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ADMINISTRATIVE TRUSTEESHIP AND POST-PENITENTIARY OVERSIGHT: LEGAL REGULATION ISSUES[1]

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Here is noted that the lack of attention to the problems of social rehabilitation of persons released from prisons, especially in matters of employment and arrangement of everyday life, can trigger a relapse of crimes.

A critical analysis of the current situation in terms of post-penitentiary oversight, in the context of combating recidivism, is given in the article.

The author argues that the probation service in Russia along with post-penitentiary oversight should exercise administrative trusteeship in respect of persons released from prison through the implementation of measures of social adaptation and rehabilitation.

Keywords: administrative trusteeship, post-penitentiary assistance, post-penitentiary adaptation, institute of probation, administrative supervision.

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The concept of development of the criminal executive system of the Russian Federation until 2020 [4] has its main purposes, among which is called the reduction of recurrence of crimes committed by persons who have served their sentence of deprivation of liberty through increasing the efficiency of social and psychological work in prisons and development of post-penitentiary assistance to such persons.

At that, the issues of post-penitentiary adaptation should be resolved through the probation service, the creation of which is provided for by the Concept of Long-Term Social and Economic Development of the Russian Federation for the period up to 2020 [3].

Currently, the Institute of probation has not yet been introduced into the legal system of the Russian Federation, but there are already drafts Federal Laws "On Probation in the Russian Federation and the System of Bodies and Organizations that Implement it" and "On Service in the Bodies and Institutions of the Probation System".

To be fair, it should be noted that some of the subjects of the Russian Federation, in the absence of federal legislation at the regional level resolve the issues of social adaptation of persons released from the penitentiary system institutions [2]. Indeed, the lack of attention to the problems of social rehabilitation of persons released from prisons, especially in matters of employment and arrangement of everyday life, can trigger a relapse of crimes. Very often it happens so. In respect of this category of citizens is needed to apply the whole system of measures of administrative trusteeship and post-penitentiary control.

By the way, as concerns the last form of prevention of relapsed of crime, it is already regulated by the Federal Law "On Administrative Supervision over Persons Released from Places of Imprisonment", which entered into force in July 2011 [1].

It should be noted that in the initial stage of development of the concept of the current law, as the main task was called the organization of assistance to former prisoners in their socialization, rehabilitation, employment, etc. When work upon the concept of the legislation on administrative supervision only began, four years ago, the chairman of the State Duma Security Committee Vladimir Vasilyev said that the main objective of such a law – an organization of assistance to former prisoners in their socialization, rehabilitation, employment, etc. [9].

In reality, however, we have a retouched version of the Decree of the Presidium of the Supreme Council of the USSR No. 5364-VI from July 26, 1966, "On the Administrative Supervision of the Internal Affairs Bodies over Persons Released from Places of Imprisonment".

According to P. V. Teplyashin, modern edition of administrative supervision is not much different from the administrative supervision of the Soviet period, is based on archaic inherently ideas about the nature of the legal impact on a person who committed a crime, do not take into account the basic position of the current reform of the criminal executive system [13]. The only significant difference is the judicial procedure for establishment administrative restrictions.

As a result, instead of the promised socialization, a person who has served its sentence, falling into the category of persons, in respect of which administrative oversight is automatically set or can be set, becomes a subject to administrative restrictions in substantive aspects similar to the restriction of freedom established by the Criminal Code of the Russian Federation. Hardly in the absence of measures of administrative trusteeship, post-penitentiary oversight will become in this form a prevention measure and the panacea against growth of recidivism.

Until then, now, in order to protect the state and public interest, we use the application of administrative restrictions, moreover established by court in civil proceedings.

By its legal nature civil process is intended for equal subjects, based on the principles of the free exercise of material and procedural rights by the parties to legal proceedings, equality of the parties, freedom of contract. And it is these characteristics do not allow, in certain cases, to establish administrative supervision over persons, who have served their sentences in prison.

Here we talk about, for example, persons who have served their sentence and leave prison camp without setting against them an administrative oversight, but who formally get under it. In this case, all the necessary documents and information come to the police for initiation by the last of civil process, during which the alleged supervised person is properly notified, but does not come at court session.

In this case, the institute of a default judgment, familiar to civil-procedural law, does not work, because, in accordance with article 261.7 of the Civil Procedural Code of the RF, a case on administrative oversight is considered with a mandatory participation of a person, in respect of which the application has been filled, and the forcing it to appear, what is possible within the framework of criminal process, is impossible due to the nature of civil proceedings.

Article 314.1 of the Criminal Code of the RF, which provides for criminal responsibility for avoidance of administrative oversight, cannot be applied to such persons since it is applied to persons in respect of whom administrative oversight have already been established upon release from prison.

Application of administrative responsibility under article 19.24 of the Code on Administrative Offences of the RF quite often does not reach the goals of private prevention. This is confirmed by the repeated commission of administrative offenses related to non-compliance with administrative restrictions and failure to perform obligations imposed under administrative oversight, what actually leads to a situation when supervised persons have dozens of unpaid fines, and this fact has no negative impact on them.

Moreover, such an extraordinary measure as administrative detention is perceived by them quite calm, in dialogues with a neighborhood police inspector they state that it is not a big problem for them to serve 15 days next time.

Administrative fine and administrative detention can cause damage to material well-being and social status of an employed, socially adapted person. For those not socially adapted, administrative sanctions will not provide proper effect, and there are no appropriate measures of criminal legal impact for malicious violation of the rules of administrative supervision, as it used to be in the criminal legislation of the RSFSR (as a malicious violation of the rules of administrative oversight in order to evade oversight, entailing responsibility under article 198.2 of the Criminal Code of the RSFSR, was recognized willful violation of the rules of oversight committed without reasonable excuse by a person under supervision, to which twice a year lawfully and reasonably has been applied an administrative sanction provided for by the Decree of the Presidium of the Supreme Council of the RSFSR from August 04, 1966 "On Administrative Responsibility for Violation of the Rules of Administrative Oversight").

We believe the above clearly shows that in the Russian legal system the problem of post-penitentiary oversight in combating recidivism has not found a proper solution.

Moreover, the analysis of draft laws on probation service in the Russian Federation allows drawing a conclusion that in the Russian state a holistic concept of prevention in the fight against crime has not been developed, since post-penitentiary oversight has remained outside of jurisdiction of probation bodies [11] and has not become a full-fledged subject of regulation of criminal legal norms.

In our opinion, the post-penitentiary oversight measures should be considered as measures of criminal-law nature, which in essence are not punishment, are not of punitive, but of educational, protective nature and contribute to the prevention of crime. Other measures of criminal-law nature (often referred to as "security measures") and punishment coexist in the legislations of many countries. The formed system of coercive measures has been called "two-track" [6, 269].

Legislation of foreign states highlights the various measures of criminal-law nature, for example, such as the establishment of oversight, prohibition of certain places, preventive or prolonged custody and others [6, 272-273].

Oleg Ivanovich Beketov absolutely rightly notes that "Institute of oversight over conduct of convicted persons in Russia should be radically reformed, including in terms of increasing the share of criminal-law norms, strengthening the role of the court; here must be implemented the idea of re-socialization. At that, the organization of work for oversight implementation should be transferred out of the system of internal affairs in the criminal executive system of justice agencies, which is greater in line with the principles of formation of the rule of law" [5].

In general, implementation of post-penitentiary oversight over persons, who have fully served a sentence of imprisonment, is not typical for foreign countries. Such control in the form of post-penitentiary oversight is provided for by criminal law only in few countries, such as England, Germany. Post-penitentiary oversight regime is virtually identical to the regime of probation and its implementation is entrusted to the same bodies [7].

In this regard, we believe that the organizational, coordinating and monitoring functions of initiation, conduct and termination of oversight activity, as well as conducting of review proceedings should be entrusted to the federal body of probation, its regional bodies, institutions of the federal probation body for oversight and supervision, and undertaking of oversight activities in the place of residence of citizens should be attributed directly to the competence of the police forces, or, alternatively, entrust post-penitentiary oversight entirely to the jurisdiction of probation officers.

By the way, in most countries the post-penitentiary probation is entrusted to justice agencies, as it allows within one agency ensuring of coherence between the bodies of execution of punishment and bodies of probation [8].

Noteworthy is the fact that in other countries post-penitentiary probation is a part of preventive system, along with other types of probation. Moreover, the practice of implementation of these institutes clearly shows their interrelation. Establishment of post-penitentiary oversight should be the result of the actions of authorized entities at the stages of pre-trial, verdict and penal probation.

In support of that conclusion here are some of the provisions of the German reform of the system of preventive detention (Sicherungsverwahrung) for convicted criminals. Now, this measure can be applied only if it was originally contained in a judgment of conviction. The German Bundestag in December 2010 approved the proposed by the Federal Government at the suggestion of the Minister of

Justice Sabine Leutheusser-Schnarrenberger (Sabine Leutheusser-Schnarrenberger) Law (Gesetz zur Neuordnung des Rechts der Sicherungsverwahrung und zu begleitenden Regelungen), which to date makes it possible the application of such a penalty as conditional preventive detention, which eliminates the need for unconditional detention post factum.

Henceforth unconditional preventive detention should mainly apply to those people who have committed very dangerous to society crimes of violent or sexual nature, and criminals who have served their sentence, including rapists, causing the authorities' fear that once restored to liberty they will commit new crimes, will be dress up a special bracelet on the leg, called "electronic shackles". With its help the former prisoners will be watched [12].

Summing up the above, it should be noted that the operation of the system of crime prevention is possible only with a complex normative-legal regulation. It is necessary to create not only criminal-law, but also administrative institutes, among which we should also include administrative trusteeship. The essence of the administrative trusteeship is that this institute of administrative law, which is one of the elements of social protection of the population of the Russian Federation, exercised in respect of a particular range of subjects (addressable) by specially authorized bodies and settled by the norms of administrative law, takes independent place among the basic democratic manifestations of Russia: the mechanism to ensure the rights and freedoms of man and citizen; civil-law trusteeship; social security, etc. [10].

Probation services in Russia along with post-penitentiary oversight should exercise administrative trusteeship in respect of persons exempted from prison through the implementation of measures of social adaptation and rehabilitation: assistance in registration of the place of stay and (or) residence, drawing-up of the passport of a citizen of the Russian Federation, disability, retirement , benefits, other social payments, medical insurance policy, promoting in restoration of supporting system of social ties, employment assistance, education and other. Measures of social adaptation and rehabilitation are defined in article 8 of the draft Federal Law "On Probation in the Russian Federation and the System of Bodies and Organizations that Implement it" [11].

Thus, probation service bodies are designed to mobilize all existing in their territory organizational and financial resources within the formation of individual programs of control and rehabilitation.

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