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ADMINISTRATIVE SUPERVISION OF PERSONS RELEASED FROM PLACES OF DEPRIVATION OF LIBERTY AS A DIRECTION OF PREVENTION OF THE NATIONAL POLICE

Abstract. Purpose. The purpose of the article is to define the purpose of establishment and forms of proceedings and to clarify the characterising features of administrative supervision of persons released from places of deprivation of liberty. **Results.** The article reveals the main purpose of the National Police's administrative supervision of persons released from places of deprivation of liberty, which, according to current legislation, is to reduce the level of recidivism. It is emphasised that such activity of the National Police as administrative supervision in the course of its implementation should, in addition to prevention, ensure social adaptation of a person released from places of deprivation of liberty and subject to administrative supervision. The author distinguishes the forms of administrative supervision of persons released from places of deprivation of liberty and the features characterising such activities. It is emphasised that administrative supervision is a measure of individual prevention of recidivism and a means of socialisation of persons who have been deprived of liberty. The conditions for establishing and the procedure for applying administrative supervision shall be enshrined and regulated by law. The current legislation regulating the procedure for establishing and exercising administrative supervision of persons released from places of deprivation of liberty does not ensure the effectiveness of its implementation by police officers. **Conclusions.** It is concluded that the social relations between the staff performing administrative supervision and the person under supervision are of an executive and administrative nature. Administrative supervision is aimed at preventing offenses, i.e., it is of a preventive nature. Administrative supervision implies personal restrictions for a person released from places of deprivation of liberty established by an authorised state body and the subsequent control measures to ensure compliance with these restrictions. Administrative supervision is based on administrative and legal relations in which one party is vested with power and the other party is, accordingly, vested with the obligation to comply with the established rules and restrictions.

Key words: supervision, administrative supervision, National Police, prevention, person released from places of deprivation of liberty.

1. Introduction

Administrative supervision of the police, as a form of prevention, remains a topical area of scientific research and discussion in modern administrative law.

The Constitution of Ukraine No. 254к/96-ВР as of 28 June 1996 guarantees freedom of movement, free choice of residence, the right to leave the territory of Ukraine, with the exception of restrictions established by law, for any person who is legally on the territory of Ukraine (Constitution of Ukraine Law, 1996). One of these restrictions on freedom of movement is the administrative supervision

imposed on persons released from places of deprivation of liberty.

European integration processes, adaptation of national legislation to European Union law in the field of law enforcement, introduction of the theory of human-centeredness in the field of public administration increases the role of prevention of the National Police, which occupies a key position in the field of administrative supervision of persons released from places of deprivation of liberty. This, in turn, actualises scientific research to clarify the nature and conditions of such administrative supervision.

The various aspects of administrative supervision of persons released from places of deprivation of liberty were under study in the works by scholars, such as: V.B. Averianov, D.M. Bakhrakh, Yu.P. Bytiak, V.V. Halunko, V.M. Harashchuk, O.V. Dzhafarova, A.V. Martynov, B.Y. Nastiuk, V.I. Olefir, S.I. Skvortsov, A.Kh. Stepaniuk, S.H. Stetsenko, V.I. Trubnikov, Yu.M. Frolov, R.V. Shahiieva, O.N. Yarmysh, and others.

The purpose of the article is to define the purpose of establishment, forms of proceedings and to clarify the characterising features of administrative supervision of persons released from places of deprivation of liberty.

2. The legal and regulatory framework for administrative supervision of persons released from places of deprivation of liberty

The effective Law of Ukraine "On administrative supervision of persons released from places of deprivation of liberty" No. 264/94-BP as of December 01, 1994, defines administrative supervision as a system of temporary compulsory preventive measures to monitor and control the behaviour of individuals released from places of deprivation of liberty, performed by the National Police. The tasks of administrative supervision are defined by the Law as prevention of criminal offenses by individuals released from places of deprivation of liberty and the correctional influence on them (Law of Ukraine On Administrative Supervision of Persons Released from Places of deprivation of liberty, 1994).

Relying on the content of this legal provision, the main purpose of administrative supervision is to reduce the level of recidivism. According to the legislator, this task can be realised through systematic supervision of the behaviour of a previously convicted person released from places of deprivation of liberty and individual influence on him/her by the National Police, application of preventive measures provided for by law to prevent the resumption of unlawful behaviour and the establishment of criminal ties.

Analysing the measures of supervision of the behaviour of persons released from places of deprivation of liberty, I.Y. Foinickii distinguishes two areas of this activity, the first is coercive and designed mainly to ensure public safety, such as police supervision; the second is of a patronising nature and is designed mainly to provide the released person with support in his/her struggle against the difficulties and temptations of free life; that is, patronage (Foinickii, 1889).

In order to ensure the achievement of this goal, to form a systematic vision of the essence and content of any legal phenomenon, it is necessary to study its meaning in the scientific field from the other scholars' perspectives.

From the etymological perspective, "to supervise" means to watch, to keep an eye on someone or something for control, ensuring order, etc.; to follow, observe for the purpose of supervision (Busel, 2005, p. 707); observation for the purpose of inspection (Yaremenko, Slipushko, 1999, p. 318).

According to A.O. Sobakar, supervision as a legal instrument contributes to the achievement of proper (lawful) behaviour of all subjects of law (enterprises, institutions, organisations, citizens) in a particular sector of public administration (Sobakar, 2017, p. 120).

In O.A. Petrenko's opinion, administrative supervision of persons released from places of deprivation of liberty is of an interdisciplinary nature, as it is on a par with other rules of administrative supervision, control of compliance with which is entrusted to the internal affairs bodies, namely: traffic safety rules, rules of the permit system, rules for holding mass cultural and sports events, etc. (Petrenko, 2012, p. 325).

V.V. Karelin states that administrative supervision, as an independent legal institution for ensuring legality and discipline, implies systematic monitoring of the activities of objects under supervision (persons with a criminal record) that are not organisationally subordinate to the supervisor, in order to verify compliance with legal requirements and, in case of violations of the established norms and rules, to bring the perpetrators to legal responsibility (Karelin, 2019, p. 82).

M.S. Studenikina defines administrative supervision as a type of supervisory control, as a form of active supervision accompanied by the use of administrative power measures in certain cases (Studenikina, 1974, pp. 19-20).

Administrative supervision, as a way to ensure legality, is a constant, systematic monitoring by special state bodies (officials) of the activities of public administration entities not organisationally subordinated to them regarding their compliance with mandatory norms, rules and standards in order to prevent, detect and suppress offenses, restore the established order and bring the perpetrators to administrative responsibility (Sobakar, 2017, p. 124).

F.S. Razarenov considers "administrative supervision" as the basis of the activities of internal affairs bodies, defining it as systematic monitoring by management bodies of the exact and strict implementation of mandatory rules in order to prevent, stop their violations, identify and bring offenders to justice or apply public pressure measures to them (Razarenov, Kotiurgin, 1979, p. 10).

Given the content of the studied definitions of administrative supervision, the main purpose

of its implementation is to monitor the behaviour of the person under supervision in order to prevent violations of the established norms and rules of conduct. Meanwhile, given the preventive nature and preventive content of such activities of the National Police as administrative supervision, the focus should be on the fact that in the course of its implementation, due attention is not paid to the issue of social adaptation of a person released from places of deprivation of liberty, over whom administrative supervision is established.

The current legislation regulating the procedure for establishing and exercising administrative supervision of persons released from places of deprivation of liberty does not ensure the effectiveness of its implementation by police officers.

3. Tasks of administrative supervision of persons released from places of deprivation of liberty

According to O.M. Holovko, administrative supervision should perform not only the functions of ensuring that a person released from places of deprivation of liberty complies with prohibitions and restrictions, but also of the formation of new value attitudes in such persons, which is not provided for in the legislation and within the framework of the activities of the bodies exercising such supervision. Administrative supervision is mostly formal in nature, which leads to a low level of its effectiveness (Holovko, 2018, p. 127).

In S.I. Skvortsov's opinion, the main factors that negatively affect the effectiveness of administrative supervision of persons released from places of deprivation of liberty are as follows: 1) the low level of legal culture and consciousness of the persons under supervision, on the one hand, and the National Police officers exercising supervision, on the other; 2) formal performance of their duties by district police officers and their lack of motivation to improve their professional skills; 3) insufficient interaction of the public administration in providing administrative services to persons under supervision in order to ensure their rapid social adaptation; 4) low level of legal and regulatory support regulating public relations in the field of administrative supervision of persons released from places of deprivation of liberty; 5) insufficient control of administrative supervision by the National Police bodies; 6) low level of material and technical support and conditions for administrative supervision of former convicts; 7) insufficient number of district officers to ensure proper administrative supervision (Skvortsov, 2018, pp. 151-152).

Since administrative supervision is an active observation by police officers of the behaviour

of an indefinite number of persons, it can be performed in the form of direct visual observation, observation using special technical means and devices, public, secret, scheduled or unscheduled inspections of compliance with the established regime, as provided for in the Instruction on the organisation of administrative supervision of persons released from places of deprivation of liberty (Order of the Ministry of Internal Affairs of Ukraine, the State Department of Penalties on the approval of the Instruction on the organisation of administrative supervision of persons released from places of deprivation of liberty, 2003).

Administrative supervision by the police over persons released from places of deprivation of liberty aims to: – prevent this category of persons from committing crimes and other offenses; – apply individual preventive (precautionary) measures to these persons in order to prevent reoffending and protect state and public interests.

Moreover, human rights defenders argue that administrative supervision is an additional restriction of a person's rights beyond the court verdict and in addition to the sanctions established by law, which can be characterised as a double punishment for the same act, for not admitting guilt, etc. According to human rights defenders, this leads to a violation of the constitutional principles of justice and international law in the field of human rights.

However, supporters of the other perspective, allowing for the rights of persons released from places of deprivation of liberty, emphasise the importance of ensuring the proper realisation of the constitutional rights of other persons who are significantly affected by the unfavourable crime situation in the country. In their opinion, it is the prevention of a high level of recidivism, rather than the desire to infringe on the rights of former prisoners, that underlies the essence and tasks of administrative supervision of the police as a preventive measure against repeated crimes and other offenses.

It should be noted, as the practical experience of administrative supervision of the police shows, that actual supervision of the behaviour of a person released from places of deprivation of liberty begins before making the relevant decision on its establishment. After all, administrative supervision is established on the basis of a reasoned decision of a competent authority that has sufficient information and grounds specified in the law to make a decision to establish supervision of a person.

The administrative supervision performed by the police should be so thoroughly organised and conducted that it enables to timely detect signs of an offense in the behaviour of a per-

son released from places of deprivation of liberty during preventive work and to respond in a timely manner to establish administrative supervision.

Administrative supervision, allowing for its tasks and content, is to ensure, by means and methods determined by law, the implementation of generally binding provisions established or authorised by the state, both at the level of law and bylaw.

Administrative supervision is performed in forms as follows:

- registration and accounting of a person subject to administrative supervision;
- periodic inspections, enabling to control the state of the person subject to administrative supervision;
- constant surveillance, for a person under supervision to have a sense of continuous control and to keep him/her from committing an unlawful act;
- study and analysis of the behaviour of the object under supervision and of information obtained in the course of administrative supervision.

4. Conclusions

Given the results of scientific research, it can be noted that administrative supervision of persons released from places of deprivation of liberty by the National Police, as activities

of a preventive nature and precautionary content, is endowed with special features that characterise its content and determine its essence.

1. Administrative supervision is a measure of individualised prevention of recidivism and a means of socialisation of persons who have been deprived of liberty.

2. The conditions for establishing and the procedure for applying administrative supervision shall be mandatory and regulated by law.

3. The social relations between the staff performing administrative supervision and the person under supervision are of an executive and administrative nature.

4. Administrative supervision is aimed at preventing offenses, i.e., it is of a preventive nature.

5. Administrative supervision implies personal restrictions for a person released from places of deprivation of liberty established by an authorised state body and the subsequent control measures to ensure compliance with these restrictions.

6. Administrative supervision is based on administrative and legal relations in which one party is vested with power and the other party is, accordingly, vested with the obligation to comply with the established rules and restrictions.

References:

- Busel, V.T. (2005). *Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy* [A large explanatory dictionary of the modern Ukrainian language]. K. Irpin: VTF «Perun» (in Ukrainian).
- Foinickii, I.Ya. (1889). *Uchenie o nakazanii v sviazii s tjur'movedeniem* [The doctrine of punishment in connection with places of deprivation of liberty science]. Sankt-Peterburg: Tipografia Ministerstva putej soobshheniia (in Russian).
- Holovko, O.M. (2018). Orhanizatsiino-pravovi zasady vzaiemodii dilnychnoho ofitsera politzii z inshymy subiektamy u pytanniakh realizatsii administratyvnoho nahliadu za osobamy, zvilnenymy z misty pozbavleniia voli [Organisational and legal principles of interaction of the precinct police officer with other subjects in matters of implementation of administrative supervision of persons released from places of deprivation of liberty]. *Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu – Scientific Bulletin of the International Humanitarian University*, 36, 126-130
- Karelin, V.V. (2019). Administratyvnyi nahliad za osobamy, zvilnenymy vid vidbuvannia pokaran yak ob'ekt rezhyimnoho rehuliuвання u sferi orhanizatsii vykonannia pokaran [Administrative supervision of persons released from serving sentences as an object of regime regulation in the field of organisation of execution of sentences]. *Pravo i suspilstvo – Law and society*, 1, 80-86 (in Ukrainian).
- Konstytutsiia Ukrainy Zakon: vid 28.06.1996 № 254k/96-VR [Constitution of Ukraine Law dated 28.06.1996 № 254k/96-BP]. (1996). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (in Ukrainian).
- Nakaz MVS Ukrainy, Derzhdepartamentu vykonannia pokaran Pro zatverdzhennia Instruksii pro orhanizatsiiu zdiisnennia administratyvnoho nahliadu za osobamy, zvilnenymy z misty pozbavleniia voli: vid 04.11.2003 № 1303/203 [Order of the Ministry of Internal Affairs of Ukraine, the State Department of Penalties on the approval of the Instruction on the organisation of administrative supervision of persons released from places of deprivation of liberty: dated November 4, 2003 № 1303/203]. (2003). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/z0046-04#Text>
- Petrenko, O.A. (2012). Sut administratyvnoho nahliadu militsii za osobamy, zvilnenymy z misty pozbavleniia voli, v systemi administratyvnoho prymusu [The essence of administrative police supervision of persons released from places of deprivation of liberty in the system of administrative coercion]. *Naukovyi visnyk Dnipropetrovskoho derzhavnogo universytetu vnutrishnikh sprav – Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*, 1, 323-332 (in Ukrainian).

Razarenov, F.S., Kotiurgin, S.I. (1979). Administrativnyj nadzor sovetской milicii [Administrative supervision of the Soviet militia]. Moskva: «Juridicheskaja literatura» (in Russian).

Skvortsov, S.I. (2018). Administrativno-pravove rehulivannia administrativnoho nahliadu za osobamy, zvilnenymy z mists pozbavleniia voli [Administrative and legal regulation of administrative supervision of persons released from places of deprivation of liberty]. *Extended abstract of candidate's thesis*. Kyiv: NAVS

Sobakar, A.O. (2017). Mistse administrativnoho nahliadu v mekhanizmi zabezpechennia pravoporiadku [The place of administrative supervision in the mechanism of ensuring law and order]. *Naukovyi visnyk Sivershchyny – Scientific Bulletin of Severshchyna*, 1, 117-125 (in Ukrainian).

Studenikina, M.S. (1974). Gosudarstvennyj kontrol' v sfere upravleniia. (Problemy nadvedomstvennogo kontroliia) [State control in the field of management. (Problems of supra-departmental control)]. M.: Jurid. Lit (in Russian).

Yaremenko, V.V., Slipushko, O.M. (1999). Novyi tlumachnyi slovnyk ukrainskoi movy [New explanatory dictionary of the Ukrainian language]. Kyiv: Akonit (in Ukrainian).

Zakon Ukrainy Pro administrativnyi nahliad za osobamy, zvilnenymy z mists pozbavleniia voli: vid 01.12.1994 № 264/94-VR [Law of Ukraine On Administrative Supervision of Persons Released from Places of Of deprivation of liberty: dated December 1, 1994 № 264/94-BP]. (1994). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/264/94-%D0%B2%D1%80/conv#Text> (in Ukrainian).

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АДМІНІСТРАТИВНИЙ НАГЛЯД ЗА ОСОБАМИ, ЗВІЛЬНЕНИМИ З МІСЦЬ ПОЗБАВЛЕННЯ ВОЛІ, ЯК НАПРЯМ ПРЕВЕНТИВНОЇ ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ

Анотація. Мета. Мета статті полягає у визначенні мети встановлення, форм провадження та з'ясуванні характеризуючих ознак адміністративного нагляду за особами, звільненими з місць позбавлення волі. **Результати.** У статті розкривається основна мета здійснення Національною поліцією адміністративного нагляду за особами, звільненими з місць позбавлення волі, яка за змістом чинного законодавства полягає у зниженні рівня злочинності, що має рецидивний характер. Наголошується, що така діяльність Національної поліції, як адміністративний нагляд, у ході її провадження повинна, крім профілактики, забезпечити соціальну адаптацію особи, звільненої з місць позбавлення волі, над якою встановлено адміністративний нагляд. Автором виділяються форми провадження адміністративного нагляду за особами, звільненими з місць позбавлення волі та ознаки, що характеризують таку діяльність. Наголошено, що адміністративний нагляд виступає мірою індивідуальної профілактики рецидивної злочинності та засобом соціалізації осіб, які були позбавлені волі. Умови встановлення та процедура застосування адміністративного нагляду має обов'язкове нормативно-правове закріплення та регулювання. Сучасне законодавство, яким регламентовано порядок встановлення та процедуру здійснення адміністративного нагляду над особами, звільненими з місць позбавлення волі, не забезпечує ефективність його провадження працівниками поліції. **Висновки.** Зроблено висновок, що суспільні відносини, що складаються між суб'єктом адміністративного нагляду та піднаглядною особою, мають виконавчо-розпорядчий характер. Адміністративний нагляд має на меті попередження правопорушень, тобто наділений превентивним характером. Адміністративний нагляд полягає у встановленні уповноваженим органом держави персональних обмежень для особи, яка звільнена з місць позбавлення волі, та здійснення в майбутньому контрольних заходів на предмет дотримання цих обмежень. Основу адміністративного нагляду становлять адміністративно-правові відносини, в яких одна сторона наділена владними повноваженнями, а інша відповідно наділена обов'язком дотримання встановлених правил та обмежень.

Ключові слова: нагляд, адміністративний нагляд, Національна поліція, превентивна діяльність, особа, звільнена з місць позбавлення волі.

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