

ISSN 2518-167X

WEB OF SCHOLAR

Multidisciplinary Scientific Journal



RS Global

INTERNATIONAL ACADEMY JOURNAL WEB of SCHOLAR

5(35), May 2019

DOI: https://doi.org/10.31435/rsglobal_wos

Chief editor

Laputyn Roman

PhD in transport systems, Associate Professor,
Department of Transport Systems and Road Safety,
National Transport University

Editorial board:

Lina Anastassova

Full Professor in Marketing, Burgas Free University,
Bulgaria

Mikiashvili Nino

Professor in Econometrics and Macroeconomics,
Ivane Javakhishvili Tbilisi State University, Georgia

Alkhawaldeh Abdullah

Professor in Financial Philosophy, Hashemite
University, Jordan

Mendebeaev Toktamys

Doctor of Technical Sciences, Professor, LLP
"Scientific innovation center "Almas", Kazakhstan

Yakovenko Nataliya

Professor, Doctor of Geography, Ivanovo State
University, Shuya

Mazbayev Ordenbek

Doctor of Geographical Sciences, Professor of
Tourism, Eurasian National, University named after
L.N.Gumilev

Sentyabrev Nikolay

Professor, Doctor of Sciences, Volgograd State
Academy of Physical Education, Russia

Ustenova Gulbaram

Director of Education Department of the Pharmacy,
Doctor of Pharmaceutical Science, Kazakh National
Medical University name of Asfendiyarov,
Kazakhstan

Tsybaliuk Vitalii

Professor, Doctor of Medicine,
The State Institution
Romodanov Neurosurgery Institute
National Academy of Medical Sciences of Ukraine

Harlamova Julia

Professor, Moscow State University of Railway
Transport, Russia

Nyyazbekova Kulanda

Candidate of pedagogical sciences, Abay University,
Kazakhstan

Kalinina Irina

Professor of Chair of Medicobiological Bases of
Physical Culture and Sport, Dr. Sci. Biol., FGBOU
VPO Sibirsky State University of Physical Culture
and Sport, Russia

Imagazinov Sagit

Director, Ph.D, Pavlodar affiliated branch "SMU of
Semei city"

Dukhanina Irina

Professor of Finance and Investment Chair, Doctor of
Sciences, Moscow State Medical Dental University
by A. I. Evdokimov of the Ministry of health of the
Russian Federation

Orehowskyi Wadym

Head of the Department of Social and Human
Sciences, Economics and Law, Doctor of Historical
Sciences, Chernivtsi Trade- Economic Institute Kyiv
National Trade and Economic University

Peshcherov Georgy

Professor, Moscow State Regional University, Russia

Mustafin Muafik

Professor, Doctor of Veterinary Science, Kostanay
State University named after A. Baitursynov

Ovsyanik Olga

Professor, Doctor of Psychological Science, Moscow
State Regional University

Nino Abesadze

Associate Professor Tbilisi State University, Faculty
of Economics and Business

Suprun Elina

Professor, Doctor of Medicine,
National University of Pharmacy, Ukraine

Copies may be made only from legally acquired originals.

A single copy of one article per issue may be downloaded for personal use

(non-commercial research or private study). Downloading or printing multiple copies is not permitted.

Electronic Storage or Usage Permission of the Publisher is required to store or use electronically any material contained in this work, including any chapter or part of a chapter. Permission of the Publisher is required for all other derivative works, including compilations and translations. Except as outlined above, no part of this work may be reproduced, stored in a retrieval system or transmitted in any form or by any means without prior written permission of the Publisher.

Publisher –

RS Global Sp. z O.O.,

Scientific Educational Center
Warsaw, Poland

Numer KRS: 0000672864

REGON: 367026200

NIP: 5213776394

Publisher Office's address:

Dolna 17,
Warsaw, Poland,
00-773

Website: <https://ws-conference.com/>

E-mail: rsglobal.poland@gmail.com

Tel: +4(857) 898 55 10

The authors are fully responsible for the facts mentioned in the articles. The opinions of the authors may not always coincide with the editorial boards point of view and impose no obligations on it.

LEGAL AND POLITICAL SCIENCE

POLICE SUPERVISION OF RELEASES FROM PRISON

Ch. Yarmaki, Doctor of Law, Professor,

V. Yarmaki, Candidate of Legal Sciences; Assistant Professor

Ukraine, Odessa State University of the Interior

DOI: https://doi.org/10.31435/rsglobal_wos/31052019/6506

ARTICLE INFO

Received: 23 March 2019

Accepted: 20 May 2019

Published: 31 May 2019

KEYWORDS

security, probation, police, police officer, police authority, administrative supervision, police supervision, prevention, restriction of law, supervision, legal state, preventive supervision, re-socialization.

ABSTRACT

It is provided the concept and features of police supervision; its correlation with administrative supervision is considered; the supervision of the behavior of previously convicted persons and legal acts regulating its implementation are analyzed. Given the central role of supervision in shaping police agency outcomes, the purpose of this paper is to understand ratings of supervisor performance overall and on several distinct dimensions. The description of the police as the strong arm of the State oversight reflects their authorization to enforce laws and policies defined by State institutions. It is concluded that there is a necessity to amend the Law of Ukraine "On the Administrative Supervision of Releases from Prison", other legal acts regulating the issue of supervision and probation.

Citation: Ch. Yarmaki, V. Yarmaki. (2019) Police Supervision of Releases from Prison. *International Academy Journal Web of Scholar*. 5(35). doi: 10.31435/rsglobal_wos/31052019/6506

Copyright: © 2019 Ch. Yarmaki, V. Yarmaki. This is an open-access article distributed under the terms of the **Creative Commons Attribution License (CC BY)**. The use, distribution or reproduction in other forums is permitted, provided the original author(s) or licensor are credited and that the original publication in this journal is cited, in accordance with accepted academic practice. No use, distribution or reproduction is permitted which does not comply with these terms.

Introduction. Terrorist acts throughout the world and in Ukraine served as a catalyst for the process of widespread transition to the so-called collective security priority. Its essence is in the fact that for the ensuring the person's security, society and state, partial or complete restriction of the rights and freedoms of individual citizens is possible. Law enforcement institutions are entrusted with a diverse set of tasks requiring a high degree of integrity within police agencies and their oversight. Objectively, this is inevitably accompanied by the process of empowering police and intelligence agencies with new powers, related to strengthening their supervisory activities, expanding the scope of police supervision. Despite the objective conditionality of these tendencies, their rapid spread in the world, including in Ukraine, this situation is quite legitimate concern, primarily from the point of view of its compliance with the principles of law-governed state. At the same time, the very term "police supervision" most accurately reflects the essence of the strengthening of the directions (types, forms, methods) of law enforcement bodies, which are used and used in the Ukrainian legislation, is now half-forgotten, and in the "foreign" word-formation today it has more likely a negative shade. Such a state, in our opinion, needs to be rethought and filled with new content.

The scientific authors of modern administrative supervision and state control point out the complexities and contradictions of the conceptual foundations of their understanding, differentiation and reform.

Some scholars believe that there is only the prosecutor's oversight (A.F. Andryko [1], V.M. Garashchuk [3]), and administrative supervision is an integral part of state control. D.M. Bahrakh [2], Ch.P. Yarmaki [7], A.V. Denisova [4] believe that supervision is carried out not only by the prosecutor's office of the executive bodies supervising, observing the observance of legal and technical-legal requirements, both subordinated to them, and not subordinated entities. It has to be stated that in the theory of Administrative law there is a need for new approaches to the study of modern problems of these institutions in general and administrative supervision of persons released from places of imprisonment, in particular.

Research results. With the adoption of the Law of Ukraine "On National Police" in 2015 [6], a fundamentally different platform is needed for the investigation of the police surveillance institution as a special administrative supervision. At the same time, police oversight should acquire the content that would meet the generally accepted norms of International law, legal standards of legal, democratic state where human rights and freedoms are the highest value, and the state guarantees and provides them.

Modern domestic legislation and leading scientists' opinions indicate that administrative supervision is the external authority of competent administrative authorities to carry out inspections regarding the observance by individuals and organizations of the laws' provisions and subordinate normative legal acts that establish requirements for provision of various types of public security, regardless of whether these entities are in the sphere of their direct administrative-regulatory influence or not.

In most countries, the police are the only State body that may legally use force to maintain order (in times of peace). Others are allowed to use force only in self-defence. This is referred to as a police monopoly on the use of force in times of peace. The officers of such bodies (the National Police of Ukraine, the State Border Guard Service of Ukraine, the Service of the Law Enforcement of the Armed Forces of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine) have the right to apply special legal means - measures of direct coercion expressed in the detention, delivery of persons; carrying out various kinds of inspections; use of physical force, special means, weapons, etc. It is their presence, relevant police authorities that can be attributed, above all, to the National Police, the Border Guard Service, the National Guard, the Law Enforcement Service of the Ukrainian Armed Forces, the SBU and differ from other state bodies involved in the fight against crimes. Special police surveillance objects should also be taken into account, such as the state-designated regime for the circulation of narcotic and psychotropic substances, weapons and ammunition; information constituting a state secret, special technical means intended for the secret receipt of information; behavior of persons potentially dangerous to society. To the listed we can also include the wider objects - public order and security. Particular attention should be paid to persons representing potential social danger - those released from imprisonment, as well as probationers and sentenced to non-prison sentences.

It is pointed that the legal basis of police supervision is equally serving as criminal (supervision of persons sentenced to non-custodial sentences) and Administrative law, as opposed to general administrative supervision, carried out by observing compliance (implementation) only of Administrative law and verification of compliance with technical and legal requirements, which are also based on Administrative law.

These features make it possible to separate from the administrative supervision an independent type of police observance and distinguish it from general administrative supervision, which, in our opinion, is the most common type of supervision. It should be noted that police supervision, as a type of administrative supervision, as opposed to another kind of it (general administrative supervision), can also be defined as special administrative supervision.

The Institute for Administrative Supervision of National Police Authorities for persons' behavior released from imprisonment is personally policed by the police. In recent years in Ukraine, there has been a lively discussion between supporters of rigorous measures to combat crime and representatives of human rights organizations who believe that administrative supervision of persons released from imprisonment violates the constitutional rights of citizens. Meanwhile, when considering administrative supervision of persons released from imprisonment, from human rights perspective, one cannot but notice that by restricting the persons' rights who have committed serious crimes and are prone to their repetition, the Law thus directly protects rights and interests the right of obedient part of population, which is also the state's task. An example here might be the Israel police that deals with protection of public order, tackle of criminality, and observance of legislation. The Government of Israel launched the "Turn" plan in 2012, in addition to other police tasks, to increase the level of servicing of law-abiding citizens. One of the factors contributing to the implementation of the plan is the realization by the police of administrative oversight of certain categories of citizens inclined to commit crimes against which the court imposes certain restrictions on their rights and freedoms. The implementation of police supervision reduces the ability of observers to commit an offense, in violation of human and civil rights and freedoms.

We note that this approach (restricting the rights and freedoms of a certain category of offenders) is typical for the most foreign countries, including those with a developed democratic system. There are far less police states such as Belgium, Germany, Denmark, France, Sweden, Japan, there are probation institutes, and institutions that are more or less developed in administrative (including police) supervision. The United States has one of the most rigorous probation system and penitentiary supervision in the world.

In accordance with Article 64 of the Constitution of Ukraine, constitutional rights and freedoms cannot be limited, except in cases clearly stipulated by the Constitution of Ukraine. Such cases include restrictions imposed on certain categories of prisoners released from imprisonment, in particular:

a) sentenced to imprisonment for serious, especially grave crimes or convicted two or more times before imprisonment for intentional offenses, if during their sentence their behavior showed that they are stubbornly unwilling to follow the correction path and remain dangerous to the society;

b) sentenced to imprisonment for grave, especially serious crimes or convicted two or more times before imprisonment for intentional crimes if they after the serving of punishment or release on parole from serving a sentence, despite the law enforcement bodies' warnings, systematically violate public order and the rights of other citizens, commit other offenses;

c) sentenced to imprisonment for one of the crimes related to the illicit trafficking of drugs, psychotropic substances and precursors [5].

Administrative supervision of persons released from places of imprisonment in Ukraine has a long history, it existed in the years when Ukraine was the part of the Russian empire and during the years of Soviet Union existence. The conditions for administrative supervision and the procedure for its implementation were gradually eased over the years.

Today, procedure for making a decision on the establishment of supervision and competence for its establishment is regulated by a separate legislative act of the Law of Ukraine "On the Administrative Supervision of Releases from Prison", 01.12.1994, No. 264/94-VR (as amended, respectively, of December 23, 2015, N 901-VIII), as well as the Law of Ukraine "On National Police", 07.07.2015, No. 580-VIII [8].

The surveillance is compulsory and preventive. Article 1 of the Law of Ukraine "On Administrative Supervision of Releases from Prison" (December 1, 1994 No. 264/94-Verhovna Rada) defined the type of administrative supervision as a system of temporary forced preventive measures for the monitoring and control of persons' behavior released from, carried out by the bodies of the National Police.

As stated in Article 7 of the Law "On the Administrative Supervision of Releases from Prison", administrative supervision is carried out by the police. Police officers register, photograph and, if necessary, take fingerprints from persons who are subject to administrative supervision. Police officers are obliged to monitor the behavior of these persons systematically, to prevent them from violating public order and the rights of other citizens, and to stop them, to search for persons who avoid administrative supervision.

The institution of police (administrative) supervision at certain intervals was considered ineffective and such that in law-enforcement practice is not important. Since police oversight has largely restricted the rights and freedoms of citizens, this oversight has been the subject of heated debate, and there were more opponents than supporters in separate periods.

Known in the 18-th century as means of policing the behavior of perpetrators following their criminal punishment, was perfected, modified, and even abolished in some states in order to reborn after a while (Germany, Belarus, Kazakhstan, Russia, etc.).

Conclusions. In order to create an effective organizational and legal system of police supervision in Ukraine that would meet the standards of legal democratic state, it would be expedient to carry out in the future a detailed comparative legal analysis of police supervision in the European Union's states on the basis of which to make appropriate amendments to the laws of Ukraine "On Administrative Supervision for Releases from Prison", "On Probation"; to adopt a joint order of the Ministry of Internal Affairs of Ukraine and the Ministry of Justice of Ukraine on approval of the Instruction on the organization of administrative supervision of releases from prison by repealing the Instruction adopted in 2003 by the Ministry of Internal Affairs of Ukraine and the State Department of Ukraine for the Execution of Sentences, the latter was liquidated.

REFERENCES

1. Андрійко О.Ф. Державний контроль в Україні: організаційно-правові засади/ Андрійко О.Ф.: монографія. – К.: "Наук. думка", 2004. – 300 с.
2. Бахрах Д. Н. Важные вопросы науки административного права. // Государство и право. – 1993. – № 2. – С. 32-43.
3. Гаращук В. М. Теоретико-правові проблеми контролю та нагляду у державному управлінні: автореф. дис. на здобуття наук. ступеня д.ю.н.: спец. 12.00.07 – теорія управління; адміністративне право і процес; фінансове право/ Володимир Миколайович Гаращук; Національна юридична академія України ім. Ярослава Мудрого. – Харків, 2003. – 35 с.

4. Денисова А.В. До питання про особливості адміністративного нагляду органів виконавчої влади у екологічній сфері/ А.В. Денисова//Прикарпатський юридичний вісник. – 2017. – Випуск № 3(18). – С.53-56.
5. Про адміністративний нагляд за особами, звільненими з місць позбавлення волі: Закон України від 01.12.1994 №264/94-ВР// Відомості Верховної Ради України, 1994, N 52 (27.12.94), ст. 455
6. Про Національну поліцію: Закон України від 02.07.2015 № 580-VIII// Відомості Верховної Ради України, 2015, N 40-41 (09.10.2015), ст. 379.
7. Ярмачі Х.П. Адміністративно-наглядова діяльність міліції в Україні: Монографія / Х.П. Ярмачі. – Одеса: Юридична література, 2006. – С. 147.
8. Hughes, T., Wilson, D. J. and Beck, A. J. 2001. Trends in State Parole, 1990–2000. Washington, DC: Bureau of Justice Statistics. *Google Scholar*.
9. *Handbook on Police Accountability, Oversight and Integrity*. Criminal Justice Handbook Series. United Nations publication, Sales No. E.11.IV.5.

INTERNATIONAL ACADEMY JOURNAL Web of Scholar

ISSN 2518-167X

5(35), May 2019

DOI: https://doi.org/10.31435/rsglobal_wos

MULTIDISCIPLINARY SCIENTIFIC EDITION

Indexed by:



Passed for printing 26.05.2019. Appearance 31.05.2019.

Typeface Times New Roman.

Circulation 300 copies.

RS Global Sp. z O.O., Warsaw, Poland, 2019

Numer KRS: 0000672864

REGON: 367026200

NIP: 5213776394

<https://ws-conference.com/>