

FOREIGN EXPERIENCE IN ENSURING THE SECURITY OF THE PENITENTIARY SYSTEM AND THE POSSIBILITY OF ITS USE IN DOMESTIC PRACTICE

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Abstract

Foreign experience of ensuring penitentiary safety is structurally studied in this article; the possibility of its use in domestic practice is discussed. The intrinsic and external aspects of penitentiary security, which are organically interconnected with each other, are highlighted. The General characteristic of modern criminal and Executive system of Russia is given, the problems of legal regulation of ensuring its safety existing at the moment are revealed. On the basis of the comparative legal method in combination with other methods of scientific cognition, the article considers foreign experience of ensuring the security of penitentiary institutions through differentiation of convicted persons and the conditions of serving sentences, and also given the wide use of advanced technical means of control and supervision in the process of correction. In this regard, some measures have been proposed to optimize the functioning of penitentiary institutions of the penal correction system of Russia in terms of penitentiary security. In order of discussion, subject to the review of best international practices are selected relevant for the domestic practice questions on the specifics of ensuring penitentiary safety in emergency situations, the models of private prison companies, the development of social control's forms and supervision over the persons released from penitentiary institutions, the conclusions about the parameters of the perception of foreign experience in domestic practice are formulated.

Keywords

Penal system; prison security; Russia; foreign experience

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1. Introduction

Held in Russia radical changes, focused on upgrading and at the same time, the progressive development of the Russian state and society, are comprehensive in nature and deal including relationships arising and developing in the penitentiary sector, including issues of prison security. The Russian Federation proceeds from the necessity of continuous improvement of the system of public security (The concept of public safety in the Russian Federation, 2013), in conjunction with the strategic objectives of national security in modern conditions (National security strategy of the Russian Federation, 2015). Prison safety genetically related to the overall system of national security, since it involves complex regulatory and legal forces and means aimed at countering threats to the normal development of the Russian state and society, lawful interests of citizens. At the same time, the prison security encompasses significant specifics due to the peculiarities of its main threats (crime, criminal and prison subculture, prison relapse) and manifesting itself in the legal instruments of its software (Romashov, Tonkov, 2014, p. 266-267).

Prison security is both intra-system and inter-system in nature, because the insider threats determine the risk in relation to the persons directly located in the prison environment – especially the convicts and the prison staff. In the field of intersystem relations in the prison as a source of danger should be considered the prison system, which concludes a threat to 'law-abiding' society.

Accordingly, a reasonable statement on the allocation of the inside and outside of prison security.

With regard to Russia we should speak about the special role of the penal system in ensuring prison security. The term 'correctional system' is traditionally used in the literature in understanding with state-legal nature and accordingly organized by the Institute for implementation of activities in the sphere of execution of criminal penalties and performs in this regard are significant for the state and society (Lelyukh, 2006).



In turn, the dynamics of state-legal and social change manifests itself in changes of the content of the functions, specific tasks of the penal system and its constituent organs and agencies. In modern conditions, in conjunction with the constitutional institution of the special value of man, his rights and freedoms (article 2 of the Constitution of Russia of 1993), active and comprehensive participation of Russia in integration processes, the correctional system is rebuilt on the line of humanization of the prison, direction is gradually replacing the punitive and derived from it.

The main milestones of the humanization of the modern criminal-Executive system of Russia include:

- the adoption of laws in the sphere of organization and activity of criminal-Executive system, taking into account the constitutional provisions and international standards in the penitentiary field (law of the Russian Federation of 21 July 1993 n 5473-1 'On institutions and bodies executing criminal penalties of imprisonment'; the Criminally-Executive code of the Russian Federation 1997);
- 1997, the penal system of Russian Ministry of internal Affairs to the Ministry of justice of Russia (on the basis of the decree of the President of the Russian Federation from October 8, 1997);
- education in 2004 the Federal service of execution of punishments, which transferred the functions of the Ministry of justice for enforcement of criminal sanctions, taking into account the updates of the legislation and accepted by Russia of its international obligations in the penitentiary sector (on the basis of the decree of the President of the Russian Federation dated March 9, 2004);
- the development, adoption and implementation of measures for implementation of the concept of development criminally-Executive system of the Russian Federation until 2020 (approved by the decree of the Government of the Russian Federation of 14 October 2010 g. N^o 1772-R), where, respectively, the General characteristics and current state of the penal system were given, the main directions, forms and methods of its improvement based on international standards and the needs of social development were determined (The concept of the Federal targeted programme "development of the penal correction system (2017-2025)", 2016).

The process of humanization of Criminal-Executive system of Russia substantively represents itself in the reduction of the number of convicts serving a sentence of imprisonment, finding alternatives to criminal sentences involving isolation from society. So, for comparison, if in 2002 the number of prisoners located on the territory of Russia correctional institutions (prison) amounted to 877 thousand 393 people and in 2015, respectively, 618, 656 thousand people (Gorban', 2016, p. 176-183). At the same time the practice of assignment and execution of alternative types of punishment not connected with isolation from society is expanding.

However, the current Russian criminal-Executive inspection, entrusted with the task of execution of alternative punishments, it is necessary to control more retidivirovanii contingent, which complicates their work and reduces its effectiveness. There is also rejuvenation and the deterioration of the criminological characteristics of the contingent of prisoners who are serving sentences in deprivation of liberty, in particular, increasing the number of prisoners who are prone to various forms of destructive behavior,



manifesting itself in violence against other convicts, as well as in attacks on employees of criminal-Executive system (Kudryavtsev, 2013, p. 20-23).

Designated circumstances actualize the problem of studying the best foreign experience of ensuring penitentiary safety.

The purpose of this study is to identify the positive elements of foreign experience of ensuring penitentiary safety and the prospects for its perception in the course of reforming the criminal-Executive system of Russia.

2. Literature Review

The theoretical basis of public security, part of which acts as a prison security, developed in the works of A. A. Ter-Akopov (1998) A. B. Antonova and V. G. Balashov (1996), M. M. Babayev and E. N. Rakhmanova (2003). Among the works of foreign authors, we mention the study of known criminologist Michael Tonry (USA) (2001) who identified the particular importance of model of criminal justice, implying the priority of measures aimed at ensuring public safety, protection from crime.

Some writers appeal directly to the problem of prison security. In particular, B. B. Kazak (2001) outlined the main components of security control of the penal system. In the research of V. Chorny, F. (1996) were systematized the factors of security of prisoners in places of deprivation of freedom. R. Z. Useev comes to conclusions about the holistic nature of penal hazards and security of criminal-Executive system, the need for a conceptual definition of this concept on the legislative level (Useev, 2015, p. 56-61).

Foreign experience of organization and functioning of penitentiary systems and ensure they prison security is provided in several studies. In particular, a review of the device penitentiary prison a number of European countries, order and conditions of serving of punishments in them, is given in the book by L. F. Pirtle, A. M. Fumm, Y. Y. Iron and T. V. Borisova (2012).

The work by A. V. Bykova, and M. A. Kalogirou (2015) discusses the prison system of the United States and the main ways of providing it security. In the book by Andrew Coyle (United Kingdom) (2002) a progressive vision of its author in terms of prison management when the balance of the prison security and prisoners ' rights is presented. Norwegian researcher Erich Saham (2006) considers in comparison with the European prison rules basic training for the Norwegian correctional. In own work S. H. Samsonov (2016) analyzes foreign experience of creation and functioning of private prisons, expresses judgments about the possibility of his careful and selective use in Russia. In conjunction with the problem of prison security (in its broadest sense) E. A. Tohave (2009) analyzes the positive foreign experience of socio-legal control over the persons, released from correctional institutions.

However, the whole issue of prison security, considered from the perspective of its impact on the modern criminal-Executive system of Russia of international experience, parameters of perception in domestic practice, in the course of the ongoing in Russia, reforms that are not specifically allocated.



3. Materials and methods

The methodological basis of this study is comparative legal method, which focuses on the comparison of different legal systems, socio-legal categories and phenomena. The practical importance of comparative legal method is the recognition characteristic of the modern world the objective process of rapprochement of the different national legal systems, given the typological differences and national legal particularities of a given country.

The comparative method is combined with other General scientific and special methods of cognition, namely:

- with systemic (involving the penitentiary need to consider security as a holistic phenomenon, and its support, respectively, as the process of preventing, detecting and neutralizing the threats emanating from criminal and criminogenic prison environment, in turn, correlated with intra and inter-system socio-legal factors);
- formal and legal (involving the use of conceptual-categorical apparatus of jurisprudence, recourse to the law and materials of law-enforcement practice in the sphere of penal activities in the countries surveyed);
- structural-functional (allows to highlight part of the prison security and the main components of its software in connection with the operation and development of the penal systems of modern States).

The research of methodology consists of the study and comparison of the basic characteristics of penal systems of modern States, in part, related to issues of prison security. The main attention is given to the penitentiary countries of Europe and the United States, taking into account the degree of development of the penitentiary systems and the accumulated positive experience of ensuring penitentiary safety in terms of total lines on the humanization of the penitentiary activities, combined with its efficiency.

Based on the special scientific and reference literature, the article takes into account the provisions of the legislative acts of Russia and a number of foreign countries in force on penitentiary security.

A comparison of foreign and Russian experience is given to justify the position about the existence of the two main areas of prison security, namely 1) internal (with reference to the actual prison) and 2) external (with respect to law-abiding society). In this regard, these directions are considered in the work, the authors are aware of a certain share of conventionality of this distinction, taking into account the noted holistic and integrated nature of the prison security and the intrinsic relationship of the parties.

4. Results

4.1. The internal security of penal institutions through differentiation of convicts

The role of the factor of differentiation of convicts and conditions of punishment serving in the internal security of penal institutions is substantively indicated in the below country-specific data. In the United States (first place in the international ranking in the number of prisoners), there is a diversified system of corrections, respectively, which, in



the jurisdiction of municipal, state or Federal government. Each prison has a security level, respectively, from 1 to 4, and:

- correctional institutions of local subordination have security level 1 or 2 and more than half contained therein offenders have a resolution without support for some time to leave the area for employment or training of any profession;
- prisons and reformatories of the fourth and third levels of security are under the jurisdiction of the States or the Federal government (however, in these penal institutions there are also units with a soft mode corresponding to the second level (Kovalev, Sheremetyeva, 2013, p. 19-20).

Differentiation of convicted persons and, accordingly, the question of determining the necessary level of security of the penal institution held not only under the sentence of the court, but also in conjunction with the operation of reception centers, diagnostic and classification of prisoners (in the case of persons serving imprisonment for more than one year) (Kovalev, Sheremetyeva, 2013, p. 19-20).

In correctional institutions: there are various programs aimed at the resocialization of the convicted person. In addition, in the United States operate:

- restitution centers (a 'mild' alternative to imprisonment; they are sent to convicted persons who have committed an offence for the first time, able-bodied and mentally healthy persons who do not have problems with drugs and alcohol, and by a court decision can be sent to convicted persons whose prison term is coming to an end; convicted persons undergo a socialization course, are obliged to go to work and perform free public works, pay their living in the center, court costs and compensate the victims for the damage);
- centers compulsory treatment (they send in need of treatment from alcoholism and drug addiction centers educational programs and programs of socialization, inmates also undergo a professional training course, they receive qualified assistance in finding employment after release);
- correctional camps (for the first time convicted for up to five years for crimes not related to violence young healthy men are sent there, and, if they express such a desire themselves; convicted persons are engaged in heavy public works, for example, the construction of roads, and are also obliged to undergo an educational program and a course of vocational training).

In the UK, due to historical administrative-territorial division and different political status of its constituent territories, Scotland and Northern Ireland have their own system of execution of punishments, and England and Wales – General (Yakovlev, Yakovleva, Yakovleva, 2011, p. 142) (respectively, England and Wales – 86 230 thousand prisoners; Northern Ireland – 1460 prisoners, Scotland – 7480 convicted (Bykov, 2017). In the UK prison service, there are different categories of institutions for the detention of prisoners, taking into account gender, age, criminal experience (separately allocated institutions with a life sentence). There are four modes of accommodation for adult males: category 'A' (top security) prisons; category 'B' (high security) prisons; category 'C' (middle security) prisons; and category 'D' (open mode) prisons. In the process of serving the sentence, many convicts in accordance with the decision of the prison administration,



taken on the basis of an assessment of the identity of the convicted person and his behavior, go into the category of a lesser degree of safety, some prisoners go into the category of a higher degree of danger than previously expected (Yakovlev, Yakovleva, Yakovleva, 2011, p.143).

In Germany (64 thousand convicts 193) (Bykov, 2017), the execution of the penalty of deprivation of liberty is carried out in penal institutions open and closed (second dominate), while the inmates depending on the risk of their identity are sent to prisons with different degrees of isolation. In connection with the reform currently under way (since 2006), the execution of sentences is regulated by the legislation of the Federal lander, which, however, does not change the basic purposes and principles of the organization of the execution of penalties relating to the protection of society from crime and the socialization of the convicted person.

In France, penitentiary establishments are divided into: detention home (where to put those arrested and sentenced to deprivation of liberty for a term of less than one year); the Central prison (where the most dangerous prisoners with a much more strict regime of detention and high security measures); the places of deprivation of liberty, which is designed for prisoners who in the opinion of the administration, have the best chance of rehabilitation (where the detention regime is focused on possible communication of convicted persons with outside world); detention centers (institutions of a mixed type, which can coexist compartments, designed for both prisoners on remand and convicted); a semi-free Autonomous centers (placed convicts who have to serve not more than one year and have attained a certain degree of correction) (Yakovlev, Yakovleva, Yakovleva, 2011, p. 150).

In Spain (as well as in Portugal) there are four categories of detention of convicted persons (closed, semi-open, open (night stay) and conditional release under house arrest), which can be applied by transfer from one correctional institution to another (the so-called progressive system of punishment (Teplyashin, 2016, pp. 113-120). It is important to note that in Portugal every convicted person is assigned an expert from the social reintegration service, which is a structural unit of the General Directorate of reintegration and prisons, who prepares a plan of social rehabilitation taking into account the individual characteristics of the convicted person and monitors compliance with its requirements (Teplyashin, 2016, pp. 113-120).

In Finland (there is a low crime rate (Koski, Druzhinina, 2015, p.90) there are various types of punishment regime associated with isolation from society, while, taking into account the behavior of the convict, testifying to his correction, there are rules on transfer from a stricter to a less strict regime of detention (Koski, Druzhinina, 2015, p. 92).

In Norway (crime rates and the level of prisoners are significantly lower than in other European countries) (Saheim, 2006, p.88) convicts are placed in prisons with different levels of security on the basis of an individual risk and needs assessment, taking into account, among other factors, the factors of influence of the criminal environment on low-risk prisoners, as well as the importance of social rehabilitation work.

In Russia, the institutions of the penal correction system that carry out prison sentences include: colony-settlement (convicted primarily for reckless crimes, in addition, for the first time convicted of crimes of minor gravity) educational colonies for minors; medical correctional institutions; correctional colonies of General, strict or special regime



(respectively, the regime is determined taking into account the gravity of the crime, as well as relapse.); prisons (their number is insignificant, they contain persons who have committed especially serious crimes, at especially dangerous relapse, and also transferred from corrective colonies on a sentence of court in connection with malicious violation of the order of serving of punishment) (Art. 16, 74 of the Criminal and Executive code of the Russian Federation). In the domestic penal enforcement legislation there are provisions on separate detention of men and women convicted of crimes, persons who committed the crime for the first time and those convicted who previously served a sentence of imprisonment (article 80 of the Penal enforcement code), as well as provisions on changing the type of correctional facility for positively characterized convicts (article 78 of the Penal enforcement code).

At the same time, there is a potential for improving legislative provisions and practice, taking into account the positive foreign experience, within the framework of two promising areas:

- differentiation of prisoners based on the findings of specialized centers on the level of risk and accept in conjunction with that decision about the direction of the face (in some cases also subject to his consent) to the penitentiary (where, in turn, operates the appropriate socialization program);
- possibility of transfer of the sentenced person, the sentence which ends in a penitentiary institution, with a 'soft mode' with simultaneous passing of the relevant programs of adaptation and re-socialization.

These provisions should be reflected in the domestic penal enforcement legislation, namely, in Art. 78 (Change of type of correctional institution) and in Art. 87 (conditions of serving of punishment condemned to imprisonment) Criminally-the Executive code of the Russian Federation.

4.2. The technical component of prison security.

The following is the experience of certain countries in the technical part of the security of penal institutions, state its significance, and formulated recommendations for improving national legislation in this part.

In the Netherlands the prisons are equipped with video cameras, which carry out continuous monitoring of convicts (prisoners have virtually no personal space, excluding the toilet and shower (Kurkina, 2013, p. 146).

In Spain, the system of security of penitentiaries (including the means of its technical support) correlates with the type of institution, and in the centers of social integration, which are generally not closed and operate on the basis of the principle of confidence in the convicts (the latter have the opportunity to work and undergo treatment outside these institutions), there is an effective security system that allows to control convicts with, inter alia, electronic bracelets GPS-monitoring, indicators of alcohol content in the blood, personal voice detectors (Teplyashin, 2016, pp. 113-120).

In the US:

- an important means of operational control of the criminal environment is centralized accounting, which allows collecting, accumulating, storing, systematizing and issuing



operational information (Central Inmate Monitoring System), first of all, in relation to prisoners with high criminal activity and significant criminal experience;

- prison staff widely uses advanced technical means to prevent escapes and other crimes, violations of the established order of serving of punishment, and to obtain the necessary information about the behavior of the convicts (Bykov, Kalugin, 2015, p. 28-32).

The use of computer technologies with the use of digital monitoring and surveillance systems allows:

- to effectively implement the task of implementation of integrated control of the territory of the penitentiary institution;
- to prevent ill-treatment of inmates by correctional staff;
- to respond promptly to emergency situations and thereby ensure security within the prison.

According to article 83 of the Criminal Executive code of the Russian Federation the administration of correctional institutions has the right to use audiovisual, electronic and other technical means of control and supervision in order to prevent escapes and other crimes, violations of the order of serving the sentence, while obliged to notify prisoners on receipt of the use of technical means of control and supervision.

Taking into account the high importance of technical means of ensuring penitentiary security, it is necessary to shift the emphasis on the obligation to use such means in order to ensure the personal safety of convicts and correctional facility personnel, and to make appropriate adjustments to article 83 of the Criminal Executive code of the Russian Federation.

5. Discussion

Peculiarities of functioning of penitentiaries and ensuring their security in emergency situations.

Among these features are: the establishment of a special legal regime; the creation of temporary structural units; the creation of a temporary system of management and communication; the use of special tactics; the use of special tools and weapons (Glushkov, 2013, pp. 28-30). In correctional institutions of the Republic of Belarus with the introduction of special provisions the decision of the head of the institution may be limited prisoners' contact with the outside world, while in this mode, insulation is within the institution or transfer to another prison convicts, organizing a group or provoking illegal actions (Glushkov, 2013, p. 28-30).

In the UK the prisoners involved in the riots, the rebellions, hostage-taking and attacks on representatives of the administration in places of imprisonment, transferred to a prison lockdown; in the Commission of such acts in jail, they are placed in the camera security category 'A' (in this case they lose their personal allowances and are subject to the most stringent monitoring: produce weekly searches of their person and cells, where they are contained (Coyle, 1994, p. 96; Draft guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism, 2015).



In General, it is necessary to take into account the foreign experience of the functioning of penitentiaries in emergency circumstances in the parameters of the current legislation.

Private prisons.

First version of private penal institutions of closed type was tested in the USA in the 1980s, currently there are private prisons in 27 States and managed by 20 private companies, their capacity is 4.4 percent of the limit of American prisons (Shamsunov, 2016, p. 25-28). The researchers regard the opportunity to provide prisoners with fairer, safer, humane and constructive living conditions, to reduce the burden on the state in maintaining the penitentiary system as positive aspects (Kovalev, Sheremetyeva, 2013, pp. 19-22), on the other hand, there is a lack of experience among the staff of such institutions in working with a contingent of prisoners (Shamsunov, 2016, pp. 25-28), in addition, the increase in the number of prisoners is associated with the privatization of prisons (Kovalev, Sheremetyeva, 2013, pp. 19-20).

The model of private penitentiaries (with some modifications) is widespread in a number of foreign countries (Shamsunov, 2016), while some countries (for example, Germany) began to stop privatization of prisons (Gulina, 2012). The national special literature suggests the possibility of gradual perception of foreign experience in this part in Russia (Kovalev, Sheremetyeva, 2013, p.28).

The authors of this article believe that the question of the introduction of a model of a private penitentiary institution in the penal correction system of Russia, taking into account the noted positive and negative aspects of it, requires careful study with the involvement of a wide range of scientists and practitioners. This process may be gradual, subject to compliance with all relevant requirements established by law and other regulatory legal acts for the organization and functioning of the correctional institution (including security issues).

The outer side of the prison security.

There is and dynamically develops a system of social control over persons released from correctional institutions abroad (Veldhuis, 2015) (first of all, repeat offenders (Tohava, 2009, pp. 198-201). In this regard, it is necessary to consider positively probation, which performs, among other things, the form of social control and supervision, as well as the prospects of its implementation in domestic practice.

In some foreign countries, criminal law instruments are provided for persons who have committed particularly serious crimes and who have served prison sentences. In particular, we are talking about the so-called preventive arrests (Sicherheitsverwahrung) to persons convicted of especially serious crimes of violent nature applied within the framework of the German penitentiary system (Gulina, 2012, pp. 136-142). At the same time, it is necessary to pay attention to the reformation of this institution, including under the influence of decisions of the European court of human rights (Reform der Sicherungsverwahrung, 2011). In General, this institution raises questions in terms of its legitimacy.

The current legislation of the Russian Federation provides for administrative supervision of persons released from prison (Federal law of 6 April 2011), while the term of



administrative supervision is limited to the period established by the legislation of the Russian Federation for the repayment of the criminal record. In this regard, the domestic approach seems to be more in line with the General legal principle of legality. However, this statement does not deny the opportunity to improve directly the forms of administrative supervision in order to prevent the Commission of new crimes and other offenses by repeat offenders.

Apparently, the efficiency of the implementation of the administrative supervision may be provided subject to systematic observation carried out by supervised entities, an important role is played by innovation component, namely, the establishment of electronic registration of supervised persons and access by all law enforcement units. In this regard, the importance of foreign best practices and the need to take them into account and use them seems obvious.

Conclusion

Conducted on the basis of the comparative legal method and with the involvement of other methods of scientific knowledge, the study has a significant novelty, since it attempts to substantiate the parameters of the perception of the best foreign experience of penitentiary security in the modern penal system of Russia. These parameters should be correlated with the type of the Russian legal system and the needs of reforming the Russian penal correction system in the direction of humanizing penitentiary activity, and at the same time improving its efficiency and security. Penitentiary security is complex, includes internal and external directions.

Accordingly, this vision, as a result of the comparison of the basic characteristics of the penitentiary systems of a number of modern foreign States and the penal enforcement system of Russia, identified promising for perception in domestic legislation and practice, the provisions of best foreign experience and formulated recommendations regarding the forms of this perception.

The conclusion about the reflection in the penal legislation of Russia (article 78, 87 of the Penal code) used in the foreign penal practice methods of differentiation of convicts on the basis of the findings of specialized centers on the level of danger and the possibility of transfer of the sentenced person, the sentence which ends in a penitentiary institution, with a 'soft mode' with simultaneous passage of programs of adaptation and re-socialization.

The importance of the technical means of ensuring penitentiary security, confirmed by the best practice in the implementation of penitentiary activities, raises the question of increasing the technical equipment of correctional institutions and other institutions and bodies executing criminal penalties, and also assumes reflection in the current criminal Executive legislation (art. 83 of The penal code of the Russian Federation), the obligation of the administration of correctional institutions to use such means in order to ensure the personal safety of convicts and correctional personnel.

The humanization of penitentiary activities does not deny the adequate response of the penal correction system to the threats posed by penitentiary crime and other factors that disrupt the normal functioning of the penitentiary institution. In this regard, the national



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practice should take into account the foreign experience of the functioning of penitentiary institutions in emergency circumstances in the parameters of the current legislation.

Assessing the foreign practice of creating private closed-type penitentiaries, as well as the possibility of its perception in the domestic practice, the authors proceed from the fact that this process can be phased, while at the same time subject to all relevant, established by law and other regulatory legal acts requirements for the organization and functioning of the correctional institution (including security issues).

Development of forms of social control and supervision over the persons released from penitentiary institutions (primarily *retidivirovanii*) in Russia has prospects in the parameters stipulated by the Federal law (2011) on administrative supervision over persons released from places of imprisonment. The introduction of electronic records of persons under surveillance and the provision of access to them by all units of law enforcement agencies can contribute to improving the efficiency of administrative supervision.

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