject basis, is certainly justified by the need to focus law enforcement activities on solving social rehabilitation and preventive tasks and increase the level of responsibility of state, municipal bodies, and civil institutions in this direction.

Some research teams have proposed conceptual draft laws containing very specific measures for social adaptation of former convicts, including mechanisms for solving their most significant social problems (employment, housing, etc.). For example, the research team of the Federal Research Institute of the Federal Penitentiary Service of Russia worked out a draft federal law “On state support for persons who have served a criminal sentence in the form of imprisonment”, providing targeted assistance to persons released from places of deprivation of liberty, in need of labor and household arrangements, housing and pension provision, health protection [15]. In contrast to a

rather abstract draft law on probation, one of the main ideas of the proposed draft law was to determine sources and mechanisms of financial support for activities of subjects providing state support to those who have served their sentences, as well as to fix specific measures of such state support (the unconditional right of persons released from prison to work and household arrangements, receiving other forms of social assistance; provision of state guarantees for investment loans received for the purpose of providing state support to those who have served their sentences, etc.).

Z. Sh. Makhmudov believes that the content of the federal law regulating issues of social rehabilitation of persons released from prison should contain specific measures, such as recognition that able-bodied persons released from places of deprivation of liberty require one-year social protection; determination of special enterprises and dormitories in the system of the Ministry of Justice of Russia for labor and domestic placement of the released; creation of social adaptation (rehabilitation) centers; determination by the local administration of the list of organizations that employ persons released from prison and provision tax benefits to them, etc. Also, in his opinion, it is important to clearly regulate issues of legal responsibility of subjects of social rehabilitation of persons released from places of deprivation of liberty and establish specific deadlines for implementation of their functions [12].

We believe that when dealing with probation issues of convicts and persons who have served their sentences, it is crucial to maintain a balance with the rights to social protection, support and assistance of other (law-abiding) categories of citizens who find themselves in a difficult life situation. Positioning of social problems of convicts (ex-convicts) at the legislative level as a special difficult life situation requiring priority resolution, it should not contradict the principles of social justice and equality of all citizens before the law (of course, recognizing the particular severity of this social problem).

Z. Sh. Makhmudov also points out that the system of state and municipal structures lacks a body or official who would be charged with the duty to provide the released person with very specific assistance in his/her work arrangement [12].

In accordance with the provisions of the draft law on probation, the powers to coordinate interaction of probation subjects are assigned to the Ministry of Justice of the Russian Federation, the functions to organize (provide) interaction – to other federal executive authorities. At the same time, the solution of organizational issues of providing targeted assistance to a specific convict is assigned to several subjects at once, depending on the type of probation used: penal enforcement inspectorates – for sentencing (executive) and post-penitentiary probation, correctional facilities and correctional centers – for penitentiary probation.

Without raising the issue of creating an independent probation service, the authors of the draft law provide for the possibility of creating specific bodies – probation centers (Article 40 of the draft law on probation), which are not classified as subjects of probation, but are specialized organizations created to assist persons engaged in probation, including provision of temporary place of stay. Probation centers can be established by socially oriented non-profit organizations, including religious organizations and public associations.

Providing that most of the functions implemented by penal enforcement inspectorates are probation ones (with the exception of monitoring suspected and accused persons, in respect of whom preventive measures in the form of house arrest, prohibition of certain actions and bail are applied), it would be more logical to create probation centers (probation services) on the basis of these state bodies. This approach would be more correct, since only state and municipal bodies and organizations (enterprises) are defined as subjects of probation in the draft law on probation (Article 6). This position is supported by I.V. Dvoryanskov, arguing that probation should be implemented through activities of the probation system in the Russian Federation, which includes a number of authorized state bodies, institutions and organizations, and therefore it is planned to create specialized probation departments in the structure of penal enforcement inspectorates [7].

Nowadays, penal enforcement inspectorates' functions are expanding. All this creates opportunities for their further development and formation of a full-fledged probation service on their basis [16, p. 29]. According to

the data of our research conducted in 2020 on the prospects for further development of the system of penal enforcement inspectorates, 34.1% of its employees surveyed considered it possible to expand probation functions of the agency while maintaining it as part of the Federal Penitentiary Service of Russia, 14.4% – widen probation functions of the agency with its subsequent transfer to an independent federal service – the Federal Probation Service of the Russian Federation. About half of the respondents (47.6%) believe that functionality of penal enforcement inspectorates is currently optimal and its expansion by analogy with functionality of foreign probation services is not advisable [3].

We believe that the issues of organizing interaction of probation subjects, as well as other subjects of crime prevention and re-socialization (social adaptation, rehabilitation) of convicts and persons who have served sentences deserve more thorough regulation. The draft law on probation mainly fixes lists of interacting parties and their general powers, procedural aspects of such interaction are regulated to a lesser extent, the solution of these issues is transferred to the level of agreements on interaction (cooperation), the list of which, in our opinion, is not complete. According to Article 10 of the draft law, the Ministry of Labor of the Russian Federation is to approve a model agreement on interaction of institutions executing sentences in the form of forced labor and deprivation of liberty, and penal enforcement inspectorates with employment service bodies in the implementation of activities in the field of post-penitentiary probation, while similar agreements in relation to other types of probation and other bodies (organizations) of social protection and social services of the population are not provided.

A.Ya. Grishko rightly points out the existence of the above-mentioned problem in foreign legislation, noting that “legislative and other regulatory legal acts regulating activities of the relevant entities involved in the process of re-socialization do not establish duties of the latter. They, at best, determine competencies and nothing more” [6].

It should be noted that Article 9 of the draft law on probation stipulates interaction of internal affairs bodies with penal enforcement inspectorates only within the framework of the application of post-penitentiary proba-

tion; interaction within the framework of sentencing (executive) probation is not provided, which does not seem fully justified from the standpoint of solving preventive tasks. Moreover, prevention of offenses is not mentioned among the main activities in the field of post-penitentiary probation (Part 2 of Article 27 of the draft law on probation).

Regulation of the legal status and activities of municipal bodies in the process of applying probation (primarily post-penitentiary probation) is also minimized. Perhaps, this is due to the need to take into account regional and local specifics of law enforcement activities, as well as the intersectoral nature of legal regulation in the field of probation.

The legislative introduction into the practice of work with former convicts of such tools as an individual program of re-socialization, social adaptation and social rehabilitation, unified register of persons for whom post-penitentiary probation is carried out, as well as criteria and methods for assessing individual need for social adaptation and rehabilitation deserves a positive assessment. However, it would be advisable to leave regulation of procedural issues related to preparation of individual programs within the framework of penitentiary and post-penitentiary probation at the subordinate regulatory level. As for a unified register, it seems that the register, as a registration legal tool, is most often formed and maintained for certain constitutive or restrictive purposes. In the context of solving probation tasks, it would be more accurate, in our opinion, to have a state information system, which is a single interdepartmental electronic information resource. This also raises the question of social support for other categories of citizens who find themselves in a difficult life situation, since working with them also requires creation of an appropriate state information system.

The analysis of the content of the draft law on probation reveals a number of other shortcomings of a technical and legal nature. We do not find it reasonable to include the Commissioner for Human Rights in the Russian Federation and the Presidential Commissioner for Children’s Rights in institutions of civil society (Article 43). Articles 19 and 20 of the draft law stipulate bringing persons in respect of whom sentencing (executive) probation is carried out to liability established by criminal and penal legislation, while nothing is said about ad-



ministrative liability. It would be more logical to combine the normative material included in chapters 5–7 of the draft law on probation within one chapter. The heading of Article 38 “Assistance in obtaining general education” does not fully correspond to its content, since it refers to assistance in obtaining, including secondary vocational education, vocational training and advanced training. Article 27 provides for the application of post-penitentiary probation measures also in relation to persons to whom sentencing (executive) probation is applied. However, given that the latter type of probation is applied only on the basis of a court decision, the implementation of post-penitentiary probation measures, in our opinion, is still carried out within the framework of an independent type of probation.

#### *Directions for improving the content of the draft law*

In order to further improve the content of the draft law on probation, we believe it is possible to propose the following:

- ensuring proper differentiation of the norms of the law on probation and the norms of the Penal Code of the Russian Federation, including by replacing the norms of penal law contained in the law on probation with relevant reference norms;
- specifying the powers of probation subjects and the content of probation procedures and measures;
- conducting a more complete and detailed study of regulation of organization of interaction between probation subjects, as well as

other subjects of crime prevention and re-socialization (social adaptation, rehabilitation) of convicts and persons who have served sentences;

- strengthening legal regulation of the preventive direction of probation;
- making amendments to the legislation regarding introducing procedures for reconciliation (mediation) with the victim (pre-trial probation) [17];
- determination of the place of public control over the probation system [5];
- further development of legislation on probation in the direction of creating a single body in the system of state and municipal structures, which would be assigned probation functions;
- ensuring proper parity of the social rights of convicts and persons released from places of deprivation of liberty with the social rights of other categories of citizens who find themselves in a difficult life situation.

#### *Conclusion*

Thus, we believe that working out the draft law on probation has become an important stage in the development and humanization of domestic legislation; its adoption and subsequent implementation will allow us to form a fundamentally new system of work with convicts and persons released from places of deprivation of liberty, providing for the widespread application of social rehabilitation and preventive measures to them, which, in turn, will have a positive impact on the level of their socialization and the recidivism rates in the country.

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