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**ADMINISTRATIVE SUPERVISION IS A TOOL OF BOTH PRIVATE AND
GENERAL PREVENTION OF CRIMES AND OTHER OFFENCES¹**

Administrative supervision is a tool of both private and general prevention of crimes and other offences

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On the grounds of a retrospective analysis of Russian legislation in part of the functioning of the institute of administrative supervision the author alleges about succession of Soviet legal science provisions by Russian law. Here is determined a distinctive feature of the Russian legislator's approach to administrative supervision – its establishment only by court decision, which shall be made in civil proceedings and may be appealed in accordance with the provisions of the Code of Civil Procedure of the Russian Federation.

Noting the high social danger of recurrence of crimes by persons released from places of detention, the author stresses the need for application to the named category of persons effective and based on law measures of preventive nature, which, in his view, are the actual basis for the establishment of administrative supervision.

It is stated that administrative supervision reduces the possibility of criminal and anti-social impact of supervised persons on other citizens.

Keywords: administrative supervision, prevention of crime, prevention of offences, general prevention, private prevention.

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On July 1, 2011, on the base of the entered into legal force of Federal Law No. 64-FL from April 06, 2011 “On Administrative Supervision over Persons Released from Prisons” [1] (hereinafter – the Law or FL-64) and Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation Russia in connection with the adoption of the Federal Law No. 66-FL (66-FL) from April 06, 2011 “On Administrative Supervision over Persons Released from Prisons”, was revived the institute of administrative supervision over the part of persons released from prison, which continue to maintain significant social danger.

This institute existed earlier, during the Soviet period, based on the Decree of the Presidium of the Supreme Soviet of the USSR No. 5364-VI from July 26, 1966, which approved the “Provision on administrative supervision of internal affairs bodies over persons released from prison”.

As noted by some authors [19, 31-39], until 90-ies of XX century in our country existed a clearly elaborated system of preventing the commission of crimes by persons released from prison, the main component of which was the institute of administrative supervision, which was a tested by long practice, effective coercive legal mean to prevent recidivism. Therefore, in the Soviet period, the level of recidivism among persons, who were under administrative supervision, ranged 10% [6, 40-42].

However, the quite effectively functioning institute of administrative supervision was abolished in the early 90s, during the period of “democratization and liberalization”, what was supposedly motivated by human rights violation. At that, different researchers pointed to the hastiness of the abolition of administrative supervision and the need for its recovery [16, 6, 42].

According to N. V. Vitruk “under the slogan of liberalization of life, liberty and human rights, in particular, the right of privacy, was disorganized the system of social and special preventive measures to combat crime and other offenses” [8, 376].

The scientific literature of the early 2000-ies began to discuss not the administrative supervision, but programs of individual correction of wrongdoing conduct [9, 98].

By the mid-2000-ies the increase of overall crime in the country took place, including, “in connection with the cancellation of responsibility for breach of the rules of administrative supervision and with the dying away of the relevant institute” [13].

The need for the elaboration and adoption of the Federal Law “On Administrative Supervision ...” was due to the lack of adequate legal framework for

the prevention of returns to crime, as well as the existing crime situation in the country and standing out against its background growth of recidivism [11].

Revival of the institute of administrative oversight was caused by the complication of criminal situation in the country, as well as by the importance of prevention of returns to crime in the general system of measures to combat crime. In recent years, serious concern is caused by the level of recidivism, which, depending on the region of Russia, ranging from 25 to 40%. Summarized data indicate that in 85% of cases recidivism takes place in the first three years after dispensation from imprisonment, what clearly demonstrates that there are serious problems of prevention. 80% of the prisoners are serving their sentences for serious and very serious crimes, in respect of a substantial part of which fail to achieve the purposes of punishment and they continue to maintain a high degree of public danger after their release from a correctional facility. A measure of social control, which has historically proven its effectiveness in preventing recidivism, is the administrative supervision over persons released from places of imprisonment [18, 54-57].

Statistics show that in 2002, 365 thousand from 721 thousand convicts in penal colonies were sentenced for the second or third time, in 2003 – respectively 351 from 682, in 2004 – 298 from 601, in 2005 – 310 from 645, in 2006 – 330 from 697, in 2007 – 331 from 717, in 2008 – 343 from 734, in 2009 – 346 from 724 [10, 50-52]. That is about half of the persons detained in penal colonies, was convicted for the second or third time, which also confirms the need for the institute administrative supervision, which should become an effective part of the warning system of repeated crimes and other offenses.

In the explanatory memorandum to the draft Federal Law “On administrative control ...” it was noted that the need for such control is due to complication of the criminal situation in Russia, as well as to the importance of preventing recidivism in the general system of measures to combat crime. During the last years each year more than 350 thousand ex-convicts have being released from prison. They commit every fifth crime. Prevention activity in the Russian Federation to prevent the crimes by previously convicted persons has proven its lack of effectiveness. One of the most effective ways to prevent the commission of crimes by previously convicted persons is the administrative control (supervision).

Time has shown the incorrectness of refusal from the reasonably well functioning in the Soviet period institute of administrative supervision. The model of the Russian administrative supervision largely preserves the continuity of the Soviet administrative supervision, but the essential difference is its humanization,

which is expressed in the establishment of administrative supervision only by court decision, which is taken in civil proceedings and may be appealed in accordance with the provisions of the Code of Civil Procedure of the Russian Federation. Now has been substantially revived the existing in the Soviet period institute of administrative supervision.

Historical analysis allows us to conclude that the institute of administrative (police) supervision has objectively proved its demand in different countries and in different historical periods, what is due to its effectiveness in preventing re-infringing conduct of persons released from prison [7, 23 - 26]. Despite the generality of functions of the institute of administrative supervision, legislations of various countries have different approaches to the issues of establishing grounds, terms, subjects of supervision, as well as to establishment of procedural forms, in which the supervision is applied. In some cases, there can be also observed the absence of any specific procedural forms for the implementation of provisions of the laws on administrative supervision, despite mandatory judicial control of its application. Transfer of the issues of establishing administrative supervision under judicial control in modern Russia seems quite justified.

According to article 1 FL-64, administrative supervision – is a carried out by internal affairs bodies monitoring of compliance by a person released from prison the time constraints of its rights and freedoms, as well as the performance of its duties under this Law and established by the court. Administrative supervision tasks are also the prevention of the committing by supervised persons crimes and other offenses, exerting on them individual preventive influence in order to protect state and public interests (article 2 FL-64). In this regard, in paragraph 1 of the Decree of the Plenum of the Supreme Court of the Russian Federation No. 22 from June 27, 2013 “On the Application of the Legislation by Courts in Consideration of Cases on Administrative Supervision”, was stressed that administrative supervision can be established by court decision namely to prevent the commission of crimes and other offenses by persons released from prison, as well as to protect state and public interests [5, 19].

Thus, the continuing high public danger of the above persons released from places of detention, as well as the need for applying to this category of persons of meaningful and based on law appropriate measures of preventive nature, is the actual basis of administrative supervision establishment.

A prerequisite for the implementation of administrative coercion in the form of administrative supervision is the duration of the conviction term, since only within this period this supervision is possible. Cancellation of a criminal record or

removal of conviction immediately entails the impossibility of implementation of administrative supervision and application of its inherent measures of administrative coercion.

The presence of a criminal record of a certain person indicates that a judgment of conviction retains its force in respect of it. That is why, the person, even after serving its sentence, stays in criminal-legal relations with the state, what also justifies the possibility of establishing, in the cases determined by law, administrative supervision, which should be recognized for the part of persons released from prison as a "compulsory prevention", administrative coercion to abstain from crimes and other offenses.

Part 1 article 4 FL-64 provides for the following administrative restrictions imposed during administrative supervision: 1) prohibition of residence in certain places; 2) prohibition of visits to places of mass and other events, and participation in these events; 3) prohibition of staying out of residential or other premises, which are the place residence or staying of a supervised person at a certain time; 4) prohibition of going out of the territory stipulated by court 5) required appearance from one to four times per month in the internal affairs bodies at the place of residence or stay for registration.

Administrative supervision is established by the court in respect of an adult person, who is being released or freed from prison and has outstanding conviction or un-removed criminal record for the commission of: 1) grave or especially grave crime; 2) recidivism; 3) intentional crime against a minor (article 3 FL-64).

Compulsory administrative supervision is applied to adult persons who are being released or freed from prison if they have an outstanding conviction or un-removed criminal record for committing a crime by a dangerous or especially dangerous recidivism or for crimes against sexual inviolability and sexual freedom of minors (Part 2 article 3 of the Law and part 1 article 173.1 of the Penal Code of the RF).

In other cases, administrative supervision is established if: 1) person while serving its sentence in places of deprivation of liberty has been recognized to be a malicious violator of the established order of serving the sentence; 2) a person that has served criminal sentence in the form of deprivation of liberty, and has outstanding conviction or un-removed criminal record, has committed within one year two or more administrative offences against the order of management and (or) administrative offences encroaching on public order and public safety and (or) on public health and public morals.

The immediate purpose of administrative supervision is private prevention. As the overall objective of administrative supervision should recognize the protection of society against the criminal actions of individuals, who have previously committed offences and are released from prison. Therefore, some authors rightly consider administrative supervision as a criminological institute [15, 48].

In our opinion, the institute of administrative supervision is aimed at not only private, but also general prevention. At that, article 2 FL-64 notes that administrative supervision is established in order to protect state and public interests, what indicates that there is a goal of not only individual, but also of general prevention of crimes and other offenses. At the same time implementation of administrative supervision in accordance with the established requirements reduces the possibility of criminal and anti-social effects of supervised persons on other citizens, who are not inclined to commit crimes and other offenses, and if its proper implementation is known to surrounding persons, to a certain extent it deters other citizens from committing of those or other offenses.

Since most of the functions for the implementation of administrative supervision is the responsibility of the MIA RF, the actual implementation of the Law is related to the adoption and entry into legal force September 06, 2011 of the order of the MIA RF No. 818 from July 08, 2011 "On the Procedure of Implementation the Administrative Supervision of Persons Released from Prison". This order regulates the exercised by internal affairs bodies supervision over the observance by persons released from prison of court-ordered administrative restrictions of their rights and freedoms, as well as over their compliance with obligations under FL-64.

Citizens, in respect of whom there is an administrative supervision, are obliged to register with the internal affairs bodies at the place of residence or stay. They must periodically be there for registration (1-4 times per month), to notify it about the change of residence or stay, change of job or dismissal. Supervised persons are prohibited to travel outside the territory, which is stipulated by the court for their stay, without the permission of internal affairs bodies. Obtaining the permission to travel outside this territory is provided only for valid excuse, such as death or serious illness of a close relative, the need for medical care, training or passing entrance exams, employment issues. In addition, the supervised persons may be not allowed to appear in specific locations, attend mass events, and be out from home at a certain time of the day.

The supervision may be suspended in case of announcement of a controlled person as wanted, recognition of it as missing, imprisonment, and after termination of these circumstances the supervision will be renewed.

Administrative supervision is terminated after cancellation of a criminal record of a citizen. The Law contains an important educational moment: early termination of administrative supervision by the court decision may be possible if a person under supervision conscientiously performs its duties and is positively characterized at its place of work, residence or stay. After the termination of administrative supervision a person under supervision is removed from the register in internal affairs bodies.

Administrative supervision is carried out mainly through the systematic monitoring of the supervised persons at the place of residence or stay concerning the observance of administrative constraints established by the court and the discharge of its obligations.

Direct involvement into administrative supervision is a duty of the units for the organization and implementation of administrative supervision or officials, who are responsible for the implementation of administrative supervision in order to prevent the commission by persons released from prison of crimes and other offenses, to provide an individual preventive impact.

In this work also involved police commissioners; employees of regimental units: Patrol-Guard Service of the Police, non-departmental security forces, road patrol of the Russian traffic police; units authorized to carry out operational investigative activities; police dispatch centers of territorial bodies, as well as police officers of linear departments of the Ministry of Internal Affairs on rail, water and air transport [3].

Much of the work on the implementation of administrative supervision is vested on the police commissioners, which, according to the order of Ministry of Internal Affairs No. 818 from July 8, 2011, oversee supervised persons, monthly report to the chief of the territorial body about their observing of court-ordered administrative constraints and discharge of their obligations, as well as about the possibility of committing by them crimes and other offenses, including those involving evasion of administrative supervision. Information on the results of conducted conversations and activities for the implementation of administrative supervision is included in the questionnaires and lists of preventive events.

Police officers carrying out investigative activities, within the limits of the granted powers, should participate in monitoring over supervised persons' observing of court-ordered administrative constraints, collect information in order to determine the location of the supervised persons deviating from the administrative supervision, in the prescribed manner conduct searches for supervised persons, who evade administrative supervision.

Also employees of other sub-divisions of internal affairs bodies in carrying out their functions are required to take part in the implementation of individual preventive events.

The main task of internal affairs bodies in the implementation of administrative supervision is prevention of offences among supervised persons, formation of their law-abiding behavior, which is achieved primarily through preventive conversations with such individuals, explanatory work and monitoring of their behavior [11].

As a result, administrative supervision reduces the possibility of criminal and anti-social influence of supervised persons on other citizens who are not inclined to commit crimes and other offenses. Even the very fact of implementation of administrative supervision, if its proper implementation is known to other people, can often deter other people from committing those or other offences.

That is why article 6 of the draft Federal law on fundamentals of the system for prevention of offences in the Russian Federation" [17] notes that administrative review will be one of the main activities of the subjects of offences prevention.

The above circumstances indicate that administrative supervision is a logical continuation of the process of legal influence on persons released from places of deprivation of liberty of persons, in respect of whom administrative supervision has been established, which, at that, is one of the major and effective forms of offences prevention exercised in respect of this category of persons.

Tasks of administrative supervision defined by law that are aimed at preventing persons released from places of detention from committing crimes and other offences, and at exerting on them individual preventive influence require law-enforcement bodies, which carry out administrative supervision, to provide to these persons assistance in social rehabilitation, employment, organization of everyday life. Unfortunately, the tasks of resocialization and post-penitentiary adaptation of supervised persons are not specifically listed in FL-64.

Meanwhile, in some foreign countries (England, USA) operates the probation service, which is engaged in both post-penitentiary adaptation and control over the conduct of persons released from places of deprivation of liberty, which is associated with the execution by the named persons of a number of requirements established in the court verdict (prohibition to visit certain locations, meet with certain persons, etc.). In the United States in the early 1980 's. in some states as a form of probation into practice was introduced intensive supervision [14, 546-548; 12, 368-373].

Since this foreign experience is positive, in Russia in 2010 has been adopted the Concept for development of the criminal and penal system of the Russian Federation until 2020, which was approved by the RF Government Decree No. 1772-r from October 14, 2010 [4]. The Concept aims to create the conditions for the preparation of released persons to further post-penitentiary adaptation through the probation service. That is, in our country it is also planned to create the probation service, the competence of which will possibly include not only the resocialization and post-penitentiary adaptation, but also administrative supervision over persons released from prison.

Thus, administrative supervision is established to prevent the committing of crimes and other offenses by supervised persons, to exert on them individual preventive influence in order to protect state and public interests.

Proper application of the institute of administrative supervision will be an effective measure for the prevention of crime and other offenses either by persons released from prison, or individuals entering with them into those or other relations.

Currently, has been needed an appropriate organization of functioning of the administrative supervision institute, which is an effective legal tool to prevent the recidivism of crimes and will serve as a tool for not only private but also general prevention of both crimes and other offences.

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